

(2014) 07 DEL CK 0145

In the Delhi High Court

Case No : Writ Petition (Civil) No. 2139/2012 and C.M. Appl. Nos. 4630 and 5719/2012

Paras Ram

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 10-07-2014

Acts Referred:

Border Security Force Act, 1968 — Section 40, 46, 53
Constitution of India, 1950 — Article 226
Penal Code, 1860 (IPC) — Section 325
Prevention of Corruption Act, 1988 — Section 13

Citation : (2015) 1 AD 104 : (2015) 214 DLT 355

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

Bench : Division Bench

Advocate : S.M. Dalai, Advocate for the Appellant; Ruchir Mishra, Advocate for the Respondent

Judgement

Kailash Gambhir, J.—In the present writ petition filed under Article 226 of the Constitution of India, the Petitioner seeks to challenge the order dated 16th May 2006 passed by the Respondents rejecting his request for grant of compassionate allowance in terms of Rule 41 of CCS (Pension) Rules. The petitioner also seeks to direct the respondents to pay compassionate allowance to him as per the mandate of Rule 41 of CCS (Pension) Rules. The facts giving rise to the filing of the present writ petition inter alia are:

"That the petitioner was enrolled as constable in Punjab Armed Police on 16.8.1963. After formation of State of Haryana, the petitioner was permanently absorbed in BSF. The petitioner received many promotions and was promoted to the rank of Subedar (Sub) in August 1991, the second highest post for a person below officer's rank. That the petitioner was transferred from 102 Bn BSF located in J & K to 39 Bn BSF in August 1991, where he was assigned the duties of company commander of E" coy on 7th November 1991 and posted in general Hilly area on Indo-Bangladesh Border, District Malda of West Bengal. The

petitioner enforced strict disciplinary norms in his company and launched offensive action against smuggling operations. As a result of his relentless drive, the petitioner managed to seize contraband goods worth Rs. 20 lakh between the periods from 9.11.1991 to 8.4.1992. That for the marriage of his youngest daughter, the petitioner had sent 12000/- of his monthly pay and allowance, when he was posted from J&K to 39 Bn BSF. He even borrowed from his friends. But some disgruntled persons did not like petitioner's strictness and made false allegations against him to the commandant for possessing assets disproportionate to his known sources of income. Without holding any preliminary enquiry, the commandant issued an order of suspension on 8.5.1992. As per the petitioner, the mandatory provisions of the Rule 45B, BSF rules were not followed by the commandant. Charges were framed against the petitioner and he was charged under Section 46 of the BSF Act. The petitioner pleaded not guilty to the charge and produced the details of Rs. 57,000/- as a loan raised from his friends and colleagues. Investigation process took place, despite the failure of the prosecution to prove its case beyond reasonable doubt as alleged by the petitioner, GSFC found the petitioner guilty and awarded the sentence of dismissal from service vide order dated 20.9.1993 under Section 46 of the BSF Act, 1968 and Section 13 of the Prevention of Corruption Act, 1988. His appeal was rejected. That the sentence of dismissal caused grave hardship to the petitioner and his family. Petitioner filed a petition to DG, BSF on 29.8.2005 for grant of compassionate allowance, but the said petition was rejected by a non speaking order dated 16.5.2006. Petitioner's financial condition had gone weak being 67 years of age. His wife was about 65 years of age and even she used to remain sick most of the time. He has no source of income. All the daughters are married and the son also does not look after the parents. Thus the petitioner left with no option filed the present petition."

Addressing arguments in support of the present petition, Mr. S.M. Dalai Advocate, submits that the petitioner had rendered about 30 years of meritorious service to the nation and during this period he was posted to serve in difficult areas of High altitude. Counsel also submits that while serving in 39 Bn, BSF the Petitioner managed to seize contraband goods worth about Rs. 20 lacs in short span of five months. Counsel further submits that ignoring his exemplary and unblemished service, the Respondents by impugned order dated 16.5.2006 illegally rejected his petition seeking grant of compassionate allowance in terms of Rule 41 of CCS (Pension) Rules. Counsel also submits that the impugned order dated 16th May 2006 passed by the Respondent is a cryptic and non speaking order and the same is against the very spirit of Rule 41 of the CCS (Pension) Rules, as interpreted by this Court in various judgments. Counsel also submits that the Petitioner was dismissed from service with effect from 20th September 1993 and has filed the petition for seeking grant of compassionate allowance in the year 2005, when his financial condition became quite miserable to sustain himself and his old wife. Counsel also submits that the family of the Petitioner is comprised of his three married daughters, his wife and a son and there is none

