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

Date of decision: 23.02.2024

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

+ **W.P.(C) 4034/2019 & CM APPL. 18226/2019 (Stay)**

GOVT. OF NCT OF DELHI AND ORS. Petitioners

Through: Mrs. Avnish Ahlawat, Standing Counsel for GNCTD with Mrs. Tania Ahlawat, Mr. Nitesh Kumar Singh, Ms. Laavanya Kaushik, Ms. Aliza Alam and Mr. Mohnish Sehrawat, Advocates.

versus

SHRI NARESH KUMAR Respondent

Through: Mr. Sachin Chauhan, Advocate (through video conferencing).
SI Ashok Kumar, Pairvy Officer.

CORAM:

HON'BLE MS. JUSTICE REKHA PALLI

HON'BLE MR. JUSTICE RAJNISH BHATNAGAR

REKHA PALLI, J (ORAL)

1. The present writ petition under Articles 226 and 227 of the Constitution of India seeks to assail the order dated 14.09.2018 passed by the learned Central Administrative Tribunal in O. A. 2966/2015.

2. Vide the impugned order, the learned Tribunal has allowed the original application filed by the respondent by quashing the order dated 25.02.2015 vide which the compassionate allowance sanctioned to him in terms of order dated 04.09.2014 was sought to be



withdrawn. While allowing the original application filed by the respondent, the learned Tribunal has relied on the decision dated 23.08.2012 of a Co-ordinate Bench of this Court in W. P. (C) 5127/2012 titled ***Ramesh Kumar Singh v. Union of India and Ors.***

3. Learned counsel for the petitioner submits that the impugned order is wholly perverse as the learned Tribunal has failed to appreciate that the respondent who had less than 10 years of service did not fulfil the qualifying period for grant of any kind of pension. Rule 41 of CCS (Pension) Rules (hereinafter Rules) under which compassionate allowance is payable, she urges, has to be read along with Rule 49 of the Rules which clearly lays down that at least 10 years of service would be required as qualifying period for pension. She therefore, contends that if the interpretation adopted by this Court in ***Ramesh Kumar Singh (supra)*** were to be accepted, it would imply that a dismissed employee would be entitled to compassionate allowance which could be as high as two third of pension payable to a superannuated employee without even fulfilling the requirement of 10 years of service thereby placing him in an advantageous position *vis-a-vis* an employee who superannuates with qualifying service of less than 10 years. She, therefore, prays that the impugned order be set aside and the matter be re-examined by ignoring the ratio of the decision in ***Ramesh Kumar Singh (supra)***.

4. On the other hand, Mr. Sachin Chauhan, learned counsel for the respondent supports the impugned order and submits that the Co-ordinate Bench was conscious of this position that superannuated employee cannot be granted any pension unless he renders at least 10



years of service. The learned Division Bench, however, took into account the fact that the purpose of the compassionate allowance is only to help a dismissed employee who is facing grave financial hardship and therefore, opined that rendering of 10 years service cannot be precondition for grant of compassionate allowance. This decision, he contends, was unsuccessfully assailed before the Apex Court. Furthermore, the petitioners being well aware of this legal position had already sanctioned compassionate allowance in favour of the respondent on 04.09.2014 which order was without any notice withdrawn on 25.02.2015. He, therefore, prays that the writ petition be dismissed.

5. Having considered the rival submissions of the learned counsel for the parties, we may begin by noting the relevant extracts of the decision in **Ramesh Kumar Singh (supra)** wherein the Co-ordinate Bench had allowed the writ petition by relying on its earlier decision dated 16.08.2012 in W.P.(C) NO. 1989/1999 titled **Ex. Const. Ram Niwas v. UOI & Ors.** The same reads as under:

5. Only recently, i.e. on August 16, 2012, disposing of W.P.(C)No.1989/1999 Ex.Const.Ram Niwas Vs. UOI & Ors. In paragraphs 5 to 9 it was observed as under:-

“5. Learned counsel for the respondents states that the petitioner joined service in April 1988 and pensionable service being 20 years, the petitioner being dismissed from service on June 22, 1998, he would not be entitled to any compassionate allowance.

