* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Judgment reserved on : 01.09.2022
Judgment delivered on : 12.10.2022

\+ W.P.(C) 4835/2017 & CM APPL. 20858/2017

GOVT. OF NCT OF DELHI & ORS. ..... Petitioners

versus

LATE SHRI ASHOK KUMAR SINGH ..... Respondent

Advocates who appeared in this case:
For the Petitioners : Mr. Anuj Aggarwal, ASC, GNCTD.
For the Respondent : Mr. S. Maini, Advocate.

CORAM:
HON'BLE MR. JUSTICE SANJEEV SACHDEVA
HON'BLE MR. JUSTICE TUSHAR RAO GEDELA

JUDGMENT

TUSHAR RAO GEDELA, J.

1. In the present case, the State of Delhi, as the petitioners assails the order dated 17.01.2017 passed by the Central Administrative Tribunal, Principal Bench (hereinafter referred to as 'Tribunal') in O.A. No. 2929/2015, whereby the Tribunal had allowed compassionate allowance with retrospective effect, that is, from the date of dismissal i.e., 10.07.1992 to the deceased respondent Late Ashok Kumar Singh (hereinafter referred to as 'respondent' which also includes his LRs.) Ex-ASI (Ministerial) who unfortunately

expired on 01.12.2015 and is now being represented by his Legal Representatives.

2. The present case is one of the many rounds of litigation that the respondent faced.

3. Shorn of all the unnecessary details, the facts germane to decide the present lis are being referred to hereunder.

4. The respondent, Late Ashok Kumar Singh had joined the Delhi Police as a Constable in the year 1970. In the year 1992, due to the acts of misconduct, premised on the basis of assaulting senior officer, an enquiry was held and consequent thereto, the respondent was dismissed from service vide order dated 10.07.1992.

5. The said dismissal was challenged by him before the Tribunal, which too dismissed the said O.A. No. 98/1993 filed by him. Subsequent thereto, the writ petition filed by him before this Court also had been dismissed and the Special Leave Petition, which he preferred, bearing SLP (C) 14260/2012, too was dismissed by the Supreme Court on merits vide order dated 31.08.2012. However, while dismissing the said SLP, the Supreme Court granted liberty to the respondent to approach the authorities and seek Compassionate Allowance in accordance with the rules.

6. Consequent to the liberty so granted by the Supreme Court vide order 31.08.2012, the respondent filed a representation dated 12.09.2012 with the Competent Authority of the petitioner.

7. The aforesaid representation was rejected by the Competent Authority i.e., the Deputy Commissioner of Police, 1st Bn., DAP, Delhi vide the order dated 27.11.2012. On an appeal thereto, the Appellate Authority, vide the order dated 02.01.2013 upheld the rejection order and dismissed the appeal.

8. The respondent preferred an O.A. No. 603/2013 before the Tribunal challenging the orders dated 27.11.2012 and 02.01.2013 rejecting his representation seeking Compassionate Allowance. The Tribunal vide the order dated 21.10.2013, directed the petitioner herein to consider the representation dated 12.09.2012 afresh.

9. In compliance of the order dated 21.10.2013 of the Tribunal, the Competent Authority after re-considering the said representation, granted Compassionate Allowance to the respondent vide its order dated 05.09.2014 which, was made effective from the date of the order itself i.e., 05.09.2014.

10. Not being satisfied with the grant of Compassionate Allowance w.e.f., 05.09.2014, the respondent submitted a representation on 05.01.2015 to the Competent Authority seeking arrears w.e.f., 10.07.1992 to 04.09.2014. However, this representation was rejected vide order dated 12.06.2015 by the Competent Authority.

11. Consequent upon the said rejection of the representation requesting for Compassionate Allowance w.e.f., 10.07.1992, the respondent preferred O.A. No. 2929/2015 before the Tribunal.

Finding favour with the contentions put forth by the respondent, and considering the judgments on Compassionate Allowance, the Tribunal, vide order dated 17.01.2017, directed the petitioners herein to grant Compassionate Allowance from the date of dismissal i.e., 10.07.1992.

