

(2018) 09 RAJ CK 0114
In the Rajasthan High Court
Case No : Civil Writ No. 13441 of 2018

Birdh Singh @APPELLANT@Hash Union Of India

Date of Decision : 28-09-2018

Acts Referred:

Central Civil Services (Pension) Rules, 1972 — Rule 24, 41

Citation : (2018) 09 RAJ CK 0114

Hon'ble Judges : Arun Bhansali, J

Bench : Single Bench

Advocate : Sukesh Bhati

Final Decision : Disposed Off

Judgement

This writ petition has been filed by the petitioner seeking grant of compassionate allowance and/or direct the respondents to re-decide the

representation filed by the petitioner in a specified period.

The petitioner was appointed as Constable in BSF on 2/12/1963 and was dismissed from service on 26/12/1992. It is submitted that the petitioner

through counsel sent a notice for demand of justice on 10/4/2018 seeking grant of compassionate allowance so as to overcome financial crisis suffered

by him, to which a response dated 5/6/2018 (Annex.2) has been received by the petitioner inter alia indicating that the petitioner was found guilty and

was awarded punishment of dismissal on 18/3/1993, which was confirmed by the competent authority and the writ petition filed by the petitioner was

dismissed on 16/1/2009 and, therefore, in terms of provisions of Rule 24 of the Central Civil Services (Pension) Rules, 1972 (the Rule, 1972)

as removal/dismissal from service entails forfeiture of past service, the petitioner is not entitled for pension/gratuity. Based on the said observations,

the representation was rejected.

It is submitted by learned counsel for the petitioner that by the representation (Annex.1), the petitioner had sought grant of compassionate allowance/pension, which is governed by Rule 41 of the Rules, 1972, the respondent without adverting to the provisions and requirements of Rule 41, has wrongly rejected the representation made by the petitioner and, therefore, the order impugned cannot be sustained. It is prayed that the respondents be directed to decide the representation made by the petitioner in terms of the provisions of Rule 41 of the Rules, 1972 within a specified period.

I have considered the submissions made by learned counsel for the petitioner and have perused the material available on record.

The petitioner has placed on record only the notice issued by the counsel and the response by the Deputy Inspector General, SHQ BSF, Jailsamer

(South) and no other material is available on record so as to determine the entitlement of the petitioner.

Rule 41 of the Rules, 1972 reads as under:

41. Compassionate allowance.- 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 which would have been admissible to him if he had retired on

compensation pension.

(2) A compassionate allowance sanctioned under the provision to sub-rule (1) shall not be less than the amount of Rupees three hundred and sixty file

per mensem.

Hon'ble Supreme Court in Mahinder Dutt Sharma vs. Union of India & Ors. : (2014) 11 SCC 684 has exhaustively dealt with the above provision,

enumerated the factors for consideration and has laid down the parameters for entitlement to the said benefit under the Rule in para 14 and 15 of the

judgment.

A perusal of the order (Annex.2) passed by the respondents clearly indicates that simply on account of the fact that the petitioner was dismissed from

service, the writ petition filed by the petitioner was rejected by this Court and in terms of Rule 24 of the Rules, the pensionary benefits stood forfeited,

representation has been rejected, however, nothing has been indicated about petitioner's entitlement under Rule 41 of the Rules, 1972 for grant of compassionate allowance, which aspect needs to be dealt with by the respondents appropriately.

In view of the above discussion, the writ petition filed by the petitioner is disposed of with a direction to the respondents to pass a fresh order on the representation made by the petitioner for grant of "compassionate allowance" keeping in view the provisions of Rule 41 of the Rules, 1972 and the judgment of Hon'ble Supreme Court in Mahinder Dutt Sharma (supra).

The respondents would pass a speaking order within a period of two weeks from the date a certified copy of this order is placed before them. The petitioner would be free to file a fresh representation, if so advised.