
(2014) 07 DEL CK 0285

In the Delhi High Court

Case No : WP (C) No. 2139 of 2012, CM Nos. 4630 and 5719 of 2012

Ex. Sub Paras Ram

APPELLANT

Vs

The Union of India

RESPONDENT

Date of Decision : 10-07-2014

Acts Referred:

Border Security Force Act, 1968 — Section 117(2), 46
Penal Code, 1860 (IPC) — Section 325
Prevention of Corruption Act, 1988 — Section 13

Citation : (2014) 212 DLT 314 : (2014) 144 DRJ 362

Hon'ble Judges : Najmi Waziri, J; Kailash Gambhir, J

Bench : Division Bench

Advocate : S.M. Dalal, Advocate for the Appellant; Mukesh Kr. Tiwari, Advocate for the Respondent

Final Decision : Allowed

Judgement

Najmi Waziri, J.—The petitioner impugns an order dated 16.5.2006, issued by respondent Nos. 2 & 3 rejecting his application for grant of compassionate allowance under Rule 41 of CCS (Pension) Rules (for short "the Rules").

2. The petitioner was charged u/s 46 of the Border Security Force Act (for short "BSF Act") for possessing assets disproportionate to his known sources of income. After trial by the Border Security Force Court and on being found guilty of the charge he was sentenced to dismissal from service vide order dated 20.9.1993 u/s 46 of the BSF Act read with Section 13 of the Prevention of Corruption Act. His statutory appeal u/s 117(2) of the BSF Act was rejected on 20.2.1994. It is more than 20 years since the petitioner has been out of service. His petition for grant of compassionate allowance under the Rules was rejected as aforesaid. This petition has been preferred eight (8) years thereafter. The petitioner has sought to explain the delay by stating all along that his wife and he were being looked after by their son, who has now stopped looking after them. The petitioner contends that he and his wife are now about 69 years and

67 years old respectively, (67 years and 65 years at the time of filing of the writ petition), and that both are keeping infirm health; that their daughters are settled in their respective matrimonial homes; that he has no source of sustenance and after thirty (30) years of an otherwise unblemished service he was dismissed for the last incident. The learned counsel for the petitioner submits that in other similarly placed cases, this Court has allowed the grant of compassionate allowance under Rule 41 of CCS (Pension) Rules.

3. In support of his contention the learned counsel for the petitioner relies upon Ex. ASI Shadi Ram Vs. Government of NCT of Delhi and Others, ; Ex. L/Nk Mahabir Prasad Vs. Union of India (UOI) and Others, .

4. On the other hand, the learned counsel for the respondents submits that the petition suffers from unexplained, unjustified and inordinate delay of about nineteen (19) years and the petition should be rejected on this ground alone. He submits that the petitioner was dismissed from service for indulging in an act prejudicial to good order and discipline of the force, besides he has been found to be in possession of assets, i.e. Rs. 93,000/-, disproportionate to his known sources of income when he was posted at the Indo-Bangla border. He submits that the petitioner cannot assail the order of dismissal after almost twenty (20) years of the passing of the order and that the impugned order is justifiably in terms of the order of dismissal; that it is a reasoned order and does not call for any interference. Therefore, the petitioner does not deserve grant of compassionate allowance under the relevant Rule.

5. The learned counsel for the petitioner submits that the petitioner was penalised with the maximum punishment contemplated under the law for the offence for which he was charged. However, what the Rules contemplate is a compassionate allowance which is to be seen on a case to case basis and in a case deserving of special consideration, could be granted. Rule 41 of 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 hundred and seventy-five) (Rupees three thousand five hundred from 1-1-2006.)

6. In Shadi Ram (supra), this Court had quashed the order of the competent authority and directed it to reconsider the petitioner's application seeking grant of compassionate allowance in the light of Rule 41 of CCS (Pension) Rules. The

Court was of the view that:

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.

7. In Mahabir Prasad (supra), this Court considered the precedents dealing with the discretion to grant compassionate allowance. In particular the following cases were taken into consideration: Anna Deoram Londhe deceased through his L.Rs. Smt. Indirabai Londhe Vs. State of Maharashtra, ; Mithilesh Sharan Sharma Vs. The State of Rajasthan & Ors. 2004 (3) SLR 485 and Shadi Ram (supra).

