

(2013) 01 DEL CK 0335
In the Delhi High Court
Case No : Writ Petition (C) 464 of 2013

Charan Singh

APPELLANT

Vs

Union of India and Another

RESPONDENT

Date of Decision : 28-01-2013

Acts Referred:

Citation : (2013) 01 DEL CK 0335

Hon'ble Judges : Sudershan Kumar Misra, J;S. Ravindra Bhat, J

Bench : Division Bench

Advocate : Joginder Tuli and Sh. Ashu Kumar Sharma, for the Appellant;
Himanshu Bajaj, CGSC, for the Respondent

Judgement

S. Ravindra Bhat, J.

C.M. APPL. 898/2013

Allowed, subject to just exceptions.

W.P. (C) 464/2013

1. Issue notice. Sh. Himanshu Bajaj, CGSC accepts notice and states that the petition may be disposed of at this stage without filing counter affidavit. The writ petitioner is aggrieved by an order of the Central Industrial Security Force (CISF) dated 25.06.2011 whereby he was dismissed from service. The petitioner was appointed as Constable by the CISF with effect from 08.04.1994. At the time of recruitment, he held himself out to be a Scheduled Caste (SC) candidate and relied upon a certificate dated 07.12.1992, which declared that he belonged to the Scheduled Tribe (Meena) community of Rajasthan. Apparently, the CISF, after enquiry, ascertained that the Caste Certificate issued by him was false. A chargesheet was issued; the petitioner went on leave on 11.10.2010. He replied to the charges; the disciplinary officer was not satisfied with the reply and directed investigation of the petitioner, for further proceedings. Accordingly, on 04.02.2011, an Inquiry Officer was appointed. The dismissal order states that

during the departmental enquiry, despite issuance of notice to the petitioner, he did not choose to participate in the proceedings. During those proceedings, deposition of two witnesses were recorded and other materials taken on the record. Eventually, the departmental proceedings ended with the report of the IO, which was forwarded to the disciplinary authority on 24.05.2011. A copy of the report was marked to the petitioner; he was afforded opportunity to reply or make his comments against the same. He, however, chose not to do so. On the basis of the report of the departmental enquiry, the Commandant, who was the disciplinary authority, by an order dated 25.06.2011, recorded as follows:

18. Accused was not available during the enquiry despite sending him the enquiry notice. So, we will have to conduct the enquiry ex-parte.

19. After evaluating all the documents and statements of the witnesses the charge has been proved.

20. Enquiry report and investigation file presented by the undersigned officer and enquiry officer after going through all the documents and evidences, whole enquiry was conducted following all the rules and regulations and the opportunity of cross-examination given to the accused res. Charan Singh but he didn't join the enquiry so, ex-parte enquiry was conducted against him.

21. Using the powers under Rule 32, Schedule-1 and Rule 34(i) Rules 2001 CISF, force no. 942331620 res. Charan Singh, CISF Unit GBS, New Delhi issue the order of punishment Dismissal from service with immediate effect.

22. Force No. 942331620 Res. Charan Singh, CISF unit GBS, New Delhi was on leave absent.

23. Force No. 942331620 Res. Charan Singh was informed that if he want to appeal to the IG, CISF, GBS, Jamnagar House, New Delhi can appeal within 30 days from the date of the order.

24. One copy of the order was given to the force no. 942331620 Res. Charan Singh.

2. After the petitioner was served with the order dismissing him from the service, he addressed an appeal to the Inspector General, CISF. This was more in the nature of mercy appeal in which he claimed that since he had to be in service in excess of 17 years, he may be reinstated.

3. In the present proceedings, the petitioner claims that having regard to the circumstances and his past service of 17 years, he should be granted compassionate allowance not exceeding 2/3rd of the compensation pension, in terms of Rule 41 of CCS (Pension) Rules. In support of this claim, the petitioner relies upon the judgment of the Division Bench of this Court in Ex. ASI Shadi Ram Vs. Government of NCT of Delhi and Others, . In Shadi Ram (supra), this Court had elaborately analysed the provisions applicable, including Rule 41 and the Office Memorandum dated 22.04.1940 titled, "Guiding Principles for Grant of

Compassionate Allowance", issued for applying the aforesaid Rule 41; which states as follows:

Guiding principles for the grant of Compassionate Allowance-It is practically impossible in view of the wide variations that naturally exist in the circumstances attending each case, to lay down categorically precise principles that can uniformly be applied to individual cases. Each case has, therefore, to be considered on its merits and a conclusion has to be reached on the question whether there were any such extenuating features in the case as would make the punishment awarded, though it may have been necessary in the interests of Government, unduly hard on the individual. In considering this question, it has been the practice to take into account not only the actual misconduct or course of misconduct which occasioned the dismissal or removal of the officer, but also the kind of service he has rendered. Where the course of misconduct carries with it the legitimate inference that the officer's service has been dishonest, there can seldom be any good case for a Compassionate Allowance. Poverty is not an essential condition precedent to grant of a Compassionate Allowance, but special regard is also occasionally paid to the fact that the officer has a wife and children dependent upon him, though this factor by itself is not, except perhaps in the most exceptional circumstances, sufficient for the grant of a Compassionate Allowance.

[G.I., F.D., Office Memo. No. 3(2)-R-II/40, dated the 22nd April, 1940.]

In the aforesaid judgment, this Court has also discussed the effect of judgments of various Courts, including the Division Bench of Bombay High Court and the Division Bench of the Kerala High Court as to the impact on a request or application for Compassionate Allowance in cases of grave misconduct such as those extending to criminal misconduct.