to look after the Petitioner, his wife after the marriage of his three daughters and the son, leaving them in lurch, at their old age. Counsel also submits that the petitioner could not approach this Court earlier because of his poor financial conditions and, therefore, the delay in filing of the present petition may not be taken adverse to deny him the compassionate allowance to which otherwise, he is legally entitled.

2. In support of his arguments, Counsel for the Petitioner placed reliance on the following judgments:

"(i) Ex. ASI Shadi Ram Vs. Government of NCT of Delhi and Others, ; and

(ii) Mahabir Prasad (Ex. L/nk)) v. UOI and Ors., reported in 2010 VIII AD (Delhi) 260."

3. Mr. Ruchir Mishra, Advocate appearing for the Respondents on the other hand has strongly contested the aforesaid claim of the Petitioner and submitted that the Petitioner was tried by General Security Force Court under Section 46 of the BSF Act, 1968 read with Section 13 of the Prevention of Corruption Act, 1988 on being found guilty of the charge and he was dismissed from service. Counsel also submits that the petitioner failed to give any specific answer as to how he had sent an amount of Rs. 90,000/- to his house through bank Draft during the period, from 10.12.1991 to 30.3.1992, in less than four months, whereas the actual pay and allowance drawn by him during the said period was Rs. 15,352/- only. Counsel also submits that statutory appeal filed by the petitioner against his order of dismissal dated 24.2.1994 was rejected by the Director General, BSF and in the absence of any further challenge raised by the Petitioner, consequently the dismissal order passed against the petitioner attained finality. Counsel also submits that the petitioner cannot be allowed to raise fresh pleas to challenge his order of dismissal on the alleged ground of raising various loans by him from his friends to justify sending of payment of Rs. 93,000/- by him to his home.

4. With regard to the challenge to the order dated 16th May 2006, the Counsel for the Respondents raised mainly two objections; firstly, that there is a delay of about 19 years in approaching this Court by the Petitioner to challenge the said order dated 16.5.2006 and therefore, the present writ petition would fail on this ground alone. Second objection raised by Counsel for the Respondent is that the offence committed by the Petitioner due to which he was dismissed from service falls under the category of moral turpitude and therefore, he is not entitled to grant of compassionate allowance under Sub-rule 1 of Rule 41 of CCS (Pension) Rules, 1972. Counsel also refuted the contention of Counsel for the Petitioner that Petitioner was having an unblemished record of service as earlier also he had earned one punishment of "severe reprimand" by Summary trial under Section 53 of the BSF Act, 1968 for committing an offence under Section 40 of the BSF Act, 1968. Counsel also submits that the Petitioner was also issued with two written warnings by Commandant of 79 Bn. BSF for indulging in illegal gratification while he was posted in BSF. Based on these submissions Counsel for

the Respondent strongly urges that the Petitioner is not entitled to any of the reliefs prayed for by him in the present writ petition and the same deserves outright dismissal.

5. We have heard learned Counsel for the parties and perused the record..

6. A short issue which arises in the present petition is whether the Petitioner who was dismissed from service, after the proven charge of accumulating disproportionate assets beyond his known sources of income, he can be denied compassionate allowance in terms of Rule 41 of CCS (Pension) Rules, 1972, read with the guiding principles for the grant of compassionate allowance. Before we further proceed in the matter, it would be appropriate to reproduce Rule 41 of CCS (Pension) Rules, 1972 and the relevant guidelines as applicable to the case of the petitioner as follows:

"(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.)