8. In Anna Deoram Londhe (supra), the petitioner had been removed from service for misconduct, on account of his conviction u/s 325 of the Indian Penal Code. However, since such misconduct was not connected with the discharge of his duties and that the petitioner had put in more than thirty (30) years of service and was found to be otherwise eligible for superannuation or retiring pension, the Court held that the petitioner was entitled to compassionate pension because removal from service for the misconduct would not be sufficient ground to deny him the benefit of compassionate pension.

9. In Mithilesh Sharan Sharma (supra), the petitioner served as a Sepoy from

17.11.1949 till 17.4.1979, after approximately thirty (30) years, which was more than the qualifying years of service for the grant of pension he was removed from service on account of unauthorised absence from duty. The Court noted that the petitioner was about 75 years old at that time, burdened with domestic liabilities, therefore, in the interest of justice compassionate allowance was allowed on a special consideration. This Court in *Shadi Ram* (supra), analyzed the principles governing the exercise of discretion in disposing off an application under Rule 41 and noted that *Shadi Ram*, the officer was dismissed from service on allegations of having accepted illegal gratification which was a far more serious charge than the case in *Mithilesh Sharan Sharma* (supra), where the officer was dismissed from service solely on the ground of his absence from duty. In *Shadi Ram* (supra), the Court observed as under:

13. In its judgment, particularly in paragraph 15 thereof, the learned Tribunal has agreed with the respondents' contention to the effect that the main ground emphasized by the Guidelines against grant of Compassionate Allowance under Rule 41, is dishonesty, and the main reason for the petitioner's dismissal was also dishonesty, therefore, the petitioner's case cannot be said to be one that deserves special consideration. To put it differently, the Tribunal has concluded that the Guidelines peremptorily disentitle officers whose dismissal happens to be occasioned by misconduct involving dishonesty, to Compassionate Allowance. To my mind, this is clearly misconceived. The relevant portion of Rule 41 provides that the Competent Authority may, "if the case is deserving of special consideration, sanction a compassionate allowance..." (emphasis added). Nothing more is specified under the Rule. It is thus evident that the sole criterion is that the, "case", must be, "deserving of special consideration". The word, "case" here has clearly been used to denote, the "state of affairs", or "the circumstances involved", [refer to the Concise Oxford Dictionary of current English, 8th edition], while the words, "deserving of" are defined as, "showing qualities worthy of...help etc"; and, "consideration," is defined as, "a fact or circumstance to be taken into account" (the Shorter Oxford English Dictionary, 3rd Edition). Therefore, 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. In particular, there is nothing whatsoever in Rule 41 to suggest that the application of any officer who has been dismissed for misconduct involving dishonesty, is to be rejected peremptorily.

14. In addition to Rule 41, on 22.4.1940, the Government of India has issued the aforesaid Guidelines which have been reproduced by me in paragraph 9 above. They are titled, "Guiding Principles for the Grant of Compassionate Allowance". They have obviously been issued with a view to ensuring uniformity in

application and decision-making under Rule 41. 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 is in this context that the Guidelines have stated the following:

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.

Immediately after this, and in the same context, that is, to examine and to see whether the punishment awarded has been unduly hard on the dismissed officer, a caution is added by the Guidelines qua those cases where the officer's dismissal was occasioned by a, "course of misconduct". This states as follows:

Where the course of misconduct carries with it legitimate inference that the officer's service has been dishonest, there can seldom be any good case for a compassionate allowance.

Unfortunately, the Tribunal appears to have taken this caution to mean that if the dismissal was the result of an incident that had an element of dishonesty, the Competent Authority is obliged to refuse the application peremptorily.

To my mind, the word, "service", has been used in both the portions of the Guidelines extracted above, to denote, "a state or period of employment to work for an individual or organization", (refer the Concise Oxford Dictionary of current English, 8th edition). At the same time, the phrase, "kind of service", denotes that it is the nature of the service rendered by the officer during his entire tenure that needs to be assessed, and is not confined to the incident that led to his dismissal. 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. Unfortunately, both the Competent Authority, as well as the learned Tribunal, appear to have overlooked this aspect.

