

(2011) 07 DEL CK 0125

In the Delhi High Court

Case No : Writ Petition (C) 2144 of 1998

Ex. Constable Chander Bhan Singh

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 11-07-2011

Acts Referred:

Central Civil Services (Pension) Rules, 1972 — Rule 41, 41(1)

Citation : (2011) 07 DEL CK 0125

Hon'ble Judges : Sunil Gaur, J; Pradeep Nandrajog, J

Bench : Division Bench

Advocate : R.M. Bagai, for the Appellant; Anjana Gosain, for the Respondent

Judgement

Pradeep Nandrajog, J.—Heard learned Counsel for the parties.

2. Record of the Department has been perused.

3. Joining services under CISF on 5.3.1981, Petitioner sought leave which was sanctioned on 10.4.1995. As against 15 days leave sought, 10 days were sanctioned requiring Petitioner to join back on 21.4.1995. He did, but left same day and did not take the movement order which required him to join a Unit which had moved.

4. Petitioner reported for duty on 20.9.1996 and was directed to join the Unit at Vishakapatnam where it was realized that the Petitioner could not be made to join duty inasmuch as his services has already been terminated by and under an order dated 25.5.1996.

5. What had happened was that upon Petitioner not joining services, a charge memo was drawn up listing the charge of disobeying lawful command and unauthorized absence, a wrong stated to be unbecoming of a force personnel. Under cover of a memo dated 20.10.1995, the charge sheet was sent under Registered AD post and the record shows that the AD card, bearing signatures of the Petitioner, was received back.

6. No reply was filed by the Petitioner to the charge sheet.
7. Record shows that the inquiry officer sent as many as 6 letters to the Petitioner intimating the date on which he would be conducting preliminary hearing; repetitive letters were sent inasmuch as the Petitioner was not receiving the letter sent.
8. Record shows that all 6 letters posted to the Petitioner were reported by the postal authorities with the report that the Petitioner was not available.
9. Conducting an ex-parte inquiry, the inquiry officer submitted a report, which needless to state indicted the Petitioner and considering the same the services of the Petitioner terminated.
10. Thus the stand of the Petitioner that he has been wronged stands belied by the record produced.
11. Stand taken by the Petitioner that he sought extension of leave, is not supported by any document. The Respondents have categorically stated that they never received any application for leave to be extended, and Petitioner has given no proof of having sent one.
12. Faced with the aforesaid, learned Counsel for the Petitioner urges that this Court may sanction compassionate allowance to the Petitioner, for the reasons when he reached home after availing leave he found his wife, who was a mentally disturbed lady missing from the house. Petitioner had to search for his wife. When he located his wife he had to ensure medical treatment for her. Petitioner is blessed with 5 children out of which 4 are girls and 1 is a boy.
13. Suffice would it be to state that the aforesaid plea of the Petitioner is without proof of any documents before us.
14. 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 Sub-rule (1) shall not be less than the amount of Rupees three thousand five hundred from 1.1.2006, per mensem.
15. Suffice would it be to state that the mandate of the rule enjoins upon the competent authority to consider whether a case is deserving or a special case requiring compassionate allowance to be sanctioned notwithstanding a

government servant being dismissed or removed from service.

16. The purport of the rule is to compensate the government servant for service rendered notwithstanding his dismissal or removal from service, if circumstances of compassion so warrant.

17. Needless to state that if Petitioner would satisfy the competent authority that he left on account of his wife's mental sickness, it certainly would attract a special consideration.

18. Proof of the fact that the Petitioner is in penury and has 4 daughters and a son as also a mentally challenged wife would be a case deserving a special consideration, as contemplated by the Rule.

19. We dispose of the writ petition declining the relief as prayed for, but issue a direction to the Director General CISF, that if Petitioner makes a representation within a period of 30 days from today seeking compassionate allowance, the same shall be considered within the parameters of Rule 41 of the CCS (Pension) Rules.

20. Needless to state that the competent authority would look into the service record of the Petitioner inasmuch as it is pleaded by the Petitioner that his services of a little over 14 years was without a blemish. Said fact if correct would be dealt with by the Director General, CISF while deciding the representation of the Petitioner as also the fact that the Petitioner claims to have brought laurels to the department at sports events.

21. Necessary orders would be passed within a period of 8 weeks of receipt of the representation, if any, filed by the Petitioner.

22. No costs.