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

+ **W.P.(C) 12294/2022 & CM APPL. 40947/2023**

BALWAN SINGH

.....Petitioner

Through: Mr. Yashpal Rangi, Advocate.

versus

**DELHI AGRICULTURAL MARKETING BOARD
AND ANR.**

.....Respondents

Through: Ms. Avnish Ahlawat, Standing
Counsel with Mr. N.K. Singh, Ms. Laavanya
Kaushik, Ms. Aliza Alam and Mr. Mohnish
Sehrawat, Advocates

CORAM:

HON'BLE MS. JUSTICE JYOTI SINGH

ORDER

07.08.2024

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1. This writ petition has been preferred on behalf of the Petitioner under Articles 226 and 227 of the Constitution of India seeking the following reliefs:

“i) Quash and set aside the impugned order dated 06/06/2022 whereby respondents have rejected the application for compassionate allowance of the petitioner, being arbitrary, illegal and unreasoned; and

ii) Direct the respondents to grant the benefit of compassionate allowance to the petitioner.”

2. Factual matrix to the extent relevant is that Petitioner joined the Delhi Agricultural Marketing Board/Respondent No.1 (hereinafter referred to as ‘Board’) as Lower Division Clerk (‘LDC’) and was promoted to the post of Upper Division Clerk (‘UDC’) on 11.08.1986. On promotion to the post of Assistant Secretary (Grade-II) in November, 1997, Petitioner was



transferred from APMC, Najafgarh to Fish, Poultry & Egg Marketing Committee, Ghazipur ('FP&EMC').

3. On 29.08.1998, while Petitioner was working at FP&EMC, a written complaint was received against him from Administrator, APMC alleging embezzlement of some amounts and on this basis FIR No.567/1998 was registered at PS: Najafgarh under Sections 409/420 IPC. Petitioner was arrested on 09.12.1998 and was released on bail on 11.01.1999. On 15.01.1999, Petitioner reported for duty at FP&EMC.

4. On the basis of the same set of allegations as levelled in the FIR, Secretary, Board suspended the Petitioner from service w.e.f. 09.12.1998 and on the same day, by a separate order dismissed him from service exercising power under Rule 19(ii) of CCS (CCA) Rules, 1965 ('1965 Rules'). Petitioner attained the age of superannuation on 30.04.2018 and was acquitted in the criminal case on 17.07.2019. Based on the acquittal order, Petitioner made a representation to the Board on 02.09.2019 to treat the dismissal order as null and void and grant him notional benefit of reinstatement with consequential reliefs. Several reminders were also sent but getting no response, Petitioner filed a writ petition in this Court being W.P.(C) No.10112/2021 challenging the order of dismissal dated 26.02.1999. The writ petition was dismissed on ground of delay and laches and an appeal preferred against the judgment being LPA No.394/2021 was withdrawn by the Petitioner with liberty to represent to the Board for grant of compassionate allowance.

5. On 22.11.2021, Petitioner made an application to the Board seeking grant of compassionate allowance in terms of Rule 41 of CCS (Pension) Rules, 1972 (hereinafter referred to as 'Pension Rules'), however, vide order



dated 06.06.2022, the application was rejected on the ground that the misconduct committed by the Petitioner which resulted in his dismissal falls under the 5 illustrations given by the Supreme Court in the case of ***Mahinder Dutt Sharma v. Union of India and Others, (2014) 11 SCC 684*** and therefore, Petitioner was not entitled for compassionate allowance. It was noted in the order that Petitioner did not reply to any of the memos issued to him before passing an order under Rule 19(ii) of 1965 Rules and has accepted the dismissal order. Petitioner was involved in large scale embezzlement in an organized manner by tampering with Bank deposit slips and forging seal of the Bank and had deposited Rs.1,00,000/- which further indicates his involvement in the matter and his case being one of corruption, fraud and personal profiteering, is not deserving of compassionate allowance.