"the, "Guiding Principles for Grant of Compassionate Allowance", formulated by the Govt. of India in OM dated 22nd April 1940 for applying the aforesaid Rule 41, CCS (Pension) Rules, under which all applications for Compassionate Allowance are to be considered. This OM (which is hereinafter referred to as the "Guidelines") is reproduced below for convenience--

Guiding principles for the grant of Compassionate Allowance--It is practically impossible in view of the wide variations that naturally exist in the circumstances attending each case, to lay down categorically precise principles that can uniformly be applied to individual cases. Each case has, therefore, to be considered on its merits and a conclusion has to be reached on the question whether there were any such extenuating features in the case as would make the punishment awarded, though it may have been necessary in the interests of Government, unduly hard on the individual. 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. Where the course of misconduct carries with it the legitimate inference that the officer's service has been dishonest, there can seldom be any good case for a Compassionate Allowance. Poverty is not an essential condition precedent to grant of a Compassionate Allowance, but special regard is also occasionally paid to the fact that the officer has a wife and children

dependent upon him, though this factor by itself is not, except perhaps in the most exceptional circumstances, sufficient for the grant of a Compassionate Allowance."

G.I.F.D., Office Memo. No. 3 (2)-R-II/40, dated the 22nd April, 1940."

7. The aforesaid Rule and the guidelines have been the subject matter of discussion in Shadi Ram's case (supra) and the Division Bench of this Court has in depth examined the true scope and intent of said Rule 41 of CCS (Pension) Rules. Relevant paras of the said judgment are reproduced as under:

"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.

35. For all the aforesaid reasons, the impugned judgment of the Tribunal dated 24.5.2007 passed in OA number 1005/06 is set aside. The decision of the Competent Authority dated 24th of February 2006, is quashed. The Competent Authority is directed to reconsider the petitioner's application dated 16.2.2005 seeking the grant of Compassionate Allowance in the light of the provisions of Rule 41 CCS (Pension) Rules, the Guidelines dated 22.4.1940, the observations and the conclusions reached by this Court, and to pass a speaking order thereon

within one month from today. It should take an independent decision in the matter, without being influenced by any observations of the Tribunal on the merits of the aforesaid application of the petitioner."

8. In the aforesaid case, the Petitioner therein was dismissed from service on the charge of extortion and as a consequence of his dismissal order, his pension and gratuity were also forfeited. Nearly 17 years later, the Petitioner applied for the grant, of compassionate allowance in terms of proviso to Rule 41 of the CCS (Pension) Rules, 1972. Request of the Petitioner for grant of compassionate allowance was declined by the order passed by the Respondent on 23.4.2006, which was confirmed by the order dated 24th May 2007 passed by the Central Administrative Tribunal, Principle Bench. The order of Tribunal was then challenged by the Petitioner before the Delhi High Court under Article 226 of the Constitution of India and this is how the Division Bench of this Court gave the said authoritative pronouncement.

9. Another important issue dealt with by the Division Bench in the aforesaid judgment was whether any delay on the part of the Petitioner could defeat his rights and deny him the grant of compassionate allowance under Rule 41 of CCS (Pension) Rules, 1972. The Petitioner in the said case had approached his employer nearly after 17 years of his dismissal and disagreeing with the reasoning of the Central Administrative Tribunal taking such an inordinate delay on the part of the Petitioner, as one of the grounds to deny him the compassionate allowance, the Division Bench took a view that such an approach of the employer and that of the Tribunal was completely erroneous as the people manage to survive the most oppressive circumstances in life, that would not mean that at a stage where he feels that he cannot bear the hard circumstances any more would disentitle him to seek grant of compassionate allowance simply because of delay on his part. In fact, decision in Shadi Ram (supra) is an answer to all the objections raised by the Respondents in the present case. As here also, one of the grounds raised by Respondent is with regard to the delay of 19 years on the part of the petitioner in approaching the respondent to seek compassionate allowance.

10. In Mahabir Prasad (Ex. L/Nk) v. UOI and Ors., 2010 VIII AD (Delhi) 260, the Division Bench of this Court was again confronted with an identical issue and the Court after placing reliance on the decision in Shadi Ram (supra) and some other judgments holding the field, found the petitioner to be entitled to the award of compassionate allowance in terms of the applicable rules and guidelines. Relevant paras of the said judgment are reproduced as under:

"13. We find that a Division Bench of the Bombay High Court in Anna Deoram Londhe (deceased by L.Rs.) v. State of Maharashtra (supra) was called upon to consider the case of a petitioner who had been removed from service for misconduct on account of his conviction under Section 325 of the Indian Penal Code. It was observed that such conduct was not connected with the discharge of his duties. The petitioner had put in more than 30 years of service and as such

was found otherwise eligible for superannuation or retiring pension. It was held that merely because the petitioner was removed from service for such misconduct, that alone would not furnish a ground to deny him the benefit of compassionate pension. The Court had set aside the order rejecting the application for compassionate pension of the employee and held that he was entitled to the compassionate pension. Consequential orders directing the respondents to pay the compassionate allowance to the legal heirs of the deceased employee were made.