12. It is pertinent to note that during the pendency of O.A. No. 2929/2015, the respondent Ashok Kumar Singh had left for his heavenly abode on 01.12.2015. Subsequently, the O.A. was pursued by the wife of the respondent, namely, Ms. Malti Devi. Unfortunately, Ms. Malti Devi, wife of respondent also left for her heavenly abode on 29.09.2017 leaving behind her, three married daughters.

13. The order dated 17.01.2017 in O.A. 2929/2015 passed by the Tribunal was challenged by the petitioners before this Court in the present writ petition, primarily on the ground that Rule 41 of the CCS (Pension) Rules, 1972 does not mandate that Compassionate Allowance must be given with effect from the date of the dismissal of the government employee or from any particular date, and it is entirely the discretion of the Competent Authority to allow or disallow such request based on subjective satisfaction while considering the facts and circumstances of each individual case.

14. Another ground raised by the petitioners herein is that there is no vested right nor can an individual seek parity in respect of, firstly, the grant of Compassionate Allowance, secondly, the date from which such Allowance may be granted. Further, it was also urged that

Compassionate Allowance is granted in order to enable the family of the Retired/ deceased employee to tide over an immediate or sudden financial crisis.

15. The petitioners also rely upon the Guiding Principles for grant of Compassionate Allowance issued by the Government of India vide G.I., F.D., Office Memo. No. 3(2)-R-II/40 dated 22.04.1940, to buttress the issue that poverty is not an essential condition precedent to the grant of Compassionate Allowance. The petitioners also rely upon judgment dated 18.05.2021 passed by the High Court of Judicature at Kerala in the matter titled ***'V. Kesavan Nair v. Union of India & Ors.'***, bearing WA No. 2210 of 2019 to submit that the grant of Compassionate Allowance is an absolute discretion and the government employee is precluded from claiming such allowance from the date of dismissal or removal, as a matter of right.

16. Mr. Anuj Aggarwal, learned counsel for the petitioners submitted arguments on the basis of the afore-stated grounds and while referring to the judgment of the Supreme Court in '***Ct. Mahinder Dutt Sharma v. Union of India & Ors.'*** [(2014) 11 SCC 684] urged that the said judgment did not specify that the Compassionate Allowance ought to be given from a particular date. He further submitted that Rule 41 also does not mandate that Compassionate Allowance ought to be given from the date of dismissal or any particular date and this is left entirely to the discretion of the Sanctioning/ Competent Authority.

17. Learned counsel for the petitioner also submitted that Compassionate Allowance is granted in order to enable the family of the Retired/ deceased employee to tide over the sudden financial crisis. Referring to the facts in the present case, learned counsel submits that the dismissal of respondent took place 22 years before the order of grant of Compassionate Allowance in the year 2014 coupled with the fact that the respondent and his wife had passed away during the pendency of the present matter and having regard to the admission of the respondent that all the three daughters were married by the time the said O.A. was filed and thus, this exercise may be in futility.

18. Per contra, Mr. S. Maini, learned counsel for the respondent, who is also appearing for the LRs of Late Ashok Kumar Singh and Ms. Malti Devi, reiterated the stand taken before the Tribunal and supported the impugned judgment of the Tribunal.

19. Learned counsel for the respondent relied upon the judgments of *Mahinder Dutt Sharma (supra)* rendered by the Supreme Court and ***Ex. ASI Shadi Ram v. Government of NCT of Delhi & Ors.,*** rendered on 22.02.2008 by a Co-ordinate Bench of this Court in W.P.(C) 5544/2007.

20. Learned counsel for respondent also submits that Rule 41 of the CCS (Pension) Rules, 1972, though is a discretion of the Competent Authority, based on subjective satisfaction, contemplates Compassionate Allowance which ought to be granted from the date of

dismissal or removal of the government employee in view of the fact that it is in the nature of an exception from the Ordinary Rule that a government employee, who is dismissed or removed from service, forfeits his pension and gratuity and thus, Compassionate Allowance should be granted from the date of dismissal/ removal from service.

