
(2020) 09 CAT CK 0077

In the Central Administrative Tribunal

Case No : Original Application No. 1049 Of 2020

Ex. Ct. (Dvr.) Raj Kumar

APPELLANT

Vs

Commissioner Of Police & Others

RESPONDENT

Date of Decision : 21-09-2020

Acts Referred:

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

Citation : (2020) 09 CAT CK 0077

Hon'ble Judges : L. Narasimha Reddy, J; Pradeep Kumar, Member (A)

Bench : Division Bench

Advocate : Somir Singh Deswal, Esha Mazumdar

Final Decision : Disposed Of

Judgement

L. Narasimha Reddy, J

1. The applicant was appointed as a Constable in Delhi Police in the year 1989. Disciplinary proceedings were initiated against him alleging acts of unauthorized absence. That ultimately resulted in passing of an order dated 16.08.2013 through which he was dismissed from service and the same was confirmed by the Appellate Authority on 14.08.2014.

2. OA No.1407/2015 filed by the applicant was dismissed. In the Writ Petition No.5024/2019 even while upholding the order of dismissal, the Hon'ble High Court of Delhi made an observation to the effect that the case of the applicant be considered for grant of compassionate allowance under Rule 41 of CCS (Pension) Rules, 1972. Accordingly, the applicant made a representation to the concerned authority. Through an order dated 07.10.2019, the respondent No.3 rejected the representation.

3. In this OA, the applicant has challenged the order of dismissal from service, the order of the Appellate Authority, as well as the order dated 07.10.2019. He contends that the third respondent passed an order rejecting his claim for compassionate allowance without referring to the relevant facts and just by

mentioning that the judgment of the Hon'ble High Court in Writ Petition (C) No.3608/2017. He submits that the dismissal was only on the ground of unauthorized absence and it cannot be said that there were any acts of cheating or moral turpitude on his part.

4. The respondents filed a detailed counter affidavit. They took exception for the prayers in relation to the order of dismissal. As regards the order dated 07.10.2019, it is stated that the relevant facts were taken into account by the 3rd respondent and that he passed the said order.

5. We heard Shri Shri Somvir Singh Deswal, learned counsel for the applicant and Ms. Esha Mazumdar, learned counsel for the respondents.

6. Though the applicant has incorporated the prayers in relation to the order of dismissal and the order of appellate authority, we cannot take the same into account. The reason is that the OA filed challenging the order of dismissal was rejected and the same was confirmed in the Writ Petition.

7. In WP(C) No.3608/2017, the Hon'ble High Court made the following observation:-

"Compassionate allowance? as the words themselves suggest is granted by the employer out of compassion. It is for the respondents to determine as to whether a particular case is deserving of compassion keeping in view the guidelines laid down inter alia in Mahinder Dutt Sharma's case (supra). There is no vested right either in ex-employee or his heirs to claim compassionate allowance irrespective of the circumstances in which the ex-employee may have been removed from service. If the said course of action was to be adopted, it would lead to sending a very wrong signal to the serving employees that they may eventually secure compassionate allowance which could be as high as 2/3rd of the pension despite being incorrigible in their conduct while in service and despite their being removed from service after enquiry."

8. Based upon this, the applicant submitted a representation. It hardly needs any mention that the Government has incorporated Rule 41 in the CCS (Pension) Rules to reduce the hardship to a dismissed employees in deserving cases. On dismissal from service an employee loses all the benefits that accrued to him throughout the service. The suffering would be not be only of himself, and it would be of the entire family. Whatever be the justification to punish an employee with such serious consequences, in cases where he is found to have resorted to acts of moral turpitude or cheating or of serious insubordination, the cases in which the dismissal is on account of unauthorized absence from duty stand on a different footing. We are of the clear view that the objective of incorporating Rule 41 is to deal with the cases of that type.

9. Though an effort is made to attribute the acts of cheating to the applicant on the ground that he filed unsigned medical reports to justify the absence, we are not in agreement with that. The defect in the certificates has resulted in not

acceptance of his claim for medical leave. It is not that, as if, any leave was sanctioned on the basis of such certificates and at a later stage it turned down to be not genuine. Therefore, the case of the applicant is one of unauthorized absence, and nothing more. No acts of cheating or moral turpitude can be attributed to him.

10. The third respondent has passed an order dated 07.10.2019 and does not at all satisfy requirement of law. He adopted a purely mechanical approach and did not even mention the relevant facts pertaining to the case. Purely, a mechanical approach and did not even fail to mention the relevant facts pertaining to the case. Being a primary authority to exercise the power under Rule 41, he was supposed to analyze the facts and then appraise the case. Rejection of the case simply by referring to an observation made in the judgment of High Court, in a different case, would not at all justify the exercise.

11. We, therefore, allow the OA, set aside the impugned order dated 07.10.2019, and direct the 3rd respondent to pass fresh orders within a period of four weeks from the date of receipt of a copy of this order.

12. The OA is accordingly disposed of. There shall be no order as to costs.