

(2023) 03 CAT CK 0018
In the Central Administrative Tribunal
Case No : Original Application No. 2279 Of 2021

Nank Chand

APPELLANT

Vs

Delhi Transport Corporation, Through General Manager, DTC
Headquarter, IP Estate, New Delhi-110002 & Ors

RESPONDENT

Date of Decision : 07-03-2023

Acts Referred:

Central Civil Services (Pension) Rules, 1972 — Rule 39, 41

Citation : (2023) 03 CAT CK 0018

Hon'ble Judges : Tarun Shridhar, Member (A)

Bench : Single Bench

Advocate : Pratap Ch. Mishra, Arti Mahajan, Shriya Sharma

Final Decision : Disposed Of

Judgement

Tarun Shridhar, Member (A)

1. The applicant, who was working as a conductor in Delhi Transport Corporation (DTC). was removed from service on certain allegations of misconduct, the primary one being his repeated unauthorised absence from duty.
2. The applicant challenged his removal from service in an earlier round of litigation in O.A. No. 2513/2019 which was disposed of by this Tribunal with a direction to the respondents to consider his claim for grant of pension. While disposing of the aforesaid O.A., it was directed that such consideration be made strictly in accordance with the relevant rules, specifically, Rule 39 of CCS Pension Rules, 1972.
3. The competent authority of the respondents in compliance of this order, considered the claim of the applicant and disposed it of by way of an order dated 9-1-2020 wherein it was held that the applicant's claim is misdirected. It was also categorically stated in the said order that the applicant did not possess minimum 10 years of qualifying service as required under the rules to avail the benefit of pension.

4. Accordingly, the competent authority declared that Rule 39 of CCS Pension Rules, 1972, is not applicable in the present case.

5. Aggrieved by the said order, the applicant has preferred the present original application seeking therein the following reliefs :

“(i) Set aside impugned order No. SNPD/GO/PFC-Ex. Cond/2020/75 dated 9.1.2020 with consequential benefits;

(ii) direct the respondent to sanction compassionate allowance @ 2/3rd of pension and 2/3rd of Gratuity w.e.f. 23.11.2001;

(iii) or any other order or directions as deemed fit in the facts and circumstances of the case may be passed.”

6. Learned counsel for the applicant argues that the impugned order has made an incorrect interpretation of Rule 39 of CCS Pension Rules and submits that the Rule 39 is to be read along with Rule 41 of the said rules and his case gets fully covered for grant of compassionate allowance which he is seeking by virtue of the present original application.

7. Learned counsel finds support to his argument by a judgement rendered by the Hon'ble High Court of Delhi in W.P. (C) No. 8421 of 2010 titled as Manoj Kumar vs Commissioner of Police wherein the Hon'ble High Court had directed and clarified that grant of compassionate allowance which is to be computed at 2/3rd of the compensation pension, does not envisage any minimum qualifying service.

8. Accordingly, he submits that the applicant's case is fully and conclusively covered in this judgement because the only ground the respondents have taken to deny him pension for compassionate allowance is that he does not possess the minimum qualifying service.

9. Learned counsel for the respondents on the other hand argues that the applicant's case has nothing to do with the provision of Rule 39 of CCS Pension Rules, 1972.

10. She argues that the limited applicability of Rule 39 of the CCS Pension Rules, 1972, is to determine the amount which shall be payable as compassionate allowance. Therefore, before resorting to the provisions of Rule 39, the applicant's entitlement for compassionate allowance is to be determined in accordance with Rule 41 of CCS Rules. The said rule is unambiguous that compassionate allowance is payable at the discretion of the competent authority albeit in accordance with the rules, only if there is an order of forfeiture of pension as an associate order of penalty imposed.

11. In the instant case, there is no forfeiture of pension involved; the question is of admissibility of pension to the applicant. Since he does not possess the minimum qualifying service, he shall not be entitled to the same.

12. Drawing attention to the specific averments made in the counter reply, learned counsel also draws attention to a judgement of the Hon'ble Supreme Court in Civil Appeal No. 9204/2019 wherein the Hon'ble Supreme Court had held in the matter of grant of invalid pension that any alternative pension or pension in the form of compensation or compassion, is applicable only if an entitlement for pension itself is established. This is not being the case here, the applicant's prayer as made out in the O.A., cannot be agreed to, she concludes.

13. I have heard the learned counsel for the parties and carefully examined the documents on record.

14. After giving detailed hearing to the learned counsel for the parties as also going through the pleadings on record, I have no hesitation in holding that the applicant's case is squarely covered under Rule 41 of the CCS (Pension) Rules, 1972, governing Compassionate Allowance. To that extent, I am in agreement with the arguments putforth by the learned counsel for the applicant. Vide the impugned order, his claim for compassionate pension has been rejected by quoting Rule 39 of the said Rules. A bare reading of the relief portion would indicate that the applicant seeks a direction to the respondents to sanction compassionate allowance at the rate of 2/3rd of the pension and 2/3rd of the gratuity. For the sake of clarity, Rule 41 of the Pension Rules, which gets attracted in this case, is reproduced below:-

"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) per mensem."

15. Moreover, we do find similarity of the present matter with the one decided by the Hon'ble High Court of Delhi in WP(C) No. 8421/2010 wherein the Court had observed as under:-

"9. ...keeping in view that pension is treated as something earned and not a bounty, and Rule 41 of the CCS Pension Rules, 1972 permits if a case is found to be deserving of special consideration a sanction of compassionate allowance notwithstanding the government servant being dismissed or removed from service, while declining relief as prayed for, we dispose of the writ petition directing the Competent Authority of the respondent to sanction to the petitioner a compassionate allowance with effect from the date he was removed from service..."

16. In the light of the above, the impugned order dated 09.01.2020, Annexure A-1 is quashed and set aside. The competent authority of the respondents is further directed to consider the case of the applicant in accordance with the Rule 41 of CCS(Pension) Rules, 1972, by passing appropriate orders for grant and sanction of compassionate allowance to him, in accordance with such rule. The OA is disposed of in the background of these directions. There shall be no order as to costs.