

(2022) 05 DEL CK 0067

In the Delhi High Court

Case No : Civil Writ Petition No. 664 Of 2021

Gauri Shankar

APPELLANT

Vs

Central Reserve Police Force & Anr

RESPONDENT

Date of Decision : 13-05-2022

Acts Referred:

Central Civil Services (Pension) Rules, 1972 — Rule 35, 36, 37, 38, 39, 40, 41, 49, 49(1), 88

Central Reserve Police Force Rules, 1955 — Rule 30

Citation : (2022) 05 DEL CK 0067

Hon'ble Judges : Suresh Kumar Kait, J;Sudhir Kumar Jain, J

Bench : Division Bench

Advocate : Amit George, Anmol Acharya, Shashank Bajpai, Shubham Singh, Vinod Tiwari

Final Decision : Disposed Of

Judgement

Suresh Kumar Kait, J

1. Petitioner claims to have been recruited on the post of Constable in the year 1994 by respondent No.1-Central Reserve Police Force (henceforth referred to as the "CRPF") through respondent No.2/ Union of India, which is under the aegis of Ministry of Home Affairs. The role of petitioner has been to assist the States / Territories in carrying out policing operations for maintaining the rule of law and public order in the country and to assist in counter-insurgency operations.

2. According to petitioner, on 17.03.2003, an argument erupted between the petitioner and his superiors in relation to a training exercise undertaken by petitioner, subsequent to which he was suspended from service on the said day, followed by an enquiry and further, dismissal from service on 20.08.2003 from respondent No.1/CRPF. The appeal preferred by the petitioner against the aforesaid dismissal order dated 20.08.2003 was rejected by the appellate authority on 24.12.2003. Even the revision preferred against the aforesaid rejection order dated 24.12.2003, also stood dismissed on 12.05.2004 by the

competent authority of respondent No.1/CRPF.

3. Petitioner further claims to have invoked writ jurisdiction of the Allahabad High Court against the aforesaid order dated 12.05.2004 which stood dismissed lacking territorial jurisdiction. Thereafter, petitioner invoked writ jurisdiction of this Court against the dismissal orders dated 20.08.2003, 24.12.2003 and 12.05.2004 (in W.P. (C) No. 13526/2006), which stood dismissed as withdrawn on 17.03.2016 with liberty to the petitioner to file a representation before the competent authority for grant of compassionate allowance etc. and further direction to respondent No.1 to consider petitioner's representation as per law.

4. Subsequent upon petitioner's making representation, respondent No.1 vide Order dated 15.06.2016 sanctioned compassionate allowance equivalent to 2/3rd of the amount towards minimum pension in terms of Rule 41 of CCS Rules payable from 21.08.2003, acknowledging the hardship faced by the petitioner. A copy of the same is said to have internally transmitted between different departments of respondent No.1/CRPF, however, petitioner received a letter dated 02.12.2016, copy marked to others, from a department stating doubt on petitioner's eligibility to grant of compensation pension within the rubric of compassionate allowance and entitling him eligible for only 2/3rd of service gratuity. Reliance was placed upon Rule 49 of the CCS Rules therein to state that compassionate allowance could be granted only if the qualifying service of 10 years had been undergone, whereas the service duration of petitioner was 9 years 1 month and 8 days only and so, pension could not be granted to him and only 2/3rd service gratuity could be granted.

5. According to petitioner, thereafter a modification order dated 09.11.2017; letter dated 09.05.2018 and communication dated February, 2019 were issued by the competent authorities of respondent No.1, subsequent to which letter dated 22.09.2020 was received by the petitioner denying any entitlement of compassionate allowance.

6. Aggrieved against the aforesaid order dated 22.09.2020 passed by respondent No.1/CRPF, the present petition has been filed by the petitioner seeking to quash the said order with direction to respondent No.1 to release the amount towards compensation pension along with service gratuity w.e.f. 21.08.2003 in terms of its order(s) dated 15.06.2016 and 09.11.2017; to pay interest @ 12% pa. on the aforesaid sums towards compassionate allowance from 15.06.2016 till payment is made to petitioner.

