



2024:DHC:7458-DB



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI*****Date of decision: 25.09.2024***

+ W.P.(C) 13492/2024

PADAM SINGH CHAUHAN

.....Petitioner

Through: Mr.R.K. Shukla, Ms.Nisha
Maurya & Ms.Menuka
Bardeva, Advs.

versus

UNION OF INDIA AND ORS

.....Respondents

Through: Ms.Niyati Sharma, SPC with
Ms.Rashi Mangal, GP &
Mr.Saurabh K. Kaushik, Adv.**CORAM:****HON'BLE MR. JUSTICE NAVIN CHAWLA****HON'BLE MS. JUSTICE SHALINDER KAUR****NAVIN CHAWLA, J. (ORAL)**

1. This petition has been filed under Article 226 of the Constitution of India, praying for the following reliefs: -

"I. To issue a writ of mandamus and such other appropriate writ or order or direction thereby quashing and setting aside the impugned order dated 18.04.2024 passed by the respondents further commanding the respondents to consider the compassionate allowance to the petitioner along with arrears.

II. To direct the respondents to pay the arrears of pension after granting compassionate allowance."

2. It is the case of the petitioner that the petitioner, who was recruited as Constable (General Duty) in BSF on 01.05.1989, on completion of his basic training, was posted in 17 Battalion BSF and later joined 95 Battalion BSF on 06.05.1992. He was tried by the



2024:DHC:7458-DB



Summary Security Force Court (in short, 'SSFC') on 03.08.2000 for absenting himself without leave from 07.08.1999 to 16.10.1999 for 70 days, and from 06.05.2000 to 05.07.2000 for 59 days. The SSFC found the petitioner guilty of the charges, and taking into account his previous conviction, character, age, length of service, including 04 punishments already awarded to him since his enrolment, sentenced him to be dismissed from service *vide* Order. no. Estt/94/Bn/SSFC/2k/ 7596-7603 dated 03.08.2000.

3. Feeling aggrieved of the said Order, the petitioner submitted a Statutory Petition dated 05/07.09.2002, which was also dismissed by the Director General, Boarder Security Force, New Delhi (in short, 'DG BSF'), *vide* Order dated 15.01.2003.

4. It is only 14 years thereafter, that the petitioner submitted a representation dated 18.05.2017 addressed to the Hon'ble Home Minister, Government of India and the DG BSF, New Delhi for re-instatement in service. His representation was also rejected *vide* Order no. L/No. Estt (Rectt)/Ftr-Guj/Re-Inst/ 94 BN/ 17/ 925-30 dated 13.10.2017 passed by the IG, Ftr Headquarter, BSF, Gujarat.

5. The petitioner then filed a Writ Petition before this Court, being WP(C) No. 10160/2023, tilted ***Padam Singh Chauhan v. UOI & Ors.***, praying therein for a direction to the respondents to consider his application for grant of Compassionate Allowance under Rule 41 of the CCS Pension Rules, 1972. The said petition was disposed of by this Court *vide* its Order dated 01.09.2019, directing the respondents to consider the petition as a representation of the petitioner for relief in terms of Proviso to Rule 41 of the CCS Pension Rules. This Court,



however, clarified that it has neither considered nor commented on the merits of the claim of the petitioner and it would be open for the respondents to consider the request of the petitioner in accordance with law and on its own merits.

6. The respondents now, by an Order dated 18.04.2024, have rejected the representation of the petitioner, *inter alia*, on the ground that the past service of the petitioner shows a continuous undisciplined streak and that he was a habitual offender. It is also observed in the Impugned Order that in terms of the CCS Pension Rules, timelines have been prescribed for considering the request for Compassionate Allowance, however, in the present case, the application filed by the petitioner was grossly delayed.

7. Feeling aggrieved of the said Order, the petitioner has filed the present petition.

8. The learned counsel for the petitioner submits that the respondents have failed to appreciate that while considering an application for grant of relief under Rule 41 of the CCS Pension Rules, the respondents must not consider the act for which the delinquent is charged and has been removed from service. An act of moral turpitude is an act that has an inherent quality of baseness, vileness, or depravity with respect to a concerned person's duty towards another. The respondents must consider whether the act of the delinquent is such as may be described as an act of dishonesty towards the employer or an act designed for personal gains from the employer; did it harm a third party interest; or it is, even otherwise, unacceptable that such delinquent be conferred the benefit flowing from Rule 41 of



the CCS Pension rules. The learned counsel for the petitioner submits that in the present case, none of the above exceptions were made out against the petitioner. The only allegation against the petitioner was that he had absented himself from the duty, which cannot be categorised as an offence involving moral turpitude.

9. He submits that on the asking of the respondent, the petitioner had also submitted his income certificate, which would show his monthly income to be only Rs.4,500/- per month. He submits that, therefore, in terms of the Judgment of the Supreme Court in ***Mahinder Dutt Sharma v. Union of India and Others***, (2014) 11 SCC 684, the respondents should have granted Compassionate Allowance to the petitioner. He submits that, in fact, in the said case, the absence of the delinquent employee therein was of more than 320 days, while in the case of the petitioner, it is only 129 days.

10. He submits that delay in filing of the representation seeking Compassionate Allowance cannot be a ground to reject such representation, inasmuch as, the Compassionate Allowance is in form of a pension, which is a recurring cause of action.

