

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.**

WRIT PETITION NO. 773 OF 2020

- | | |
|--|-------------------|
| 1. Ramesh S/o Madhukar Wankhede,
Aged about 53 years, Occ.: Nil, R/o
31, Sillari Layout, Shivangaon, Nagpur. | Petitioner |
|--|-------------------|

-Versus-

- | | |
|---|--------------------|
| 1. Union of India, Through Secretary,
Ministry of Personnel, Public
Grievances and Pensions.

2. Director General, Central Reserve
Police Force, C.G.O. Complex, Lodhi
Road, New Delhi.

3. The Commandant, 141 Bn, C.R.P.F.,
Kawya Gardens Bhadrachalam,
Khammam District, Andhra Pradesh.

4. The Controlling Authority (Central)
Assistant Labour Commissioner,
Under Payment of Gratuity Act, 1972. | Respondents |
|---|--------------------|

Ms Laxmi Y. Malewar, appointed counsel for the petitioner.
Mr. N.S.Deshpande, DSGI for the respondents

**CORAM : ROHIT B. DEO AND
M.W.CHANDWANI, JJ.**

DATE : 12TH JULY, 2023

JUDGMENT (Per : M. W. Chandwani, J.)

Heard.

2. Rule. Rule made returnable forthwith. The petition is heard finally with the consent of the learned counsel for the parties.

3. A short question arose in this petition as to whether compassionate allowance can be directed to be paid from the date of dismissal.

4. The petitioner was appointed as constable in the year 1990. The Disciplinary Committee in the year 2007-08 held that the petitioner found guilty of two charges including slapping of his junior and tampering of the moment order for availing five days casual leave in excess of authorization. By order dated 11/10/2008, the Disciplinary Authority imposed the penalty of dismissal from service on the petitioner. An unsuccessful attempt was made by filing appeal and revision. The petitioner approached by way of Writ Petition No.565 of 2010. The writ petition came to be dismissed. The petitioner

challenged the order of this Court before the Hon'ble Supreme Court. The said civil appeal is also came to be dismissed. Ultimately, on pursuation of the petitioner, the President of India, however, granted 50% compassionate allowance to the petitioner i.e. equal to 50% of admissible pension, to the petitioner from 02/02/2017. By way of present petition, the direction is sought to the respondents to pay the compassionate allowance equal to 50% of admissible pension to the petitioner from the date of dismissal i.e. from 11/10/2008.

5. Heard the learned counsel for the petitioner and the learned Deputy Solicitor General of India for the respondents.

6. Perused the record and order of the President of India. The grant of compassionate allowance is governed by rule 41 (1) of the Central Civil Services (Pension) Rules, 1972, which reads thus -

“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.”

7. A bare perusal of the Rule would make it clear that compassionate allowance has to be granted only on special consideration and not casually or in the routine manner. The grant of compassionate allowance is only by way of an exception and after considering all the factors, which would clinch the issue in favour of the delinquent employee. The compassionate allowance cannot be sought as a matter of right. Thus, the granting of compassionate allowance is a matter of discretion of the Authority depending on the fact of deserving special candidate. Although misconduct of delinquent is proved in the departmental enquiry, would have its own impact upon the exercise of discretion in the matter, the Authority can nevertheless consider grant of such allowance to the employee by balancing the aggravating mitigating factors.

8. In the present case, it can be seen that the misconduct of the petitioner was proved and the punishment of dismissal from service was upheld till the Supreme Court of India. However, by exercising discretion, Hon'ble President has granted compassionate allowance to the petitioner equal to 50% of admissible pension from 02.02.2017. Considering all factors of the case including misconduct, penalty and judicial pronouncement in the case of petitioner, we do not find that by extending benefit from 02.02.2017, the discretion has been exercised arbitrarily. Therefore, we do not find any merit in the writ petition. Accordingly, the petition is dismissed.

9. Rule stands discharged. No order as to costs.

(M.W.CHANDWANI, J)

(ROHIT B. DEO, J)