21. He further submitted that the respondent had served in the Indian Army for 6 years before rendering service in the Delhi Police for about 21 years and 7 months, totaling to approximately 28 years in all. He further submits that there are no charges of bribery, corruption or moral turpitude against the respondent and that he joined as a Constable and earned promotions to the rank of ASI before his dismissal. It was further urged that the respondent while in the service of Indian Army had also participated in the Indo-Pak War of the year 1965 at the border areas. Lastly, he submits that the respondent was blessed with three daughters, who are married and there was no one to look after the respondent and his wife who were suffering from various health issues.

22. We have heard both the counsel and considered the facts arising in the present case, the grounds urged as well as the judgments relied upon by the parties and are of the considered opinion that the Order of the Tribunal granting Compassionate Allowance with retrospective effect from the date of the dismissal i.e., 10.07.1992 needs modification.

23. Before adverting to the reasons, it would be relevant to consider the provisions of Rule 41 of the CCS (Pension) Rules, 1972, which is extracted hereunder :

> "***<u>RULE 41 – CCS PENSION RULES, 1972</u>***
>
> ***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 superannuation pension.*
>
> *(2) The competent authority shall, either on its own or after taking into consideration the representation of the Government servant, if any, examine whether any compassionate allowance is to be granted and take a decision in this regard in accordance with the proviso to sub-rule (1) not later than three months after the date of issue of the order imposing the penalty of dismissal or removal from service.*
>
> *(3) The competent authority shall consider,-*
>
> > *(a) each case of dismissal and removal from service on its merit to decide whether the case deserves of special consideration for sanction of a compassionate allowance and, if so, the quantum thereof.*
> >
> > *(b) the actual misconduct which occasioned the penalty of dismissal or removal from service and the kind of service rendered by the Government servant.*
> >
> > *(c) in exceptional circumstances, factors like family members dependent on the Government servant along with other relevant factors.*
>
> *(4) Where an order imposing the penalty of dismissal or removal from service was issued before the date of commencement of these rules and the competent authority, at that time, did not examine or decide whether or not any compassionate allowance was to be granted in that case, that authority shall take a decision in this regard not later than six months from the date of commencement of*

these rules.

(5) No compassionate allowance shall be sanctioned after the expiry of the aforesaid period of six months, to a Government servant on whom a penalty of dismissal or removal from service was imposed before the date of commencement of these rules.

(6) A compassionate allowance sanctioned under the proviso to sub-rule (1) shall not be less than the amount of minimum pension under rule 44."

A plain reading of the provisions of Rule 41 bring to fore the manifold intentions of the executive while enacting Rule 41, which are, that it is a discretion of the Competent Authority; that the consideration is on the subjective satisfaction of the Competent Authority; that the competent Authority is required to consider whether the case deserves of special consideration, if so, the quantum thereof; the misconduct of the government employee and in exceptional circumstances the family members dependent on such government employee and other relevant factors.

24. From a reading of Rule 41, it is manifest that the proviso to sub Rule 1 of Rule 41 is an exception carved out from the ordinary rule that a government servant, who is dismissed or removed from service, shall forfeit his pension and gratuity. It is also clear that Compassionate Allowance is itself calculated on the basis of pension or gratuity or both, which aspect leads us to conclude that Compassionate Allowance is akin to pension which a government servant ordinarily would have been entitled to had the circumstances of dismissal or removal from service not intervened. The aforesaid

view becomes more clearer by looking at Sub Rule 6 of Rule 41 whereby it is stipulated that the Compassionate Allowance shall not be less than the amount of minimum pension under Rule 44. Thus, we have no doubt that Compassionate Allowance under Rule 41 is akin to pension that a Government employee is entitled to.