14. The decision of the Rajasthan High Court in *Mithlesh Sharan Sharma Vs. State of Rajasthan and Others*, is similar. In this case, the employee served as a sepoy since 17th November, 1949 till 17th April, 1979 when he was removed from service. As a result, this petitioner had served for approximately 30 years which was more than qualifying service for pension. The Court also noticed the fact that he was 75 years old on the date of consideration of the writ petition and might be burdened with numerous liabilities as being head of the family. It is noteworthy that the services of this petitioner had been also terminated on grounds of unauthorized absence from duty. In this background, the Court had directed that it would be in the interest of justice to allow compassionate allowance on a special consideration to the petitioner.

15. At this stage, we may notice the authoritative pronouncement of a Division Bench of this Court which is reported at *Ex. ASI Shadi Ram Vs. Government of NCT of Delhi and Others*, which authoritatively lays down the applicable principles so far as the manner in which discretion for granting compassionate allowance in terms of Rule 41 of the CCS (Pension) Rules and the Guidelines thereunder, has to be exercised. The observations and the findings of the Court relevant for the present adjudication may usefully be extracted and read as follows--

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.

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."

16. The Division Bench also considered the respondents objection that the writ petition was grossly delayed in the following terms--

"31. In addition to this, the learned Tribunal has also upheld the impugned order of the third respondent on the ground that the petitioner has applied for grant of compassionate allowance nearly 17 years after his dismissal, and that such a long lapse of time, demonstrates that the petitioner has managed to survive all this while without pension, and therefore he could not possibly require this allowance henceforth. In other words, the fact of the petitioner applying after nearly 17 years, has persuaded the Tribunal to conclude that the penalty of dismissal, and the consequent forfeiture of his pension and gratuity, was not unduly hard on him. To my mind, this is a completely erroneous approach. People manage to survive the most oppressive circumstances in life. That does not mean that since their adverse circumstances have not actually killed them, and they have managed to somehow survive, therefore it must be presumed that the circumstances through which they have passed have not been unduly harsh: Similarly, simply because the petitioner managed to stay alive all these years after his dismissal bereft of pension and gratuity, doesn't automatically warrant the conclusion that the punishment was not unusually harsh on him. It is entirely possible that the applicant has struggled all these years to make ends meet and felt ashamed to beg for a compassionate allowance, but his current circumstances have reduced him to such a state that he had no alternative but to throw himself at the mercy of his former employer's compassion. It is also conceivable that for some years after his dismissal, the petitioner was not so badly off, and that his condition has deteriorated only much later.

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, 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 v. Union of India and Ors., 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."

17. In view of the principles laid down in the judicial pronouncements noted hereinabove especially the binding adjudication in *Shadi Ram (Ex. ASI) v. Government of NCT of Delhi and Ors.* (supra), it is apparent that the respondents could not have premised the rejection of grant of compassionate allowance to the petitioner herein solely on his absence from duty in the year 1994 for which he stood dismissed from service. We may note that *Shadi Ram* (supra) had been dismissed from service on allegations of having accepted illegal gratification, certainly a very serious charge. The judicial precedents noted above are concerned with the employees who have been involved in serious offences and yet were found deserving compassionate allowance.

18. We may note that the order of dismissal from service imposed by the respondents upon the petitioner was not assailed by him. There is no allegation of the petitioner ever having been involved in any misdemeanour or misconduct involving moral turpitude.

19. The petitioner states that he belongs to a poor family, is not highly educated and is suffering from social backwardness as well. He explains that he was therefore not in a position to avail any proper remedies. It is only during the visit of the Poorva Sainik Sewa Parishad, Rajasthan (Regd.) in his village that the petitioner had sought legal advice from them and was advised to approach the authorities for grant of compassionate allowance.