7. During the course of hearing, learned counsel appearing on behalf of petitioner submitted that the impugned order dated 22.09.2020 is sue moto review of the earlier decision dated 15.06.2016 vide which petitioner was granted compassionate allowance on the basis that petitioner has not completed minimum 10 years of service and it deserves to be set aside being untenable, as no such requirement for completion of a minimum duration of service is prescribed under the Pension Rules for grant of compassionate allowance.

Learned counsel submitted that the order dated 15.06.2016 specifically noted that petitioner was in dire financial needs and had therefore granted compassionate allowance. Next submitted that the said Order was affirmed in letter and spirit by way of Order dated 09.11.2017 with a limited modification of removal of the word 'minimum' from the phrase 'minimum pension' and subsequently, after a long period the order dated 22.09.2020 has been passed.

8. Learned counsel for petitioner empathically submitted that Rule No. 41 of the Pension Rules is the express rule governing the grant of compassionate allowance including deemed entitlement of compensation pension to a government servant who has been dismissed from service and deserves some special consideration and thereby orders dated 15.06.2016 and 09.11.2017, are covered under the said Rule. Also submitted that Rule No. 39 of the Pension Rules does not provide for any minimum length of service that should necessarily be undergone for availing compensation pension. In support of above submissions, learned counsel placed reliance upon decisions in Sohan Bir Singh Vs. UOI and Ors. 2012 see OnLine Del 4339; Manoj Kumar Vs. Commissioner of Police and Ors. 2013 SCC OnLine Del 227; Ramesh Kumar Singh Vs. Union of India and Ors. 2012 SCC OnLine Del 4342; Attar Singh Vs. State of NCT of Delhi and Ors. 2013 SCC OnLine Del 192 and Ex. Const. Ram Niwas Vs. UOI and Ors. 2012 SCC OnLine Del 4225.

9. Learned counsel further submitted that Rule 49 of the Pension Rules is wholly in-applicable inasmuch as it does not govern the entitlement of a beneficiary of Compassionate Allowance but concerns the quantum of pension and only lays down how the pension is to be calculated. Reliance was also placed upon decision in Chaman Lal Vs. Union of India and Ors. 2018 SCC OnLine J&K 36 to submit that Rule 49 of the Pension Rules does not create a new class of pension and the classes of pension and the conditions governing their grant have to be dealt with within Rules 35-41 of the Pension Rules.

10. Lastly, it was submitted that respondent No.1 be directed to pay allowance to the petitioner in terms of Rule 41 of the Pension Rules along with interest @12% p.a. from the date of order sanctioning i.e. from 15.06.2016 till receipt of payments by the petitioner.

11. Refuting the aforesaid claims raised by the petitioner, learned Senior Panel appearing on behalf of respondents submitted that petitioner was dismissed from service on 20.08.2003 and the appeal and revision preferred by him also stood dismissed by the competent authority, however, in view of decision dated 17.03.2016 by this Court and keeping in view petitioner's dire pecuniary state and his large family dependency, the then SDG/DG vide order dated 15.06.2016 had granted/sanctioned compassionate allowance @ 2/3rd minimum pension w.e.f 21.08.2003 subject to the condition that the compassionate allowance would not be less than Rs. 3500/- per month w.e.f. 01.01.2016. Further, PAO, CRPF vide letter dated 07.11.2016 returned the case of petitioner with the observation that "no pension can be granted until and unless the qualifying

service is 10 years or more vide rule 49 of CCs (Pension) Rules and if the competent authority intends to sanction Compassionate Allowance by relaxing the Rules the matter may kindly be referred to Deptt. of Personnel and Administrative Reforms as required vide Rule 88 and provision thereto CCS (Pension) Rules.” Subsequently, the competent authority vide letter dated 18.04.2017 returned with the observation that if petitioner had retired on compensation pension, then Compassionate Allowance to be granted not exceeding two third of admissible pension. Thus, the word “Minimum” in the last part of order dated 15.06.2016 is “incorrect” and needs to be omitted. However, further the competent authority vide letter dated 04.03.2020 conveyed that petitioner could not be sanctioned compassionate allowance equal to 2/3rd of his service gratuity plus 2/3rd of his retirement gratuity for the qualifying service of 9 years by relaxing Rule 49 of CCS (Pension) Rule. Vide letter of even date it was also suggested that the earlier orders dated 15.06.2016 and 09.11.2017 be amended citing efforts of the department to implement order dated 17.03.2016 of this Court. Pursuant thereto, vide letter dated 22.09.2020 the previous orders dated 15.06.2016 and 09.11.2017 were cancelled.

