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* **IN THE HIGH COURT OF DELHI AT NEW DELHI*****Date of Decision: 28.01.2022***+ **W.P.(C) 13836/2021**

ANIL KUMAR

..... Petitioner

Through Mr.T.N.Tripathi, Adv.

versus

UNION OF INDIA & ANR.

..... Respondents

Through Mr.Avnish Singh, Adv.

CORAM:**HON'BLE MR. JUSTICE MANMOHAN****HON'BLE MR. JUSTICE NAVIN CHAWLA****NAVIN CHAWLA, J. (Oral)**

The petition has been heard by way of video conferencing.

CM 43664/2021 (Exemption)

Allowed, subject to all just exceptions.

WP(C) 13836/2021

1. The present petition has been filed challenging rejection letter dated 11.01.2021 issued by the respondent nos. 1 and 2, rejecting the representation made by the petitioner for the grant of revised pension under the 7th Central Pay Commission (in short, 'CPC'). The petitioner further seeks direction to the respondents to grant revised pension under the 7th CPC on notional basis to the petitioner.



2. It is the case of the petitioner that the petitioner was appointed as a Sub-Inspector in the Central Reserve Police Force (in short, 'CRPF') in the year 1981. However, since the petitioner remained unauthorisedly absent from service, he was inflicted with the penalty of removal from service vide order dated 09.07.1997. The petitioner preferred an appeal against the order of penalty of removal from service, which was also rejected vide order dated 24.11.1997. Thereafter, the petitioner approached this Court by way of a writ petition, being WP(C) 1728 of 1999, titled **Anil Kumar v. CRPF & Ors.**, challenging his removal from service. This Court vide Judgment dated 25.09.2012, while balancing the equities, issued the following direction:

"7. Faced with aforesaid and the possibility of the entire period being required to be treated "dies-non" i.e. not making petitioner eligible for any wages or the period to be counted towards pensionable service, learned counsel for the petitioner states that the petitioner would be satisfied if this Court were to uphold the penalty removing the petitioner from service provided the petitioner is sanctioned a compassionate allowance in terms of Rule 41 of the CCS Pension Rules.

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11. A conjoint reading of Rule 39 and Rule 41 would reveal that a Government servant who is dismissed or removed from service can be paid compassionate allowance upto 2/3rd of the pension which would have been admissible to him if he had retired on compensation pension. Meaning thereby, to be eligible for compassionate allowance pensionable service is not the criteria.

12. Noting that even respondents are at fault of not ensuring that the charge sheet was served upon the petitioner, but weighing the



fact of the petitioner's continued unauthorized absence and factoring therein the concession made by the learned counsel for the petitioner, we think that a fair, just and equitable direction which needs to be passed in the instant writ petition is to direct that the petitioner be paid compassionate allowance for the reason he had joined CRPF on September 26, 1981 and had served a cause for the nation till he was removed from service in the year 1997.

13. Declining relief as prayed for, we dispose of the writ petition directing the respondents to pay to the petitioner compassionate allowance which shall be 2/3rd of the compensation pension which would have been admissible to him if petitioner had retired on compensation pension. We also direct that petitioner would be paid proportionate gratuity for the period he had rendered service.”

3. The learned counsel for the petitioner submits that the Impugned Order rejecting the petitioner's representation for grant of revised pension as per the 7th CPC has been passed in violation of Rule 41(2) of the Central Civil Services (Pension) Rules, 1972 [in short, 'CCS (Pension) Rules']. The petitioner relies upon the following:

***“(2) Commutation of Compassionate Allowance permissible.*—A question has been raised whether Government servants drawing Compassionate Allowance under Rule 41 of the Central Civil Services (Pension) Rules, 1972, are entitled to commute a part of such Compassionate Allowance as in the case of other kinds of pension or not. The matter has been considered and it is clarified that the Compassionate Allowance is one of the various kinds of pensions enumerated in the**



CCS (Pension) Rules, 1972, and as such the CCS (Commutation of Pension) Rules, 1981, would apply to the Compassionate Allowance in the same manner as in respect of any other class of pension.”

4. We have considered the submissions made by the learned counsel for the petitioner, however, find no merit in the same.

5. The impugned rejection letter dated 11.01.2021 reads as under:

“2. It is to inform you that as per CPAO OM No.CPAO/IT&Tech/ Revision(7th CPC)/19-Vol-III(C)/2016-17/143 dated 03/11/2017 and para No.11 of OM No.38/37/2016-P&PW(A) dated 12/05/2017, the pension cases of compulsory retirement and compassionate appointment are not to be revised at Pay and Accounts office level. They would continue to be entitled to receive pension as already revised by Bank authority by multiplying the factor to 2.57 of pre-revised pension with effect from 01/01/2016 in accordance with the instruction contained in OM No.38/37/2016-P&PW(A)(ii) dated 04.08.2016. As you were also retired compulsory, hence your pension case is also not to be revised under 7th CPC on notional basis.”