As a result of this advice the petitioner approached an advocate who advised him to make a representation to the authorities for grant of the compassionate allowance. It is averred that the petitioner and his wife have no land or property and are without any source of income to earn his day-to-day livelihood. He is passing hard days doing hard labour and surviving at the mercy of his relatives.

20. Learned Counsel for the petitioner submits that on account of the intervention of the dismissal order, despite having been put in 23 years of pensionable service, the petitioner stands deprived of his monetary and retirement benefits. Furthermore for want of the finances as well as legal assistance, the petitioner was unable to take legal remedies to assail the order of dismissal and denial of the benefits of the fruit of his service.

21. We find that the petitioner had made the representation dated 27th November, 2009 to the Director General, CRPF. The office of the Director General forwarded the petitioners representation under cover of a communication dated 4th January, 2010 to the Inspector General of Police, Middle Sector, CRPF, Lucknow with the directions to examine and investigate the case as per the rules and to intimate the position to the petitioner and Director General, Headquarters, New Delhi by 4th February, 2010. It is pointed out by learned Counsel for the petitioner that instead of informing the Director General as directed, the Deputy

Inspector General of Police proceeded to examine the representation of the petitioner and rejected the same by the impugned order dated 11th March, 2010.

22. On an application of the principle laid down in the aforementioned judgments, it has to be held that the respondents have erred in passing the order dated 11th March, 2010 and have failed to exercise discretion conferred upon them in accordance with law and the applicable rules. The respondents have failed to take into consideration the relevant factors relating to the service of the petitioner. The petitioner was dismissed from service as back as on 28th October, 1995 after 23 years of service and a long period of almost 15 years has passed since his dismissal. There is no material denial to the submissions relating to the petitioners penury and financial hardship on the part of the respondents. The commendations, rewards and the positive comments about his service in the petitioners ACRs have not been taken into account. Nothing has been pointed out which would disentitle the petitioner in the light of the guidelines dated 22nd April, 1940.

23. We find that not only the respondents have failed to exercise the discretion but the consideration is not even by a person to whom the representation has been made by the petitioner. None of the facts and circumstances brought out by the petitioner in his representation and noted hereinabove nor the service record of the petitioner has been considered by the authority who has passed the order dated 11th March, 2010.

In this background, in the peculiar facts and circumstances of the case, we hold that the petitioner is entitled to award of compassionate allowance in terms of the applicable rules and guidelines."

11. In the facts of the present case also the Petitioner was not considered deserving for grant of compassionate allowance under Rule 41 of CCS (Pension) Rules, 1972 primarily due to the reason that he was dismissed from service after he was found guilty of possessing disproportionate assets. The delay of 12 years on the part of the Petitioner in approaching the Respondents was also one of the reasons to deny him the said compassionate allowance.

12. So far as the dismissal or removal from service of a Government servant is concerned, the same by itself cannot disentitle him to seek grant of compassionate allowance as the proviso to Rule 41 of CCS (Pension) Rules, 1972 has carved out an exception to deal with those deserving cases where the authority competent to dismiss or remove a Government servant from his service, after such removal or dismissal still finds that his case is deserving or can be given special consideration for the grant of compassionate allowance then nothing would come in the way of such a competent authority to sanction the compassionate allowance in favour of such Petitioner. Now dismissal or removal of any Government servant can be due to varied reasons which may also include the case of moral turpitude and gross misconduct. While evaluating the claim of a dismissed (or removed from service) employee, for the grant of compassionate

allowance, the rule postulates a window for hope, if the case deserves special consideration. Circumstances deserving special consideration, would ordinarily be infinite, keeping in mind the unlimited variability of human environment, it would be easier than otherwise, to extend such benefit to the punished employee, of course, subject to availability of factors of compassionate consideration.