12. Learned Senior Panel Counsel for respondents submitted that no pension can be granted until and unless the qualifying service is of 10 years in terms of Rule 49 of CCS (Pension) Rules and also, relaxation of Rule 49 is not covered under CCS Pension Rules to provide compassionate allowance equal 2/3rd of petitioner’s service gratuity plus 2/3rd of his retirement gratuity for the qualifying service of 9 years and for this reason, vide order dated 22.09.2020 the competent authority has cancelled the previous orders dated 15.06.2016 and 09.11.2017. Reliance was placed upon Hon’ble Supreme Court’s decision in Union of India Vs. Bashirbhai R. Khiliji (2007) 6 SCC 16, which has also been followed by Rajasthan High Court in Balu Devi Vs. Union of India 2009 SCC OnLine Raj 4365. Reliance was also placed upon another decision of Hon’ble Supreme Court in P. Bandopadhyaya Vs. Union of India, (2019) 13 SCC 42 to submit that minimum qualifying service is essential to be entitled to pensionary benefits.

13. Lastly, learned counsel for respondents submitted that the impugned order dated 22.09.2020 is well merited and does not require any interference and hence, the present petition deserves to be dismissed.

14. The arguments advanced by learned counsel representing both the sides were heard at length and the material placed on record as well as decisions cited have been considered by us.

15. We hereinbelow first sail through the decisions relied upon by learned counsel for the petitioner.

16. In Sohan Bir Singh Vs. UOI and Ors. (Supra), the petitioner therein was dismissed from service after serving the department from the year 1982 till 1994 i.e. for 12 years and this Court had permitted him to lay a claim of compassionate allowance as the provisions of Rule 41 of the CCS (Pension) Rules

permits so.

17. In *Manoj Kumar Vs. Commissioner of Police and Ors.* (Supra), a Division Bench of this Court had dealt with a case where the petitioner, was visited with penalty of removal from service after serving from December, 1995 till May, 2006 (for a period of 10 years and 06 months) on account of his unauthorized absence from duty purportedly for the reasons of being mentally ill and admitted in Shahdara Mental Hospital and in those facts, compassionate allowance being 2/3rd of the compensation pension as per Rule 39 of the CCS Pension Rules, 1972 were directed to be paid.

18. In *Ramesh Kumar Singh Vs. Union of India and Ors.* (Supra), a Division Bench of this Court relied upon another decision in *Ex. Ram Niwas Vs. UOI*. 2012 SCC OnLine Del 4225 to hold that compensation pension is not related to any length of service rendered and it is to be paid if a government servant is discharged owing to a permanent post being abolished and the quantum is relatable to the years of service rendered. It was further held that Compassionate Allowance is referable to Compensation Pension, which pension has no concern to a minimum number of years served but is payable with reference to the number of years of service rendered and if the financial condition of the government servant is a matter of special consideration, it has to be considered by the competent authority.

19. In *Attar Singh Vs. State of NCT of Delhi and Ors.* (Supra), this Court while dealing with the case of petitioner who had joined service in Delhi Police on February 15, 1989 and the penalty of removal from service was inflicted upon him on June 8, 1998, had permitted the petitioner to seek compassionate allowance from the competent authority while holding that Rule 41 of the CCS Pension Rules, 1972 permits compassionate allowance to be sanctioned to a government servant who is dismissed or removed from service, which amount if sanctioned cannot exceed 2/3rd of the pension admissible if the government servant was retired on compensation pension. Further held that Rule 39 of the Rules provide for compensation pension and the said rule do not have any minimum qualifying service.