6. Learned counsel for the Petitioner assails the impugned order dated 06.06.2022 on several grounds. It is urged that the claim for compassionate allowance was required to be decided on 'compassion' taking into account the special circumstances brought forth by the Petitioner in his application dated 22.11.2021 seeking compassionate allowance: (a) the prolonged criminal trial wherein extensive evidence was led by the prosecution and is predicated on the principle of proof beyond reasonable doubt, ended in an acquittal of the Petitioner for offences under Sections 409/420/468 IPC; (b) it was established during the trial that accounts of relevant period were audited by the Auditors appointed by the Board after tallying the Bank balance with the Books of Accounts and they did not find any inconsistency and after the judgement, prosecution department opined that the matter was not fit for appeal; (c) Petitioner was dismissed without any inquiry under



Rule 19(ii) of 1965 Rules, basis the allegations which were the same as in the FIR and once Petitioner was acquitted, dismissal order ought to have been set aside or in the alternative compassionate allowance should have been granted; (d) in LPA No.394/2021, Petitioner was granted liberty to approach the Board for seeking compassionate allowance as the recognized that despite dismissal Petitioner was entitled for consideration for grant of the said allowance; (e) Rule 41 of Pension Rules is applicable only in a case where Government servant is dismissed or removed from service and forfeits his pension and gratuity and therefore, it was not open to the Board to take into account that very misconduct which resulted in dismissal as the only ground to reject his application for compassionate allowance, as this would defeat the purpose of enacting a provision such as Rule 41; (f) Petitioner has no other source of income and has to fend for his wife, a younger daughter who is 30 years of age and still unmarried, a son 29 years of age but physically disabled with 50% disability and the entire family is surviving on old-age pension and the handicap pension of the son, which is a meagre amount of Rs.6,500/-; and (g) Petitioner rendered dedicated service of more than 18 years to the Board and all his ACRs were excellent or outstanding.

7. Mr. Yashpal Rangi, learned counsel for the Petitioner submits that the glaring illegality in the impugned order is that it is based entirely on the alleged misconduct which was the basis of the dismissal order and the FIR. If the misconduct which leads to dismissal of an employee is to be the only consideration, the objective and purpose behind Rule 41 will be defeated and in no case a delinquent employee will get the benefit of the said Rule. For this proposition, reliance is placed on the judgment of the Division



Bench of this Court in *Ex. ASI Shadi Ram v. Government of NCT of Delhi & Ors., W.P.(C) 5544/2007*, decided on 22.02.2008. It is also pointed out that there is a glaring factual error also in the impugned order wherein it is recorded that Petitioner deposited Rs.1,00,000/- and therefore admitted his involvement in the alleged embezzlement, whereas Petitioner never deposited this amount.

8. Without prejudice to all the aforesaid contentions, learned counsel, on instructions, submits that Petitioner be permitted to make a comprehensive representation to the Board highlighting that the Supreme Court in the case of *Mahinder Dutt Sharma (supra)* has not held that in no case the delinquent employee will be entitled to compassionate allowance, if his case falls in the 5 categories delineated in paragraph 14 of the judgement and this is fortified by the use of the word ‘ordinarily’ as also the observations in paragraph 15 where the Supreme Court observed that in deserving special circumstances, exceptions may be carved out even if the case falls under any of the 5 categories and bringing forth the special circumstances in Petitioner’s case which deserve special consideration.

9. Mrs. Avnish Ahlawat, *per contra*, defends the impugned order and submits that Petitioner’s services were terminated as far back as on 26.02.1999 exercising powers under Rule 19(ii) of 1965 Rules by the Board on account of serious misconduct of embezzlement of an amount over Rs.8,00,000/- between 1991 to 1998, by tampering the Bank slips. Rs.1,00,000/- was deposited by the Petitioner on his own accord thereby admitting his involvement in the embezzlement. Order was passed after issuing a show-cause notice on 04.09.1998, calling upon the Petitioner to explain the circumstances and defend the allegations. Petitioner chose not to



file any reply despite several reminders sent to him and his family members. Board also filed a suit for recovery of Rs.7,97,423.76 with penal interest being Suit No.160/07/02, which was decreed by the Trial Court and the decretal amount was also not paid by the Petitioner and he continued to evade the execution process.