32. In Thankappan Nair Vs. State of Kerala, , the Division Bench of High Court of Kerala thought fit to direct reconsideration of a dismissed officer's request for

Compassionate Allowance for which he had applied 28 years after this dismissal. Similarly a Division Bench of Bombay High Court in *R.S. Sharma Vs. Union of India (UOI)* and Another, Bom directed reconsideration of a dismissed officer's request for Compassionate Allowance for which he had applied 11 years after his dismissal. Only recently, in a case where the dismissed officer happened to apply for Compassionate Allowance 30 years after his dismissal, the Andhra Pradesh High Court has set aside the order rejecting his application and directed reconsideration, see *Md. Abdul Samad Vs. General Manager, South Central Railway and Others*, . However, in the case of *Idan Puri Vs. Union of India (UOI) and Others*, , a Single Judge of the Rajasthan High Court thought fit to reject a petition challenging refusal to grant Compassionate Allowance to a dismissed officer on the ground that his claim was hit by delay and laches because he had applied for the same nearly 20 years after his dismissal. Be that as it may, as I have already concluded, it was inappropriate on the part of the learned Tribunal to have stepped into the shoes of the Competent Authority to decide whether the applicant's case is deserving of special consideration warranting the sanction of Compassionate Allowance. By the same line of reasoning, these questions are not for this Court to decide. Suffice to say that it is open to the Competent Authority to apply itself to every aspect and, while taking a decision on the matter, there is nothing to prevent the Competent Authority from fixing not only the quantum of allowance, but also the date from which it will be payable.

10. Therefore, what needs to be seen by the competent authority in an application under Rule 41 of CCS (Pension) Rules is whether the case is deserving of a special consideration. The "case" means all the facts of the case as exist on the date when the application is made. The facts cannot be circumscribed to the charges leading to the punishment that may have been meted out. While the petitioner has already been visited with the maximum punishment contemplated under the Rules for the offence for which he was charged, the same cannot be a ground for denial of compassionate allowance. By definition the consideration has to be an allowance on compassionate grounds, which would entail appreciating the entire tenure, nature and merit of the service the petitioner had rendered. The consideration cannot be constrained by, what could be termed as a perfunctory reappraisal/review of the final punishment meted out in the disciplinary proceedings. Compassionate consideration would encompass all circumstances prior to and after the punishment. It is an act of beneficence imbued in grace and unshackled by the cause for or the nature of the punishment. It is, as if that human entity's existential circumstances were being appraised, warts and all. The petitioner contends that he has rendered about thirty (30) years of meritorious service to the nation and had served in difficult areas of high altitudes and CI operation areas. While serving in the 39th Battalion of BSF, he had seized cash/contraband worth about Rs. 20.00 lakh in a short span of five (5) months and after many promotions had reached the rank of Subedar, i.e. the second highest rank below an officer's rank. He submits that apart from the stigma of dismissal from service and that too for a meagre

amount of Rs. 93,000/- he cannot be left to fend for himself at the age of 69 years along with his wife who is 67 years old and both keeping infirm health. These averments have not been controverted by the respondents.

11. This Court is of the view that it is such circumstances as the present, which require compassionate consideration. It is pertinent to note that in Shadi Ram (supra), the officer concerned was charged with illegal gratification, while the present case is of disproportionate assets. The former being a far more serious charge and compassionate allowance having been granted, this Court is of the view that a conviction for disproportionate assets of Rs. 93,000/-, the petitioner, whose service of thirty (30) years otherwise shows merit, has also reached the second highest rank in his cadre through promotion on merit, should be granted compassionate allowance especially since he would have otherwise qualified for regular pension and gratuity. While the passage of time would not extenuate the seriousness of the charge or the punishment, the entire tenure needs to be assessed and not be confined to the incident which led to his dismissal from service. The punishment meted out was the severest that could have been in the circumstances, i.e., he was dismissed from service without any pensionary benefits. The personal circumstances of the petitioner as narrated hereinabove too show a difficult disposition: he and his wife's advanced age and their corporal frailty tormented by afflictions without familial support are aggravating circumstances deserving a compassionate view a la Mithilesh Sharan Sharma (supra). This Court is of the view that de hors the disproportionate assets case, the petitioner, whose service of 30 years otherwise shows merit, should be granted compassionate allowance.

12. In the circumstances the petition is allowed. The respondents are directed to grant the petitioner compassionate allowance as per Rule 41 of CCS (Pension) Rules. Requisite communication in this regard along with release of the allowance amounts from the date of filing of the writ petition, shall be communicated to the petitioner within two (2) months from the date of this order. No orders as to costs.