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

+ **W.P.(C) 12775/2021**

EX HC DHARAM SINGH

.....Petitioner

Through: Mr. U. Srivastava with Mr. Rachit,
Mr. Saurabh, Mr. Anoop Kumar, Mr.
Gaurav, Advs.

versus

UNION OF INDIA AND OTHERS

.....Respondent

Through: Ms. Nidhi Banga and Mr. Nishant
Kumar, Advs.

CORAM:

HON'BLE MS. JUSTICE REKHA PALLI

HON'BLE MS. JUSTICE SHALINDER KAUR

ORDER

11.07.2024

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1. The petitioner who is an Ex. Head Constable of the Central Industrial Security Force (CISF), has approached this Court by way of the present petition under Article 226 of the Constitution of India, assailing the order dated 06.03.2021 vide which his request for grant of compassionate allowance under Rule 41 of the CCS (Pension) Rules 1972 has been rejected. He, therefore, seeks the following reliefs:-

“a) Directing the respondents to place the relevant records, pertaining to the present writ petition before their lordships for the proper adjudication in matter in the interest of justice.

b) Quash and setting aside the impugned orders dt. 06.03.2021(Annexure P/1), issued by the respondents rejecting the request of the petitioner for the grant of compassionate allowances under rules 41 of CCS (Pension) Rules 1972, with all other consequential benefits in accordance with the relevant rules and instructions on the subject.”



2. The petitioner who was serving in the CISF since April 1988, was while he was posted with the CISF unit, BSSL, Koyla Nagar, Dhanbad, Jharkhand served with a major penalty charge sheet under Rule 36 of the CISF Rules 2001 on the allegation of indulging in corrupt activities. Based on the findings of the departmental enquiry, he was vide order dated 31.01.2019 awarded the penalty of dismissal from service. This order was affirmed in appeal by the appellate authority on 30.04.2019 as also by the reviewing authority on 23.04.2020.

3. Aggrieved by his dismissal and rejection of his statutory appeal and revision, the petitioner approached this Court by way of W.P.(C) No.9094/2020. On 09.12.2020, after the petition was argued at length, the petitioner chose to withdraw the same with liberty to apply for compassionate allowance as per the provisions of Rule 41 of CCS Pension Rules.

4. Consequently, the petitioner submitted a representation to the respondents for compassionate allowance which representation has been rejected vide the impugned order dated 06.03.2021. It may be noted that while rejecting the petitioner's claim, the respondents have observed that the charges levelled against him were serious and therefore he was not entitled to any compassionate allowance. Being aggrieved, the petitioner has approached this Court.

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.

REKHA PALLI, J

SHALINDER KAUR, J

JULY 11, 2024
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