10. It is urged that no doubt Petitioner was acquitted in the criminal case on 17.07.2019 but that does not preclude the Board from dismissing him. The dismissal order was challenged by the Petitioner in the year 2021 but his writ petition was dismissed on ground of delay and laches. Appeal was withdrawn by the Petitioner as the Division Bench found no ground to interfere in the judgment of the Writ Court and therefore, it is not open to the Petitioner to challenge the dismissal order indirectly by questioning that the order was without any inquiry.

11. Insofar as rejection of the application for grant of compassionate allowance is concerned, the order suffers from no infirmity and has been passed in light of the judgment of the Supreme Court in ***Mahinder Dutt Sharma (supra)***, wherein it was held that if the case of the delinquent employee falls under any of the 5 illustrative categories in paragraph 14 of the judgment, the delinquent employee cannot be granted compassionate allowance. It is true that the Supreme Court has also observed that there may be exceptions in a given case but the circumstances put forth by the Petitioner do not fall under the expression ‘deserving special consideration’ used in Rule 41 and highlighted by the Supreme Court. The acts of embezzlement by the Petitioner were repeated acts over a period of several years and he embezzled the amounts in an organized manner, tampering with the Bank deposit slips and forging the seal of the Bank and amount to



corruption, fraud and personal profiteering. In this backdrop, it is urged that the writ petition be dismissed as Petitioner is undeserving of any compassion.

12. Heard learned counsels for the parties and examined their contentions.

13. Having perused the impugned order dated 06.06.2022, there is no doubt that the entire order is based on the acts of misconduct of embezzlement committed by the Petitioner, for which he has suffered a dismissal order. Learned counsel for the Board is right in her submission that Petitioner cannot question the dismissal order indirectly by arguing that it was without any inquiry since a substantive challenge to the dismissal order was rejected by this Court in a writ petition being W.P.(C) No.10112/2021 and LPA No.394/2021 against the said judgment was withdrawn by the Petitioner *albeit* with liberty to seek compassionate allowance. Learned counsel is also right in her submission that the acts of embezzlement amount to a serious and grave misconduct on the part of an employee and amount to corruption and fraud and would fall under the 5 categories delineated by the Supreme Court in ***Mahinder Dutt Sharma (supra)***. It is strenuously argued that the acts of embezzlement of the Petitioner were repeated acts over a period of several years and involved tampering of Bank deposit slips and forging the seals of the Bank. To this extent, no infirmity can be found in the impugned order.

14. Contention of Mr. Rangi however touches on a different aspect of the matter. He argues that the delinquency leading to the extreme penalty of dismissal cannot be the sole ground to reject the claim of compassionate allowance as a thumb rule in every case, else the objective and purpose for which Rule 41 of Pension Rules was enacted would be defeated. To this



extent, I am in agreement with the learned counsel. In fact, this argument is fortified by the observations of the Supreme Court in ***Mahinder Dutt Sharma (supra)***, wherein the Supreme Court after holding that where the delinquency leading to punishment falls in one of the five classifications delineated in paragraph 14, it would ‘ordinarily’ disentitle an employee from such compassionate consideration, observed that there may be situations where there are deserving special considerations and therefore, in a given case based on the special circumstances being made out by the delinquent employee, a claim for compassionate allowance may be sustained. In this context, I may allude to paragraphs 14 and 15 in ***Mahinder Dutt Sharma (supra)*** as follows:

“14. In our considered view, the determination of a claim based under Rule 41 of the Pension Rules, 1972 will necessarily have to be sieved through an evaluation based on a series of distinct considerations, some of which are illustratively being expressed hereunder:

14.1. (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? An act of moral turpitude is an act which has an inherent quality of baseness, vileness or depravity with respect to a concerned person's duty towards another, or to the society in general. In criminal law, the phrase is used generally to describe a conduct which is contrary to community standards of justice, honesty and good morals. Any debauched, degenerate or evil behaviour would fall in this classification.

