



2025:DHC:599-DB



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

+ **W.P.(C) 9020/2018 & CM APPL. 34694/2018**

GOVT. OF NCT OF DELHI AND ANR.Petitioners

Through: Mr. Rishabh Sahu, SPC with
Mr. Sameer Sharma and Mr. Mayank
Yadav, Advs.

versus

SUMLESH DEVIRespondent

Through: Mr. Anil Singhal, Adv.

CORAM:

HON'BLE MR. JUSTICE C.HARI SHANKAR

HON'BLE MR. JUSTICE AJAY DIGPAUL

JUDGMENT (ORAL)

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29.01.2025

C.HARI SHANKAR, J.

The challenge

1. The GNCTD¹ and the Delhi Police, by means of the present writ petition, challenge judgement dated 26 April 2018 passed by the Central Administrative Tribunal² in OA 3373/2016³, whereby the Tribunal has allowed the OA.

The issue

¹ Government of National Territory of Delhi

² "the Tribunal" hereafter

³ **Sumlesh Devi v GNCTD**



2. The entitlement, of the respondent Sumlesh Devi, to compassionate allowance, is in dispute. The Tribunal has held her to be so entitled, and has directed the petitioner to grant compassionate allowance to her, from the date of filing of the OA, with interest @ 7% p.a. till the date of actual payment.

3. The GNCTD disputes the claim.

Facts

4. Mahesh Kumar, who was working as Constable in the Delhi Police, was dismissed from service on 26 February 1993. He died on 16 January 2004. The respondent claimed to have come to know of the dismissal of Mahesh Kumar, from service, only in 2004.

5. On 21 March 2012, the respondent submitted an application to the Delhi Police, for compassionate allowance, in terms of Rule 41⁴ of

⁴ 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 superannuation pension.

(2) The competent authority shall, either on its own or after taking into consideration the representation of the 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 Government 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



the Central Civil Services (Pension) Rules, 1972⁵, as there was no earning member in her household. The application was rejected by the petitioners on 20 December 2012. The respondent assailed the rejection before the Tribunal by way of OA 3019/2013. *Vide* judgement dated 19 September 2014, the Tribunal set aside the order dated 20 December 2012 and directed the petitioners to reconsider the respondent's case, keeping in mind the guidelines framed by the Supreme Court in *Mahinder Dutt Sharma v UOI*⁶, which may be reproduced thus:

“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

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.

⁵ “the CCS (Pension) Rules” hereinafter

⁶ (2014) 11 SCC 684



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



2025:DHC:599-DB



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.”

6. In compliance with the above judgement dated 19 September 2014 passed by the learned Tribunal in a 3019/2013, the following Order was passed by the Deputy Commissioner of Police⁷, granting compassionate allowance to the respondent @ ₹ 3500/- + RIP per month, with effect from 12 September 2013, under Rule 41 of the CCAs (Pension) Rules:

“ORDER

In pursuance of decision dt. 19.09.2014 pronounced by Hon’ble CAT in OA No. 3019/2013 – Smt. Sumlesh Devi Vs Commissioner of Police, Delhi & others sanction is, hereby, accorded for payment of ₹ 3500/- + RIP per month as compassionate Allowance with effect from 12.09.2013 under rule-41 of CCAs (Pension) Rules, 1972 to Smt. Sumlesh Devi w/o Ex./Late Constable Mahesh Kumar No. 8821/DAP (PIS No. 28850435) who was dismissed from Delhi Police vide order No. 1321-1391/HAP & Trg/7th Bn DAP dated 26.02.1993 and expired on 16.01.2004.”

(RAJESH KUMAR) IPS
Dy. Commissioner of Police:
7th Bn, DAP, New Delhi”

7. Subsequently, however, vide Order dated 26 August 2015, the DCP withdrew the aforesaid Order dated 20 November 2014. This latter Order dated 26 August 2015 stated that, after the passing of the earlier order dated 20 November 2014, sanctioning compassionate allowance to the respondent, the case was taken up with the Pay and



2025:DHC:599-DB



Accounts Office⁸ which directed that the opinion of the Financial Advisor⁹ to the Commissioner of Police be obtained. The opinion of the FA was forwarded to the PAO, who opined that compassionate allowance had erroneously been sanctioned to the respondent. According to the opinion of the PAO, Compassionate Allowance was a class of pension, which could not exceed two thirds of the pension payable. Under the CCS (Pension) Rules, a qualifying service of not less than 10 years was necessary for a permanent employee to be entitled to pension after retirement. Inasmuch as Mahesh Kumar had served with the Delhi Police only for 5 years, the PAO opined that pension was not admissible to him. If pension was not admissible to Mahesh Kumar, *ipso jure*, compassionate allowance would also not be admissible to his widow. Mahinder Dutt Sharma, the employee before the Supreme Court had, to his credit, more than 22 years of service, which rendered him eligible for pension under the CCS (Pension) Rules. On this reasoning, the Order dated 26 August 2015 withdrew the earlier Order dated 20 November 2014, whereby compassionate allowance had been sanctioned in favour of the respondent.