6. Pursuant to the recommendations of the 7th CPC, OM No.38/37/2016-P&PW(A)(ii) dated 04.08.2016, was issued by the Government of India for revision of pension for the pre-2016 pensioners/family pensioners, et cetera with effect from 01.01.2016. Clause 4.1 thereof provides that the revised pension/family pension with effect from 01.01.2016 shall be determined by multiplying pension/family pension, as had been fixed at the time of



implementation of the 6th CPC, by 2.57. Thereafter, vide an OM No. 38/37/2016-P&PW(A) dated 12.05.2017, it was *inter alia* directed that the revised pension/family pension with effect from 01.01.2016 in respect of all the Central Civil Pensioners/family pensioners, including CAPF's, who retired/died prior to 01.01.2016, may be revised by notionally fixing their pay in the pay matrix recommended by the 7th CPC in the level corresponding to the pay in the pay scale/pay band and grade pay at which they retired/died. However, paragraph 11 of the said OM provides as under:

“11. These orders would not be applicable for the purpose of revision of pension of those pensioners who were drawing compulsory retirement pension under Rule 40 of the CCS (Pension) Rules or compassionate allowance under Rule 41 of the CCS (Pension) Rules. The pensioners in these categories would continue to be entitled to revised pension in accordance with the instructions contained in this Department's O.M. No. 38/37/2016-P&PW(A)(ii) dated 4.8.2016.”

7. Therefore, the benefit of the OM dated 12.05.2017 was not available to the pensioners who were drawing Compulsory Retirement Pension under Rule 40 of the CCS (Pension) Rules or Compassionate Allowance under Rule 41 of the CCS (Pension) Rules, and they were to be continued to be governed by the OM dated 04.08.2016.

8. The Government thereafter, while issuing instructions dated 25.05.2017 to all concerned to revise the pension of pre-2016 pensioners/family pensioners, inadvertently missed out paragraph 11 of the OM dated 12.05.2017 quoted hereinabove. This omission was



clarified by an Office Memorandum, being CPAO/IT&Tech/Revision (7th CPC) 19.Vol-III(C)/2016-17/14, dated 03.11.2017.

9. A reading of the above Office Memorandum(s) clearly shows that the pensioners drawing Compassionate Allowance under Rule 41 of the CCS (Pension) Rules were entitled to a revision of pension by multiplication of 2.57 and not by notionally fixing their pay in the pay matrix recommended by the 7th CPC.

10. In the present case, this Court, vide its Judgment dated 25.09.2012, passed in WP(C) 1728 of 1999, had directed that the petitioner shall be entitled to two-third of the compensation pension by relying upon Rule 39 and Rule 41 of the CCS (Pension) Rules. In fact, what was invoked was the proviso to Rule 41(1) of the CCS (Pension) Rules. Rule 41 of the CCS (Pension) Rules is quoted hereinbelow:

“41. Compassionate Allowance.—

(1) A Government servant who is dismissed or removed from service shall forfeit his pension and gratuity:

Provided that the authority competent to dismiss or remove him from service may, if the case is deserving of special consideration, sanction a compassionate allowance not exceeding two - thirds of pension or gratuity or both which would have been admissible to him if he had retired on compensation pension.

(2) A compassionate allowance sanctioned under the proviso to sub-rule (1) shall not be less than the amount of Rupees three thousand five hundred per mensem.”

11. What is being relied upon as Rule 41(2) of the CCS (Pension) Rules by the learned counsel for the petitioner and quoted



hereinabove, is, in fact, the OM dated 23.08.1977, which merely allows the Government servant to commute a part of such Compassionate Allowance. It is not Rule 41(2) of the CCS (Pension) Rules. The same has no application to the revision of the compassionate pension pursuant to the recommendations of the 7th CPC. The said revision is governed instead by the OM dated 04.08.2016 read with OM dated 12.05.2017 referred to herein above. The said OMs have not been challenged by the petitioner in the present petition. It is also not denied that the petitioner has been granted the revision in his pension in accordance with OM dated 04.08.2016, as is also evident from his Pension Pay Order filed with the petition.

12. In view of the above, no infirmity can be found in the Impugned rejection letter dated 11.01.2021 issued by the respondents.

13. We, therefore, find no merit in the present petition. The same is dismissed. There shall be no order as to costs.

NAVIN CHAWLA, J

MANMOHAN, J

JANUARY 28, 2022

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