20. In *Ex. Const. Ram Niwas Vs. UOI and Ors.* (Supra), this Court had dealt with a case where the respondent/BSF had contended that petitioner therein had joined service in April 1988 and pensionable service being 20 years and petitioner being dismissed from service on June 22, 1998, was not entitled to any compassionate allowance, the Court had held that the Compassionate Allowance is referable to Compensation Pension, which has no concern to a minimum number of years served but is payable with reference to the number of years of service rendered and directed the competent authority to consider if the case of government servant deserved any special consideration.

21. We have also gone through the decisions relied upon by learned Senior Panel Counsel for the respondents.

22. In Union of India Vs. Bashirbhai R. Khiliji (Supra), the Hon'ble Supreme Court has refused pension to petitioner for not having completed minimum qualifying service of 10 years as provided by the CCS (Pension) Rules, 1972 but had granted amount of Rs.1 Lakh taking into account his dire state and the fact that he had impaired his ears while discharging his duties.

23. In P. Bandopadhyaya Vs. Union of India (Supra), the Hon'ble Supreme Court had dispensed with a case where the appellants were en mass transferred / merged from a department of Government of India to a Limited Company and were refused pensionary benefits for having not completed 10 years of service. The facts of the said case are distinguishable and is of no assistance to the case in hand.

24. Now applying the ratio of law laid down in afore-noted decisions to the case in hand we find that against his dismissal orders dated 20.08.2003, 24.12.2003 and 12.05.2004, petitioner had approached this Court (in W.P. (C) No. 13526/2006) which was disposed of vide order dated 17.03.2016 while granting liberty to the petitioner to file a representation for compassionate allowance before the competent authority, which shall be considered in the light of financial and other attendant circumstances of petitioner as per law.

25. Pursuant thereto, petitioner made a representation to the competent authority which was allowed vide order dated 15.06.2016 by observing as under:-

"7. XXXXXX

However, keeping in view the direction of the Hon'ble High Court of Delhi vide order dated 17/03/2016 and his present dire pecuniary state with dependent large family, I am taking a lenient view and hereby sanction compassionate allowance, i.e., @ 2/3rd of minimum pension in accordance with rule 41 of CCS (Pension) Rules, 1972 w.e.f. 21/08/2003 (i.e. the next day of the date of dismissal from service) and amount of compassionate allowance shall, not be less than Rs. 3500/- per month w.e.f. 1/1/2006 to No. 943323405 Ex-Ct/GD Gauri Shankar of 65, Bn, CRPF."

26. However, the competent authority vide letter dated 07/02/2017 referred the case of petitioner to the Deptt. of Personnel and Administrative, Reforms for obtaining the relaxation in the rule and to extend the benefit of Compassionate Allowance to the petitioner. Thereafter, vide order dated 09.11.2017 the competent authority modified the order dated 15.06.2016 to the limited extent that it removed the word 'minimum' from the phrase 'minimum pension' and directed that petitioner was sanctioned compassionate allowance @ 2/3rd of pension which would have been admissible to him....

27. Further, vide order dated 22.09.2020, the competent authority held as under:-

"10. NOW WHEREAS considering the petition, dated nil submitted by No. 943323405 Ex-CT/GD Gauri Shankar of 65 B11 CRPF, the judgement of the

Hon'ble High Court of Delhi dated 17/03/2016, the direction of Dte Genl, CRPF vide letter dated 04/03/2020 and the concurrence accorded by Law Dte, CRPF, the undersigned passes the following orders :

i) I do not find any cogent reason and valid material to interfere with the orders passed by the Disciplinary Authority(Com.maudant~65 BN,' CRPF)", upheld by the Appellate Authority (DIG, Range Neemuch) the Revisioning Authority (IG, Spl. Sector, Now MP Sector) and hence reject the present petition dated Nil submitted by No.-. 943323405 Ex-CT/GD Gauri Shankar of 65 BN, CRPF being devoid of merit under the provision of Rule 30 of CRPF Rules, 1955.

ii) The petitioner was enlisted in CRPF on 09/06/1994 &. dismissed from service by the Commandant 65 BN,. C.RPF on. 20/08/2003 and thus had not completed the minimum 10 years qualifying service. As such he is not eligible for grant of Compassionate Allowance equal to 2/3 of his -service gratuity plus 2/3rd of his retirement gratuity in accordance with Pension Rule 41 of CCS (Pension)Rules,1972.