14.2. (ii) Was the act of the delinquent, which resulted in the infliction of the punishment of dismissal or removal from service, an act of dishonesty towards his employer? Such an action of dishonesty would emerge from a behaviour which is untrustworthy, deceitful and insincere, resulting in prejudice to the interest of the employer. This could emerge from an unscrupulous, untrustworthy and crooked behaviour, which aims at cheating the employer. Such an act may or may not be aimed at personal gains. It may be aimed at benefiting a third party to the prejudice of the employer.

14.3. (iii) Was the act of the delinquent, which resulted in the infliction of the punishment of dismissal or removal from service, an act designed for personal gains from the employer? This would involve acts of corruption,



fraud or personal profiteering, through impermissible means by misusing the responsibility bestowed in an employee by an employer. And would include acts of double-dealing or racketeering, or the like. Such an act may or may not be aimed at causing loss to the employer. The benefit of the delinquent could be at the peril and prejudice of a third party.

14.4. (iv) Was the act of the delinquent, which resulted in the infliction of the punishment of dismissal or removal from service, aimed at deliberately harming a third-party interest? Situations hereunder would emerge out of acts of disservice causing damage, loss, prejudice or even anguish to third parties, on account of misuse of the employee's authority to control, regulate or administer activities of third parties. Actions of dealing with similar issues differently, or in an iniquitous manner, by adopting double standards or by foul play, would fall in this category.

14.5. (v) Was the act of the delinquent, which resulted in the infliction of the punishment of dismissal or removal from service, otherwise unacceptable, for the conferment of the benefits flowing out of Rule 41 of the Pension Rules, 1972? Illustratively, any action which is considered as depraved, perverted, wicked, treacherous or the like, as would disentitle an employee for such compassionate consideration.

15. 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 levelled and proved against the punished employee, does not fall in the realm of misdemeanour illustratively categorised 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."

15. This was also the view of the Division Bench of this Court in **Ex. ASI Shadi Ram (supra)**, following which recently another Division Bench of this Court in **Ex. HC Dharam Singh v. Union of India and Others, W.P.(C)**



12775/2021, decided on 11.07.2024, permitted the Petitioner to file a detailed representation bringing out the special circumstances and directed the Respondent to reconsider his claim. Relevant paragraphs from the order in **Ex HC Dharam Singh (supra)**, are as follows:

“5. Learned counsel for the petitioner submits that the impugned order is liable to be set aside as the respondents have failed to consider the ratio of the decision of this Court in **Ex. ASI Shadi Ram vs. Government of NCT of Delhi & Ors. [W.P.(C) 5544/2007]**. He contends that the respondents have rejected the petitioner’s prayer for compassionate allowance only on the basis of the very same grounds on which he was dismissed without appreciating that this Court has consistently held that the parameters for examination of a request for grant of compassionate allowance are different than those which form the basis of dismissal. Despite the petitioner mentioning in his representation that he has a large family to support and does not have any source of income, the respondents have neither examined this aspect nor considered that the petitioner had already served for 31 years before being dismissed from service. He, therefore, prays that the impugned order be set aside and the respondents be directed to grant compassionate allowance to the petitioner.

6. Per contra, learned counsel for the respondents seeks to support the impugned order and submits that taking into account the reasons due to which the petitioner was dismissed; the respondents were justified in rejecting his request for compassionate allowance. Furthermore, she contends that the petitioner has not even made any specific averment in his representation regarding the purported financial difficulties being faced by him and has merely stated that he has a large family to support. She, therefore, prays that the writ petition be dismissed.