13. Under the guidelines, poverty is not held to be an essential condition precedent to the grant of compassionate allowance. Further, for paying allowance, the fact that officer has a wife and children dependent upon him will be given special regard but this fact by itself has been held to not to be sufficient for the grant of compassionate allowance except in the most exceptional circumstances. Dealing with the scope of the said guidelines, Division Bench in Shadi Ram (supra) very aptly observed that the said guidelines cannot be interpreted and applied in such a way as to either override or whittle down the scope and applicability of the Rules itself. The Court further held that Rule 41 of CCS (Pension) Rules, 1972 has a statutory force while the aforesaid guidelines don't. The Court further held that the interpretation based upon the guidelines by the Central Administrative Tribunal has the effect of restricting the application from scope of Rule 41 as this excludes all officers who were dismissed or removed from service for misconduct, which had an element of dishonesty from the purview of the said rules pre-emptorily. The Court further held that the construction as placed by the learned Tribunal in guidelines is not sustainable. The Bench also held that the opinion of the learned Tribunal stating that simply because the applicant was dismissed from service for a single act of misconduct which demonstrated an element of dishonesty, his poverty or existence of dependant wife and children or even his service record, cannot be taken into consideration, is erroneous and cannot be sustained. In a situation where an employee deserves special consideration, it has to be momentous and the same shall be handled carefully.

14. Thus taking the cumulative view of the facts and circumstances of the present case, we find ourselves in complete agreement with the said view taken by the Division Bench and the view taken by another Bench of this Court in Mahabir Prasad (supra) as binding judicial precedent. Shadi Ram (supra) was the case where the Petitioner had been dismissed from service on the allegations of having accepted illegal gratification while Mahabir Prasad (supra) was of one for being absent from his duties. But the view taken by the Court was that the Respondents could not have premised the rejection of grant of compassionate allowance in these cases solely on the ground of dismissal of an employee from his service. In fact, the true intent and purport of proviso to Section 41 of CCS (Pension) Rules, 1972 will stand defeated if such an interpretation as has been conversed in the present case and earlier propounded in the cases referred above, as the applicability of the proviso itself is only in those cases where there is an order of removal or dismissal. The use of expression "compassion" in the proviso would also lose its meaning and significance if such an allowance is denied to the Petitioner on the mere ground of his dismissal and removal from

his service. We are not saying that the competent authority should not take into consideration the entire service profile of the Petitioner and also the ground on which he was dismissed or removed from his service, but certainly the same cannot be the sole basis to deny him the compassionate allowance, as ultimately it would be the existing financial condition of the Petitioner and his family which would determine his entitlement for the grant of compassionate allowance.

15. The Petitioner herein was enrolled as constable in Punjab Police on 16th August 1963 and later he was permanently absorbed in BSF. He was promoted to the rank of Subedar in August 1991. It was due to his relentless drive he managed to contraband goods worth Rs. 20 lacs between the period 9th November 1991 to 8th April 1992 during his posting at Indo-Bangladesh Border in District Malda, West Bengal. The Petitioner has also stated that he had rendered about 30 years of meritorious service to the nation and during this period he has served in difficult areas of high altitude. The Petitioner in the present petition has also tried to explain as to how he came into possession of said amount of Rs. 93,000/-. After having borrowed money from his friends and colleagues but we are not going to take the said explanation into consideration as no further challenge has been laid by the Petitioner against the order of his dismissal. As per the Petitioner, he is more than 67 years of age and is not keeping with good health. His wife is also stated to be of 65 years and she too remains sick most of the time. Petitioner also states that he has no source of income and his son is also not looking after him and his wife and in these circumstances he is living in starved condition/poverty and finds it very difficult two ends to meet. As already stated above, the Respondents have not taken the compassion angle of the Petitioner and his family and they were over obsessed by the fact of his dismissal on the charge of possessing disproportionate assets exceeding his source of income and therefore in the background of the peculiar facts and circumstances we hold that the Petitioner is entitled to the award of compassionate allowance in terms of Rule 41 of CCS (Pension) Rules, 1972.

16. In view of the aforesaid, we give the following directions to respondents for compliance:

"(i) The Respondents shall make the appropriate order in accordance with Rule 41 of the CCS (Pension) Rules of the amount and period for which the compassionate allowance is admissible to him within a period of eight weeks from today. The order which is passed shall be communicated to the Petitioner immediately on the same being made.

(ii) The Respondents shall effect payment of all arrears of the compassionate allowance to the petitioner and the amount which may be due to him within a period of four weeks thereafter."

This writ petition is allowed in the above terms.