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

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Judgment delivered on: 13.07.2023

+ W.P(C) 12981/2018 & CM APPL. 50396/2018

TUNDA RAM DAGAR

..... Petitioner

versus

UNION OF INDIA THROUGH
DIRECTOR GENERAL, CISF & ANR.

..... Respondents

Advocates who appeared in this case:

For the Appellant: Mr. Piyush Sharma and Mr. Shivam Dubey, Advocates.

For the Respondents: Ms. Shweta Singh, Advocate with Insp. Meena Manan, SI
Prahlad Devenda, SI Amit Kumar, CISF.

CORAM:-

HON'BLE MR. JUSTICE SANJEEV SACHDEVA

HON'BLE MR. JUSTICE MANOJ JAIN

JUDGMENT

SANJEEV SACHDEVA, J. (ORAL)

1. Petitioner seeks setting aside of order dated 22.06.2016 whereby the representation of the petitioner for grant of compensation allowance under Rule 41 of CCS pension rules 1972 has been rejected. Petitioner further seeks award of compensation allowance under the aforesaid rule.

2. Learned counsel for the petitioner submits that the respondents have erred in rejecting the representation of the petitioner on the ground that his entire service record which is liable to be considered



was not taken into account and secondly because the order erroneously records that the petitioner did not have the total length of qualifying service of over 10 years. He relies on the judgment of the Supreme Court in *Ramesh Kumar Singh v. Union of India & others*, (2012) SCC Online Del. 4342 to contend that that 10 years qualifying service is not required under rule 41 of the CCS pension rule.

3. As per the petitioner he had joined and served the Indian army as Sepoy for a period of 5 years 1 month and 7 days and thereafter joined the respondent, CISF as a constable on 25.11.1983. Petitioner was sentenced to life imprisonment on 15.01.1998 for having committed an offence under section 302 IPC and thereafter dismissed from service.

4. Petitioner submitted a representation for grant of compassionate allowance which was rejected and thereafter his wife also gave a representation which has also been rejected.

5. Rule 41 of the CCS Pension Rules reads as under:-

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 hundred and seventy-five per mensem."



6. Rule 41 stipulates that a government servant who is dismissed or removed from service shall forfeit his pension and gratuity. However, it empowers the competent authority to sanction a compensate allowance not exceeding two-thirds of the pension or gratuity or both in cases deserving special consideration.

7. Government of India vide Office Memorandum No.3 dated 22.04.1940 stipulated that it would be practically impossible keeping in view the wide variations that naturally exist in the circumstances attending each case, to lay down precise principles that could be uniformly applied to individual cases. Each case had to be considered on its merit and conclusion reached on the question whether there were any extenuating features in the case. In considering the question not only the actual misconduct or course of misconduct but also the kind of service rendered is to be taken into account. It stipulates that poverty is not an essential condition precedent to grant of compassionate allowance but special regard is to be paid to the fact that the officer has a wife and children dependent upon him so, that factor alone is not the most exceptional circumstance sufficient to grant of compassionate allowance.

8. The impugned order dated 22.06.2016 refers to a decision of the Supreme Court in *Mahinder Dutt Sharma v. Union of India & others*, (2014) 11 SCC 684 and notes that the Supreme Court has enumerated



following guidelines for grant of compassionate allowance. For the sake of completion the guidelines are extracted herein as under:-

- i) Was the act of the delinquent, which resulted in the infliction of the punishment of dismissal or removal from service an act of moral turpitude?*
- ii) Was the act of the delinquent, an act of dishonesty towards his employer?*
- iii) Was the act of delinquent, an act of designed for personal gains from the employer?*
- iv) Was the act of delinquent aimed at deliberately harming a third party interest?*
- v) Was the act of the delinquent, which resulted in the infliction of the punishment, otherwise unacceptable, for the conferment of the benefits flowing out of Rule 41 of the Pension Rules, 1972?*

9. The impugned order also notes that petitioner was detailed on “A” shift duty at BPCL main gate and he drew his service rifle with 50 rounds from Unit Kote for security duty and instead of reporting for briefing before mounting for duty he went to Barrack Number 3 and committed the murder of another constable. The impugned order notes that instead of performing his security duty he killed his colleague which is serious misconduct as well as an act of moral turpitude and unacceptable for conferment of benefits under rule 41.



10. Not only the petitioner had killed a trained soldier but ruined the life of his family members and also deprived the department from taking services of two trained soldiers i.e. himself and the constable he murdered and thereby causing irreparable loss to the department. The impugned order notes that the parameters as laid down by the Supreme Court for grant of compassionate allowance are not met in the instant case for the reason that the offence committed by the petitioner was an act of moral turpitude and was aimed at deliberately harming a third party.

11. We are of the view that the first reason given in the impugned order for denying petitioner's compassionate allowance i.e. his conduct of committing the offence of murder which was an act of moral turpitude and also an act which affected the life of other individual and his family and also deprived the department from taking service of two trained soldiers, was sufficient ground to disentitle the petitioner from grant of compassionate allowance under rule 41 of CCS Pension Rules, 1972.

12. No doubt the other reason recorded by the impugned order that petitioner did not have the qualifying service of 10 years and was also not entitled for compassionate pension on that count, is contrary to the judgment in *Ramesh Kumar Singh (Supra)* but nothing would turn on it because the first ground itself was sufficient to disentitle the petitioner for compassionate allowance.



13. In view of the above we find no ground to take a different view from the view taken by the competent authority rejecting the representation of the petitioner for grant of compassionate allowance.

14. We find no merit in the petition. The petition is consequently dismissed.

SANJEEV SACHDEVA, J

MANOJ JAIN, J

JULY 13, 2023/ak



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