6. Now, 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."

7. It is apparent that the compassionate allowance admissible under the Rule relates itself not to pension but compensation pension. As per the Rule a Compassionate Allowance not exceeding two-third of pension or gratuity admissible if the retirement was on Compensation Pension is admissible. Now, Rule 39 of the CCS (Pension) Rules reads as under:-

"39. Compensation pension

(1) If a Government servant is selected for discharge owing to the abolition of his permanent post, he shall, unless he is appointed to another post the conditions of which are deemed by the authority competent to discharge him to be at least equal to those of his own, have the option-

- (a) of taking compensation pension to which he may be entitled for the service he had rendered, or*
- (b) of accepting another appointment on such pay as may be offered and continuing to count his previous service for pension.*

(2) (a) Notice of at least three months shall be given to Government servant in permanent employment before his services are dispensed with on the abolition of his permanent post.

(b) Where notice of at least three months is not given and the Government servant has not been provided with other employment on the date on which his services are dispensed with, the authority competent to dispense with his services may sanction the payment of a sum not exceeding the pay and allowances for the period by which the notice actually given to him falls short of three months.

(c) No compensation pension shall be payable for the period in respect of which he receives pay and allowance in lieu of notice.



(3) *In case a Government servant is granted pay and allowances for the period by which the notice given to him falls short of three months and he is re-employed before the expiry of the period for which he has received pay and allowances, he shall refund the pay and allowances so received for the period following his re-employment.*

(4) *If a Government servant who is entitled to compensation pension accepts instead another appointment under the Government and subsequently becomes entitled to receive a pension of any class, the amount of such pension shall not be less than the compensation pension which he could have claimed if he had not accepted the appointment."*

8. *Suffice would it be to state that compensation pension is not related to any length of service rendered. Compensation pension is to be paid if a government servant is discharged owing to a permanent post being abolished and the quantum is relatable to the years of service rendered.*

9. *Thus, declaring that the Compassionate Allowance is referable to Compensation Pension, which pension has no concern to a minimum number of years served but is payable with reference to the number of years of service rendered, we dispose of the writ petition directing the Competent Authority to pass an order with respect to Compensation Allowance and for which we may note that the same is not a matter of right but a matter of a considered decision and if it is shown that the case is deserving of special consideration, which obviously would have to be the financial condition of the government servant concerned; and thus requiring the petitioner to submit a proper application addressed to the Director General BSF. We guide the petitioner that in the application he should bring out such circumstances which he considers would make out a deserving case for Compensation Allowance to be paid to him. Upon the application being filed, and for which we grant petitioner 12 weeks time, the same shall be decided within further 12 weeks thereafter."*

6. From a perusal of the aforesaid, it is evident that while dealing with the claim for compassionate allowance in ***Ex. Const. Ram Niwas (supra)***, the Co-ordinate Bench took note of the fact that the grant of the said allowance is not a matter of right but is payable only in a case which is deserving of special consideration depending upon the



financial condition of the dismissed employee and, therefore, opined that there was no connection with the concept of service of minimum number of years.

7. We also find that the primary contention of Mrs. Ahlawat, learned counsel of the petitioner is that when under Rule 49 of the Rules, the minimum qualifying period prescribed for a superannuated employee to earn pension is 10 years of service, no compassionate allowance would be payable to a dismissed employee who had rendered less than 10 years of service. Even though this plea appears to be attractive on the first blush, but on a closer scrutiny of the Rule 41, we find that this rule does not prescribe any minimum qualifying period. This, in our view, is not any inadvertent omission but is for the reason that the compassionate allowance is to be granted at the discretion of the employer and unlike regular pension which depends only on the number of years of service, no employee is entitled to claim that compassionate allowance as a matter of right. It is only when the employer finds that the respondent is suffering from grave financial hardships that the employer may despite his/her dismissal sanction compassionate allowance.

8. In the light of the aforesaid, we find no reason to differ with the view taken by the Co-ordinate Bench in **Ramesh Kumar Singh (supra)** and in **Ex. Const. Ram Niwas (supra)**, which decision we are informed were unsuccessfully assailed before the Apex Court. We, therefore, find no merit in the petitioner's plea that compassionate allowance can in no circumstances be payable for the service less than 10 years.



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9. The present petition along with all the pending applications is dismissed.

(REKHA PALLI)
JUDGE

(RAJNISH BHATNAGAR)
JUDGE

FEBRUARY 23, 2024

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