11. The office orders issued by this HQr vide No. R-XIII-42/2015(GS)-DA-I (Estt-II) CZ dated 15/6/2016 and its addendum 09/11/2017 be treated as "CANCELLED".

12. The aforesaid chain of communications clearly shows that the grant of Compassionate Allowance granted to the petitioner stood withdrawn pursuant to the aforesaid order dated 22.09.2020 in view of Rule 41 of CCS (Pension)Rules,1972. This Court in a catena of decisions has already settled the applicability of aforesaid provisions of law in cases similar to the one in hand and we proceed to see its applicability in the facts of the present case.

13. A Division Bench of this Court in Sohan Bir Singh (Supra), in a somewhat similar case where the petitioner was dismissed before completion of 10 years of service, had applied provisions of Rule 41 and 39 of the Rules and observed as under:-

"2. 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 hundred and seventy five."

3. A perusal of the Rule would reveal that compassionate allowance admissible

relates not to pension but to compensation pension. Rule 39 of the CCS (Pension) Rules deals with compensation pension. It reads as under:-

“39. Compensation pension

(1) If a Government servant is selected for discharge owing to the abolition of his permanent post, he shall, unless he is appointed to another post the conditions of which are deemed by the authority competent to discharge him to be at least equal to those of his own, have the option -

(a) of taking compensation pension to which he may be entitled for the service he had rendered, or

(b) of accepting another appointment on such pay as may be offered and continuing to count his previous service for pension.

(2)(a) Notice of at least three months shall be given to Government servant in permanent employment before his services are dispensed with on the abolition of his permanent post.

(b) Where notice of at least three months is not given and the Government servant has not been provided with other employment on the date on which his services are dispensed with, the authority competent to dispense with his services may sanction the payment of a sum not exceeding the pay and allowances for the period by which the notice actually given to him falls short of three months.

(c) No compensation pension shall be payable for the period in respect of which he receives pay and allowance in lieu of notice.

(3) In case a Government servant is granted pay and allowances for the period by which the notice given to him falls short of three months and he is re-employed before the expiry of the period for which he has received pay and allowances, he shall refund the pay and allowances so received for the period following his re-employment.

(4) If a Government servant who is entitled to compensation pension accepts instead another appointment under the Government and subsequently becomes entitled to receive a pension of any class, the amount of such pension shall not be less than the compensation pension which he could have claimed if he had not accepted the appointment.”

4. It is apparent that compensation pension is not relatable to any length of service rendered and is to be paid if a government servant is discharged owing to a permanent post being abolished, and the quantum is relatable to the number of years service is rendered, but upon being found to be a deserving case requiring special consideration.”

14. The aforesaid observations make it manifestly clear that compensation pension is not relatable to the length of service rendered by the government

servant and if the case is deserving, then special consideration has to be provided by the competent authority. No doubt each case has to be seen on its own facts and merits and in the present case, the competent authority at the first instance took a lenient view and granted compensation pension vide letter dated 15.06.2016. However, later on the Deptt. of Personnel and Administrative Reforms took the view that petitioner's qualifying service is 09 years 01 month and 08 days i.e. less than 10 years and hence, no pension is admissible but 2/3rd of gratuity under Rule 41 r/w Rule 49(1) is admissible. Pertinently, Rule 49(1) of the Pension Rules does not govern the benefit of compassionate allowance but relates to quantum of compensation, whereas grant of pension has to be dealt within Rule 35-41 of the Pension Rules, which enumerate that the compensation pension is not relatable to the length of service rendered by the government servant. Also, it is not the case of respondent that in the past a government employee never been kept in a special consideration zone or nor provided compensation pension.

15. In the light of above, the impugned order dated 22.09.2020 is hereby set aside and the competent authority is directed to release the amount towards compensation pension along with service gratuity w.e.f. 21.08.2003 in terms of order(s) dated 15.06.2016 and 09.11.2017 within four weeks.

16. With aforesaid directions, this petition is disposed of while making it clear that this order has been passed in the peculiar facts of the present case and shall not be treated as a precedent in any other case.