
(2012) 09 DEL CK 0476

In the Delhi High Court

Case No : Writ Petition (C) No. 1728 of 1999

Anil Kumar

APPELLANT

Vs

CRPF and Others

RESPONDENT

Date of Decision : 25-09-2012

Acts Referred:

Citation : (2012) 09 DEL CK 0476

Hon'ble Judges : Pradeep Nandrajog, J; Manmohan Singh, J

Bench : Division Bench

Advocate : T.N. Tripathi, for the Appellant; Rajender Nischal, Advocate with Mr. M.P. Singh, for the Respondent

Final Decision : Disposed Off

Judgement

Pradeep Nandrajog, J.—Sanctioned leave upto October 30, 1995, the petitioner did not report back for duty. Four letters were sent at the address recorded in the personal file of the petitioner. He responded only twice praying that leave be extended and the reason stated was the petitioner being unwell. Medical certificates obtained from a Doctor practicing in Homeopath were annexed. Departmental requests that petitioner should get himself examined at a Government Hospital and after obtaining a certificate apply for leave was ignored by the petitioner.

2. Petitioner was issued a charge memo dated May 30, 1996, alleging the charge of continuous unauthorized absence.

3. The charge sheet, as per record of the respondents, was not served upon the petitioner and only one attempt was made to effect service. When sent by post, the postal authorities reported that the petitioner was not available in his house.

4. Not making a repeat attempt to serve the petitioner either by post or personally or by affixation at his house, Enquiry Officer was appointed. The notice sent by the Enquiry Officer intimating date of hearing before the Enquiry Officer was likewise received back unserved. The Enquiry Officer proceeded with

an ex-parte enquiry and submitted a report which was forwarded to the petitioner on April 11, 1997 to which petitioner responded informing that he would join back as and when he was fit to do so. Vide order dated July 9, 1997, the petitioner was inflicted with the penalty of removal from service, against which appeal filed by him was rejected on November 24, 1997.

5. Noting the fact that the petitioner remained unauthorizedly absent from November 1, 1995 and continued to remain absent till charge sheet dated May 30, 1996 was sent to him; continuing to remain absent till when the penalty order was inflicted, but conscious of the fact that the charge sheet was not served upon the petitioner, only course available to us is to set aside the penalty imposed and permit the respondents to hold an enquiry against the petitioner, for the reason we cannot overlook the fact that from November 1, 1995 till penalty of removal from service was inflicted, the petitioner never reported back. It is unfortunate that the writ petition has remained pending in the record room of this Court for over 13 years since it was filed. It is not a case to prohibit respondents from serving the charge-sheet and holding an enquiry.

6. Faced with aforesaid and the possibility of the entire period being required to be treated "dies-non" i.e. not making petitioner eligible for any wages or the period to be counted towards pensionable service, learned counsel for the petitioner states that the petitioner would be satisfied if this Court were to uphold the penalty removing the petitioner from service provided the petitioner is sanctioned a compassionate allowance in terms Rule 41 of the CCS Pension Rules.

7. 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 of 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 sub-rule (1) shall not be less than the amount of (Rupees three hundred and seventy-five) per mensem.

8. Needless to state the Competent Authority can sanction compassionate allowance and gratuity not exceeding 2/3rd of the compensation pension payable.

9. 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.

(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 allowances 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.

10. A conjoint reading of Rule 39 and Rule 41 would reveal that a Government servant who is dismissed or removed from service can be paid compassionate allowance upto 2/3rd of the pension which would have been admissible to him if he had retired on compensation pension. Meaning thereby, to be eligible for compassionate allowance pensionable service is not the criteria.

11. Noting that even respondents are at fault of not ensuring that the charge sheet was served upon the petitioner, but weighing the fact of the petitioner's continued unauthorized absence and factoring therein the concession made by the learned counsel for the petitioner, we think that a fair, just and equitable direction which needs to be passed in the instant writ petition is to direct that the petitioner be paid compassionate allowance for the reason he had joined CRPF on September 26, 1981 and had served a cause for the nation till he was removed

from service in the year 1997.

12. Declining relief as prayed for, we dispose of the writ petition directing the respondents to pay to the petitioner compassionate allowance which shall be 2/3rd of the compensation pension which would have been admissible to him if petitioner had retired on compensation pension. We also direct that petitioner would be paid proportionate gratuity for the period he had rendered service.

13. The compassionate allowance required to be paid to the petitioner would be with effect from the date he was removed from service and for which the arrears would be paid to him after they are computed within twelve weeks from today. No costs.