(2011) 04 DEL CK 0045

In the Delhi High Court

Case No : Writ Petition (C) No. 20885 of 2005

Additional Deputy Commissioner of Police APPELLANT

Vs

Ms. Anju RESPONDENT

Date of Decision : 06-04-2011

Acts Referred:

Central Civil Services (Pension) Rules, 1972 — Rule 41

Citation : (2011) 04 DEL CK 0045

Hon'ble Judges : Veena Birbal, J;Anil Kumar, J

Bench : Division Bench

Advocate : V.K. Tandon, for the Appellant; Anil Singhal, for the Respondent

Judgement

Anil Kumar, J.—The Petitioner, Additional Deputy Commissioner of Police has challenged the order dated 12th April, 2005, passed by the Central Administrative Tribunal, Principal Bench, New Delhi in OA 2350/2004 titled as Ms. Anju v. UOI and Anr. allowing the original application of the Respondent and granting compassionate allowance under Rule 41 of CCS (Pension) Rules, 1972 to the Respondent, widow of the dismissed deceased Constable Nidhi Kumar.

2. Relevant facts to comprehend the dispute are that the Respondent is a legal heir of the deceased Constable Nidhi Kumar who was in the service of the Delhi Police. Her husband, Constable Nidhi Kumar had died on 22nd October, 2003 after a long absence from service without authorized leave for which he was dismissed from service. One month after his death, she applied for compassionate appointment.

3. The Respondent was intimated that her husband was dismissed on 22nd June, 2001 on account of his unauthorized absence, and therefore, she cannot be granted compassionate appointment.

4. Thereafter, the Respondent sought compassionate allowance on humanitarian ground as contemplated under Rule 41 of the CCS (Pension) Rules, 1972. By order dated 12th March, 2004 the request of the Respondent was declined.

5. The Respondent in her application/representation for compassionate allowance gave details of her family comprising of mother of the deceased Constable and three children, namely, Nishant, Nishi and Vishakha along with the details of their income and financial conditions and the educational qualification. The Respondent disclosed that they have no income and no such qualification which would make them earn their livelihood and survive. The representation of the Respondent was, however, rejected by order dated 12th March, 2004 without giving any reasons.

6. Aggrieved by the order of rejection of the Respondent''s request for compassionate allowance, an original application being OA No. 985 of 2004, titled as "Anju v. Union of India, through Commissioner of Police? was filed which was disposed of by order dated 21st April, 2004 directing the Petitioner to dispose of the matter by a reasoned and speaking order.

7. Thereafter, the Petitioner has again passed an order dated 11th August, 2004. While declining the request of the Respondent for compassionate allowance, the reasons given by the Petitioner were as under:

... Constable Nidhi Kumar was enlisted in Delhi Police on 30.6.1989 and had absented himself unauthorizedly and willfully for over years and did not join his duties in spite of issuing repeated notices. Besides he also failed to cooperate in the D.E. proceedings which clearly shows his intention not to serve the department and on having been proved the charges of willful and unauthorized absent, he was dismissed from the force. Since he was member of the disciplinary force and therefore such in disciplined act effects the moral of force adversely. Taking into consideration all the facts I am of the considered opinion that there is no scope of leniency in this case. Hence the request for compassionate allowance has been considered and rejected.

8. The said order was challenged by the Petitioner by filing an original application being OA No. 2350 of 2004, titled as "Anju, wife of late Constable Nidhi Kumar v. Union of India, through Commissioner of Police and Anr.? which was disposed of by order dated 12th April, 2005. The Tribunal has taken into consideration the guiding principles for the grant of compassionate allowance as detailed in Office Memo No. 3(2)-R-II/40, dated 22nd April, 1940 and 2000 (1) ATJ 137, "Ex. Constable Daya Nand v. UOI? and thus, allowed the original application of the Respondent and directed the Petitioner to accord the compassionate allowance to the legal representative of the deceased Constable Nidhi Kumar with all consequential benefits.

9. This Court has heard the learned Counsel for the parties. The main contention of the learned Counsel for the Petitioner is that Ex. Constable Nidhi Kumar was dismissed from service on account of unauthorized absence for over years and not joining the duties and thus according to the Petitioner, his widow and children are not entitled for compassionate allowance. The Petitioner also contended that compassionate allowance would be applicable only in case competent authority

while removing an officer from service proposes to recommend the grant of compassionate allowance to the incumbent.