11. We have considered the submissions made by the learned counsel for the petitioner.

12. In the present case, as it would be evident from the above, the petitioner was dismissed from service *vide* Order dated 03.08.2000. His Statutory Petition against the same was also dismissed on 15.01.2003. It is only by a representation dated 18.05.2019, that the petitioner first sought re-instatement in service and later, requested for Compassionate Allowance in terms of Rule 41 of the CCS Pension



Rules.

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

“(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 superannuation pension.

(2) The competent authority shall, either on its own or after taking into consideration the representation of Government servant, if any, examine whether any compassionate allowance is to be granted and take a decision in this regard in accordance with the proviso to sub-rule (1) not later than three months after the date of issue of the order imposing the penalty of dismissal or removal from service.

(3) The competent authority shall consider: -

a) each case of dismissal and removal from service on its merit to decide whether the case deserves of special consideration for sanction of a compassionate allowance and, if so, the quantum thereof;

(b) the actual misconduct which occasioned the penalty of dismissal or removal from service and the kind of service rendered by the Government servant;

(c) in exceptional circumstances, factors like family members dependent on the Govt servant along with other relevant factors.

(4) Where an order imposing the penalty of dismissal or removal from service was issued before the date of commencement of these rules and the competent authority, at that time, did not examine or decide whether or not any compassionate allowance was to be granted in that case, that authority shall take a decision



in this regard not later than six months from the date of commencement of these rules.

(5) No compassionate allowance shall be sanctioned after the expiry of the aforesaid period of six months, to a Government servant on whom a penalty of dismissal or removal from service was imposed before the date of commencement of these rules.

(6) A compassionate allowance sanctioned under the proviso to sub-rule (1) shall not be less than the amount of minimum pension under rule 44. (i.e., not less than Rupees Nine thousand and not exceeding Rupees One lakh twenty five thousand per month)."

14. The Impugned Order dated 18.04.2024, rejecting the representation of the petitioner for grant of Compassionate Allowance, after taking note of the Judgment of the Supreme Court in ***Mahinder Dutt Sharma*** (supra), further gives the following reasons for the rejection of the representation:-

"10. Whereas, on examination of case of the petitioner, it is noticed that record of past service of the petitioner shows continuous indiscipline streak, where he has been committing one offence after another. Besides, he had the audacity to run away from the unit when cognizance was taken of his absence and decision had been taken to try him by a Summary Security Force Court. He was a habitual offender and indulged in various indiscipline activities in such a short span of his service. He was dishonest towards his service as well as to the BSF where discipline is required. As such, his case does not at all fall in the category where special consideration can be shown by sanctioning Compassionate Allowance. It shall be putting premium to the indiscipline acts which he committed all through in his short span of 11 years of service.



11. It is further on record that the CCS (Pension) Rules, 2021 has brought in a concept of timed action for sanction of Compassionate Allowance which is three months and six months respectively as provided under Rule 41. Thus, such a claim is otherwise also time barred. Petitioner was dismissed in the year 2000, his petition was rejected in the year 2003. Thereafter, he submitted another petition in the year 2017, which too was disposed of. Thereafter, the petitioner filed the writ petition in the year 2023, which the Hon'ble Court has also disposed of. Thus, such a delayed claim deserve to be kept out of consideration.

12. Whereas, the DG BSF carefully and diligently examined the prayers of the petitioner made in the Writ Petition (C) No.10160/2023 in terms of Order of Hon'ble Delhi High Court dated 01.09.2023 as well as the facts emerged on the case file and found that petitioner within a period of four years from joining the service started committing offences one after another. Summary Trials held and punishment awarded to him did not bring any change in his conduct towards the service. His absence without leave for 70 days in Aug to Oct 1999 was taken cognizance of and he was put to notice to face Summary Security Force Court trial. He again absented himself without leave until he finally reported to the unit on 05.07.2000. He was thereafter tried by Summary Security Force Court and sentenced to be dismissed from Service.

13. The DG BSF is of the view that conduct of the petitioner in committing offences, as brought out above, abundantly makes it clear that the petitioner was not interested to continue his service in a disciplined manner. It becomes absolutely difficult for the unit authorities to command such errants and indisciplined persons. Punishment of dismissal from service entails forfeiture of past service, thus, no pensionary benefits are admissible.



14. Whereas, Law of Compassionate Allowance provides for grant of financial benefits to dismissed/removed employees where the case is deserving of special consideration. As noted above, the petitioner was a habitual offender and thus' his case does not at all fall within the category of a case deserving special consideration. For all above reasons, the DG BSF found that the case of the petitioner is devoid of any merits for grant of Compassionate Allowance under Rule 41 of the CCS (Pension) Rules, 2021."

15. In our view, the Impugned Order passed by the respondents is well reasoned and has considered all aspects that are relevant for the adjudication of the application/representation submitted by the petitioner for grant of Compassionate Allowance.

16. In the present case, the petitioner has also not explained his absence right from 2003 till 2017, when the first application/representation was filed by the petitioner, seeking re-instatement/Compassionate Allowance. The service record of the petitioner also shows that, even while in service, the petitioner had earned at least four punishments.

17. In view of the above, we find no merit in the present petition.

18. The same is accordingly dismissed.

NAVIN CHAWLA, J

SHALINDER KAUR, J

SEPTEMBER 25, 2024/rv/DG

[Click here to check corrigendum, if any](#)