25. We are fortified in our above view, by the judgment rendered by a Division Bench of the High Court of Himachal Pradesh at Shimla in LPA No. 333/2010 decided on 01.12.2015 titled ***'State of H.P. and Ors. v. Naresh Lal.'*** In that case too, facts as obtaining in the present case were involved. The learned Division Bench in para 7 of its judgment while referring to the Government of India's decision No. 2, dated 23.04.1977 under Rule 41 of the Rules regarding Compassionate Allowance concluded that it is, *"one of the various kinds of pension enumerated in the CCS (Pension) Rules, 1972"*. For convenience, para 7 of the aforesaid judgment rendered by the High Court of Himachal Pradesh is extracted hereunder :

> "*7. We may also refer to Government of India's Decision No. 2, dated 23rd April, 1977, under Rule 41 of the Rules, that the Compassionate Allowance is a pension. It is apt to reproduce Decision No. 2 hereunder:*
>
> > *"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.*
>
> *[G.I., M.F., O.M. No.F.14(3)-E.V(A) 176, dated the 23rd April, 1977.]*"

26. On the basis of the above O.M., the learned Division Bench concluded that since pension is always payable from the date employee ceases to be in the employment and not from any other date, Compassionate Allowance may also be granted from date of dismissal or removal. Though, we are in agreement with the conclusion that the Compassionate Allowance is akin to pension that a Government Employee may be entitled to, but, we are of the view that unlike pension, receipt of which is a matter of right, Compassionate Allowance is not a right and it is at the discretion of the Competent Authority accordingly the discretion as to the date from which it may be granted, would necessarily vest with the Competent Authority granting the same, on a case to case basis. However, it is further clarified that such discretion would obviously be open to judicial review.

27. Insofar as the ratio laid down by the Supreme Court in *Mahinder Dutt Sharma (supra)* is concerned, it would be pertinent to bear in mind the guidelines laid down by the Supreme Court in para 14 of its judgment while considering case of grant of Compassionate Allowance, which is quoted hereunder:

> *"While evaluating the claim of a dismissed (or removed from service) employee, for the grant of compassionate allowance, the rule postulates a window for hope, "...if the case is deserving of special consideration...". Where the delinquency leading to punishment, falls in one of the five classifications delineated in the foregoing paragraph, it would ordinarily disentitle an employee from such compassionate consideration. An employee who falls in any of the above five categories, would therefore ordinarily not be a deserving employee, for the grant of compassionate allowance. In a situation like this, the deserving special consideration, will have to be momentous. It is not possible to effectively define the term "deserving special consideration" used in Rule 41 of the Pension Rules, 1972. We shall therefore not endeavour any attempt in the said direction. Circumstances deserving special consideration, would ordinarily be unlimited, keeping in mind unlimited variability of human environment. But surely where the delinquency leveled and proved against the punished employee, does not fall in the realm of misdemeanour illustratively categorized in the foregoing paragraph, it would be easier than otherwise, to extend such benefit to the punished employee, of course, subject to availability of factors of compassionate consideration."*

In the present case, we are not to examine the various considerations which are illustratively expressed by the Supreme Court in para 13 of its judgment, primarily for the reason that in the case of the respondent, the Competent Authority had in fact, itself taken into consideration all the relevant aspects and had granted Compassionate Allowance, though from the date of the order allowing such allowance.

28. Thus, in the present case, we are only to consider whether the Tribunal was correct in granting Compassionate Allowance to the respondent w.e.f., the date of his dismissal i.e., 10.07.1992.

29. The reliance of the petitioner upon the judgment rendered by the Kerala High Court in *V. Kesavan Nair (supra)* is misplaced for the reason that in that case the learned Division Bench came to the conclusion that the government employee cannot, as a matter of right, claim Compassionate Allowance or that it should be so much or it should be paid w.e.f., the date of dismissal. There is no quarrel with the proposition that the government employee may not claim it as a matter of right, however, keeping in view the fact that we have considered the same as akin to pension, it may be possible to grant the Compassionate Allowance from the date of dismissal/ removal of the government employee as per the facts obtaining in a particular case.

30. In the present case, late Ashok Kumar Singh had applied for Compassionate Allowance on 12.09.2012, in pursuance of the liberty granted by the Supreme Court vide its Order dated 31.08.2012. A coordinate bench of this Court in W.P.(C) 7067/2019 titled as ***Shiksha vs. Union of India & Ors.***, vide its order dated 04.07.2022, granted Compassionate Allowance to the Petitioner in that case, from the date of the filing of the aforesaid writ petition. In view of the above, we deem it appropriate that the deceased Respondent would be entitled to Compassionate Allowance w.e.f. 12.09.2012, i.e., the date of the submission of the representation pursuant to the liberty granted by the Supreme Court.