7. Having considered the submissions of learned counsel for the parties and perused the record, especially the impugned order dated 06.03.2021 vide which the petitioner’s representation for grant of compassionate allowance has been rejected, we find that there is merit in the petitioner’s plea that the rejection of his representation is not based on relevant criteria. The petitioner is justified in urging that his prayer for grant of compassionate allowance has been rejected only on the basis of his dismissal from service on the charges of corruption and without appreciating the effect of the decision in **Ex. ASI Shadi Ram (supra)**, wherein it was held that the mere rejection of the challenge to the dismissal order passed on account of misconduct cannot be a ground to reject the claim for compassionate allowance. In this regard, we may refer to the observations made by this Court in paragraph 17 of its decision in **Ex. ASI Shadi Ram (supra)**, which reads as under:-



*“17. The learned Tribunal was impressed by the fact that all the courts have rejected the petitioner’s challenge to his dismissal. It appears to have felt that in this way, the order of dismissal of the petitioner has been confirmed, and that this somehow disqualifies the petitioner for the grant of Compassionate Allowance. This is apparent from its acceptance of the respondent’s submissions noted in paragraph 10 of its judgment to the effect that, “the dismissal of the applicant has attained finality”, as well as its observations in para 13 of its judgment where it has sought to distinguish the decision of the High Court of Delhi in the case of **Ex. CT. Daya Nand v Union of India & Ors. [2000 (1) ATJ 136]** on the ground that in that case, there was no court order confirming the petitioner’s dismissal. Similarly, a reading of paragraph 15 shows that the learned Tribunal has unwittingly evolved a new ground for dismissing an application for grant of Compassionate Allowance, which is affirmation of the applicant’s incident of misconduct by the Tribunal as well as by the High Court. Besides the fact that it was not within the province of the Tribunal to substitute its own conclusions on the merits of the petitioner’s application for that of the Competent Authority; I feel that such a consideration is not even germane to the issue for the reason that no such factor is provided under Rule 41 of the CCS (Pension) Rules read with the aforesaid Guidelines.”*

8. For the aforesaid reasons, we are of the view that since the respondents have overlooked the relevant parameters as laid down under Rule 41 of the CCS Pension Rules, the impugned order is liable to be set aside. The same is, accordingly, set aside and the matter is remanded back to the respondents for re-consideration of the petitioner’s request for grant of compassionate allowance.

*9. However, since we find that the petitioner’s earlier representation for compassionate allowance was not a very detailed representation, we grant the petitioner liberty to file a fresh representation within a period of four weeks which will be disposed of by the respondents within a period of 12 weeks thereafter by passing a reasoned and speaking order. Needless to state, while considering the petitioner’s claim, the respondents will take into account the decision of this Court in *Ex. ASI Shadi Ram (supra)*. It is further made clear that in case the petitioner is still aggrieved by any orders passed by the respondents, it will be open to the petitioner to seek legal recourse as permissible in law.”*

16. In light of the aforesaid, this Court allows the prayer of the Petitioner to the extent of making a fresh and comprehensive representation to the Board bringing forth the circumstances, which according to him, are



deserving of special consideration for grant of compassionate allowance beyond the acts of delinquency. As and when the representation is received, the Competent Authority shall examine the circumstances put forth therein keeping in mind that the Supreme Court in the judgment of ***Mahinder Dutt Sharma (supra)***, has observed that if the case of the delinquent employee falls under the 5 categories delineated in paragraph 14, 'ordinarily' he will be disentitled to compassionate allowance and ordinarily, in my view, cannot mean mandatorily as also the observations in paragraph 15 of the judgment and the fact that Petitioner has been acquitted in a criminal trial based on evidence, on the same set of allegations for which he was dismissed. Decision shall be taken by the Competent Authority within 08 weeks from the date the representation is received from the Petitioner. The decision will be communicated within one week from the date of the decision. Liberty is reserved with the Petitioner to take recourse to legal remedies in case of any surviving grievance.

17. Writ petition along with the pending application stands disposed of.

JYOTI SINGH, J

AUGUST 7, 2024/kks