8. Aggrieved by the aforesaid withdrawal of the compassionate allowance earlier sanctioned in her favour, the respondent approached the Tribunal by means of OA 3373/2016. Among other things, the respondent contended that the view of the PAO, as reflected in the Order dated 26 August 2015, and which constituted the basis for withdrawing the earlier Order dated 20 November 2014, was contrary to the judgement of a Division Bench of this Court in ***Ramesh Kumar***

⁸ PAO

⁹ FA



2025:DHC:599-DB



*Singh v UOI*¹⁰, the Special Leave Petition preferred against which was also dismissed by the Supreme Court on 2 February 2015.

9. The petitioners replied to the OA filed by the respondent, who filed the rejoinder thereto. Consequent on completion of pleadings, the OA was finally heard and, by the impugned judgement dated 26 April 2018, stands allowed in favour of the respondent. The operative portion paragraph of the impugned judgement reads as under:

“14. The OA thus succeeds. The impugned order dated 26.08.2015 is quashed and set aside. The respondents are directed to restore their earlier order dated 20.11.2014. As already directed by the Tribunal vide its earlier order dated 19.09.2014 in OA 3019/2013 (supra), the respondents shall accord a benefit or compassionate allowance to the Applicant from the date of filing of 1st OA. The Applicant shall also be entitled to interest @ 75 per annum in the date of actual payment. These directions should be implemented within a period of 3 months from the date of receipt of a certified copy of this order. No costs.”

10. The said judgement, dated 26 April 2018, passed by the Tribunal, as already noted, is in challenge before us.

11. We have heard Mr. Rishabh Sahu, learned Counsel for the petitioner and Mr. Anil Singhal, learned Counsel for the respondent. Inasmuch as learned Counsel essentially reiterated their respective stands before the Tribunal, we do not deem it necessary to reiterate them.

Analysis and Conclusions



12. The respondent was denied compassionate allowance only on the ground that her husband had not rendered 10 years of service as Constable before he was dismissed. The petitioner was, therefore, canvassing a proposition that a minimum qualifying service of 10 years was required for the petitioner's widow to be entitled to compassionate allowance.

13. We may note that this is the only ground on which the respondent's entitlement to compassionate allowance has been contested. The petitioners do not seek to contend that "special circumstances", justifying grant of compassionate allowance to the respondent, did not exist. Indeed, they cannot, as they had already sanctioned compassionate allowance in the respondent's favour on 20 November 2024.

14. Insofar as the stand that a minimum of 10 years' qualifying service by the respondent's husband was necessary for her to be entitled to compassionate allowance is concerned, the issue is no longer *res integra*. It stands settled by the judgment of the Division Bench of this Court in *Ex. Const Ram Niwas v UOI*¹¹, which was thereafter followed in *Ramesh Kumar Singh*. We may reproduce, for ready reference, para 5 of the judgment in *Ramesh Kumar Singh*, which also stands reproduced by the Tribunal:

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

"5. Learned counsel for the respondents states that the

¹¹ MANU/DE/4124/202



2025:DHC:599-DB



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 subrule (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.



2025:DHC:599-DB



(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



2025:DHC:599-DB



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. ...”

15. Thus, the *entitlement* to compassionate allowance is not dependent on the length of service rendered by the Police Officer who was later dismissed from service, though the length of service rendered might have an effect on the *quantum* of compassionate allowance.

16. This latter aspect need not detain us, as the petitioner does not seek to contend that the respondent was entitled to compassionate allowance, but was sanctioned an incorrect quantum, or amount.

17. In view of the aforesaid declaration of the law in ***Ramesh Kumar Singh***, it cannot lie in the mouth of the petitioner to contend that the respondent was not entitled to compassionate allowance because her husband had not served the petitioner for 10 years before being dismissed.

18. This being the sole ground on which the Order dated 26 August 2015, withdrawing the earlier Order dated 20 November 2014, was passed, the Tribunal was obviously justified in its decision to set aside the former order and restore the latter.



2025:DHC:599-DB



19. We, therefore, find no reason to interfere with the impugned judgment of the Tribunal, which is upheld in its entirety.

20. The writ petition is dismissed.

C. HARI SHANKAR, J.

AJAY DIGPAUL, J.

JANUARY 29, 2025

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Click here to check corrigendum, if any