31. From a total consideration of all the facts, circumstances and the various judgments rendered by the Supreme Court as well the

High Court of Himachal Pradesh and the Kerala High Court, the following aspects are clear :

(a) The exercise under Rule 41 is discretionary.

(b) Compassionate Allowance is akin to pension. [vide G.I., M.F., O.M. No.F.14(3)-E.V(A) 176, dated the 23rd April, 1977].

(c) Though no date is mentioned in Rule 41, such allowance may be granted from the date of dismissal, considered on a case to case basis, subject to judicial review.

(d) Illustrations in para 13 of *Mahinder Dutt Sharma's case (supra)* are guiding principles to be considered at the time of examining request for Compassionate Allowance, but not limited to such illustrations as explained in para 14 of the said judgment.

32. In the present case, a peculiar situation has arisen due to the fact that during the pendency of the O.A. before the Tribunal, the original respondent to the present petition had expired and subsequent to the impugned judgment of the Tribunal, his wife, Ms. Malti Devi also expired on 29.09.2017. It is an admitted case of the respondent that his three daughters were already married by the time the O.A. was filed in the month of August 2015 as averred in para 5.4 of O.A. No. 2929/2015.

33. Having regard to the aforesaid conclusion that Compassionate Allowance is akin to pension, the effect thereof, on the facts obtaining in the present case, has to be considered in terms of Rule 54(6) of the

CCS (Pension) Rules, 1972, the pre-amended rule 54(6) reads as under :

> *"Rule 54……*
>
> *(6) The period from which the family pension is payable shall be as under :*
>
> *i) in the case of a widow or widower, up to the date of death or re-marriage, whichever is earlier;*
>
> *ii) in the case of a son, until he attains the age of 25 years; and*
>
> *iii) in the case of unmarried daughter until she attains the age of 25 years or until she gets married whichever is earlier."*

Subsequently amended as per the notification dated 08.06.2011:

> *"(6) The period for which family pension is payable shall be as follows:-*
>
> *(i) subject to first proviso, in the case of a widow or widower, up to the date of death or re-marriage, whichever is earlier;*
>
> *(ii) subject to second proviso, in the case of an unmarried son, until he attains the age of twenty-five years or until he gets married or until he starts earning his livelihood, whichever is the earliest;*
>
> *(iii) subject to second and third provisos, in the case of an unmarried or widowed or divorced daughter, until she gets married or remarried or until she starts earning her livelihood, whichever is earlier*
>
> *(iv)………"*

On the plain reading of the aforesaid Rule and applying it to the facts of the present case, it is clear that the daughters, who are already married as on the date of filing of the O.A. No. 2929/2015 would not be entitled to continuation of the Compassionate Allowance beyond the date of death of their mother Ms. Malti Devi, i.e., on 29.09.2017. However, they would jointly be entitled to the arrears of

Compassionate Allowance, as allowed vide order dated 05.09.2014 of the Competent Authority, w.e.f., 12.09.2012, the date of submission of representation/ application by the respondent late Ashok Kumar Singh, along with interest in accordance with the Pension Rules. To this extent, we modify the impugned order dated 17.01.2017 passed by the Tribunal in O.A. No. 2929/2015.

34. In view of the above, we direct the petitioners to calculate the Compassionate Allowance w.e.f., 12.09.2012 upto 29.09.2017, at the rate specified in order dated 05.09.2014 and release it to three daughters, Respondent Nos. 1 to 3, namely, Ms. Vandana, Ms. Archana Gupta and Ms. Aarti Arora. The respondent Nos. 1 to 3 would also be entitled to the interest on arrears of such Compassionate Allowance in accordance with the Pension Rules.

35. Said exercise be completed within six weeks.

36. The petition is disposed of, in above terms, with no orders as to costs.

TUSHAR RAO GEDELA, J

SANJEEV SACHDEVA, J

OCTOBER 12, 2022/*nd*