The Court, inter alia, observed as follows:

13... in the context, the phrase, "if the case is deserving of special consideration", can only mean that if the state of affairs or the circumstances involved bring out qualities that are worthy of help or assistance, the applicant should be granted Compassionate Allowance. For arriving at this conclusion, the field is left wide open for the Competent Authority. All that is required for the Competent Authority to entertain the matter, and to apply its mind thereto, is that the applicant must have been dismissed from service and his pension and gratuity forfeited...

14 ... At their very outset, the Guidelines make it clear that while each case has to be considered on its own merits, the question which is to be decided by the Competent Authority in every case is, whether the case has any such extenuating features that would make the punishment awarded unduly hard on the dismissed officer. They also seek to facilitate the task of decision-making entrusted to the Competent Authority under the said Rule by laying down certain principles for their application. Every aspect that is referred to in the Guidelines

is aimed at determining the same question, i.e., whether the punishment awarded has been unduly hard on the dismissed officer. This approach is in consonance with the mandate of the Rule 41 that has been analysed by me above, which authorizes the Competent Authority to sanction Compassionate Allowance if the case is deserving of special consideration.....It follows therefore that the Guidelines enjoin the authority to look at the officer's entire service record, and then decide whether the punishment awarded has been unduly hard on the officer. And this requirement for the officer's service to be looked at from the point of view whether the punishment awarded has been unduly hard on him, cannot be peremptorily dispensed with on the ground that his dismissal was based on an incident of misconduct which had an element of dishonesty...

33. I also agree with the submission of the petitioner's counsel that the punishment of dismissal from service is employed only in the most grievous cases of misconduct by an officer, and the provision contemplating the grant of Compassionate Allowance can be invoked only by someone who have been dismissed from service. It is obvious that conduct that leads to an officer's dismissal is bound to be of a kind that tends to tarnish the image of his employer. After all, that is also one of the reasons for his dismissal. For the Competent Authority to thereafter say that he doesn't deserve Compassionate Allowance because he lowered his employer's image by the very act, or acts, that led to his dismissal, is to render the provision otiose. Furthermore, in the light of foregoing analysis of Rule 41 as well as the Guidelines, the issue before the Competent Authority is only whether the punishment imposed has been unduly hard on the officer. That is the point of view from which the whole thing is to be examined. That the dismissed officer's conduct has tarnished the image of the Force is irrelevant to the issue at hand. Such an approach on the part of the Competent Authority shows a lack of understanding of the object and purpose of the rule and the circumstances under which it is invoked.

34. I might add that, in my view, there is an element of decision-making involved in disposing of an application for grant of Compassionate Allowance. As the title suggests, it is an application seeking a, "compassionate" allowance. It is a plea whereby the authorities might be moved to show "compassion" for a former employee in straitened circumstances. I need hardly add that justice tempered with mercy always has a lasting effect. Furthermore, even in decisions taken by an Administrative Authority, there must be an element of uniformity and rationality. The power to grant or refuse Compassionate Allowance cannot be exercised on the mere whim of the officer who is designated as the Competent Authority at the relevant time.

4. In a subsequent judgment of another Division Bench of this Court, in W.P. (C) 7672/2012 (Hakim Singh v. UOI & Anr.) (decided on 11.12.2012), this Court adopted a somewhat similar approach. The Court in Hakim Singh (supra) stated as follows:

4. Faced with the situation aforesaid, learned counsel for the petitioner submits that the respondents are also at fault, in that, they took 17 years and 6 months to verify as aforesaid. Counsel states that as a result, the petitioner has become overage for seeking Government employment and notwithstanding the penalty of removal from service not being a bar to fresh Government employment, the petitioner cannot gain employment as he is overage. Counsel states that the least which petitioner deserves is a Compassionate Allowance envisaged by Rule 41 of the CCS (Pension) Rules; proviso whereof authorizes the competent authority, upon a Government servant being dismissed or removed from service, to pay a Compassionate Allowance not exceeding 2/3rd of the compensation pension.

5. Clarifying that Compassionate Allowance envisaged in Rule 41 of the CCS (Pension) Rules refers to Compensation Pension and not Pension, and Compensation Pension being envisaged by Rule 39 of the CCS (Pension) Rules with reference to number of years service is rendered, we dispose of the writ petition declining relief as prayed for but observe that if the petitioner were to make a representation to the competent authority and would make out his being a special case deserving special consideration, the competent authority would sanction a compassionate allowance as envisaged by Rule 41 of the CCS (Pension) Rules.

6. For benefit of the petitioner, we may only pen down that in the representation the petitioner should not make an averment with respect to the manner in which he sought employment inasmuch as said fact would be irrelevant. He has to make out a case deserving of special consideration. This would mean that the petitioner would inform such facts as would be relevant to consider financial hardship and for which he may indicate to the authority concerned the number of dependent children, parents or any other dependent relative. He must bring out whether he owns any agricultural land or other immovable property from which rentals or other income can be generated...

In view of the above decisions and having regard to the facts that in both the cases reported-Shadi Ram (supra) and Hakim Singh (supra), the petitioners had faced similar situations, the Court is of the opinion that the same directions have to be issued. Following the ratio in Shadi Ram (supra) and Hakim Singh (supra), the respondents are hereby directed to consider the petitioner's representation, if made, for grant of Compassionate Allowance in terms of Rule 41 of the CCS (Pension) Rules. If such a representation is made, same shall be considered and appropriate order shall be made within six weeks. It shall be directly communicated to the petitioner. The petition is disposed of in the above terms. No costs.