10. This cannot be disputed that compassionate allowance not exceeding 2/3 of the pension or gratuity or both can be granted to a Government servant who has been dismissed or removed from the service. This is also not disputed that compassionate allowance shall be admissible to a Government servant who is dismissed or removed from the service in case of deserving person on account of special circumstances. By Office Memo No. 3(2)-R-II/40, dated 22nd April, 1940 guiding principle for the grant of compassionate allowance have been laid down stipulating that each case has to be considered on its own merit and conclusion has to be reached on the question whether there are any such extenuating features in the case while taking into consideration the actual misconduct which occasioned the dismissal or removal of the officer along with kind of service he had rendered. It has also been elaborated that whether the misconduct carries with it the legitimate inferences that officer''s service has been dishonest or not also has to be taken into consideration and in case of misconduct on account of dishonesty of the employee, it would not be a good case for compassionate allowance. The said Office Memo also laid down that special regard is also to be paid to the fact that officer has a wife and children dependent upon him though this factor by itself may not be sufficient for grant of compassionate allowance.

11. Taking into consideration the facts disclosed by the Respondent as widow of the dismissed Constable Nidhi Kumar, it is apparent that he was dismissed on account of unauthorized absence. This is also not disputed that he was ailing and ultimately died. In the circumstances, it is inevitable to infer that the service of the husband of the Respondent was not terminated on account of his dishonest behaviour. This is also not disputed that the Respondent widow of the dismissed Constable has three children and widowed mother of the deceased Constable. They have no source of income, nor has such education, as disclosed by her which can save them from the utter penury which the Respondent and her family are facing.

12. In order to consider whether the compassionate allowance is to be granted or not, the Petitioner ought to have considered some of these factors as enumerated hereinabove which are in terms of Office Memo dated 22nd April, 1940 and in accordance with Rule 41 regarding grant of compassionate allowance. The plea of the Respondent for grant of compassionate allowance was first declined by a non-speaking order dated 24th February, 2004 and 12th March, 2004 which entailed filing an original application being OA No. 2350 of 2004 which was disposed of by order dated 12th April, 2005 directing the Petitioner to pass a speaking and reasoned order. Pursuant to that the impugned order dated 11th August, 2004 was passed however, the relevant facts for grant of compassionate allowance have not been considered rather the circumstances in which the husband of the Respondent was dismissed were reiterated. The facts leading to the dismissal from the service rather support the plea of the

Respondent that her husband had not mis-conducted based on dishonesty. The facts that before dismissal from the service on account of unauthorized absence on account of his illness, he had rendered 12 years of service was also not taken into consideration. The Petitioner also did not take into consideration the relevant facts regarding the financial conditions of the family members of the deceased constable and utter penury in which they are living and that the deceased constable had rendered 12 years service. The order dated 11th August, 2004 declining the compassionate allowance was passed mechanically without application of mind. In the circumstances, the order of the Tribunal taking into consideration these facts and directing the Petitioner to grant compassionate allowance to the Respondent, widow of deceased Constable Nidhi Kumar cannot be termed to be illegal or not unsustainable.

13. The learned Counsel for the Petitioner, Mr. Tandon has contended that while dismissing the husband of the Respondent, the authorities had not passed any order entitling him for compassionate allowance. However, this cannot be disputed that it was not held that the family of the deceased constable was held to be not entitled for compassionate allowance as contemplated under relevant rules. If at the time of dismissal it was not specifically held that the dismissed employee and his dependents would be entitled for compassionate allowance, later on plea of the compassionate allowance by the dependent of the deceased employee cannot be denied on this ground especially in the present facts and circumstances.

14. No other ground has been canvassed before this Court except that Constable Nidhi Kumar was dismissed from service on account of unauthorized leave and consequently his widow is not entitled for compassionate allowance.

15. For the foregoing reasons, compassionate allowance could not be denied to the widow of dismissed Constable Nidhi Kumar in the peculiar facts and circumstances of this case and consequently, there is no perversity or such illegality in the order of the Tribunal which would require any interference by this Court. The writ petition, in the facts and circumstances, is without any merit and it is dismissed and the order of the Tribunal allowing the original application of the Respondent and granting compassionate allowance under Rule 41 of CCS (Pension) Rules, 1972 to the Respondent, widow of the dismissed deceased Constable Nidhi Kumar is upheld in the peculiar facts and circumstances of the case. Perusal of the orders passed by this Court in the present writ petition also reveals that order dated 12th April, 2005 of the Tribunal was not stayed by this Court during the pendency of the present writ petition. In the circumstances the Petitioner is liable to implement the order of the Tribunal granting compassionate allowance to the widow of the deceased constable forthwith. Considering the facts and circumstances, the parties are however left to bear their own costs.

