

(2018) 10 CAT CK 0051

In the Central Administrative Tribunal

Case No : Original Application No. 4410 Of 2017

Sant Ram

APPELLANT

Vs

Commissioner Of Police And Anr

RESPONDENT

Date of Decision : 16-10-2018

Acts Referred:

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

Citation : (2018) 10 CAT CK 0051

Hon'ble Judges : Pradeep Kumar, Member (A)

Bench : Single Bench

Advocate : Ajesh Luthra, Harvinder Oberoi

Final Decision : Dismissed

Judgement

1. Heard Sh. Ajesh Luthra, learned counsel for applicant and Ms. Harvinder Oberoi, learned counsel for respondents.

2. The applicant was working as a Head Constable in Delhi Police and after about 29 years of service, he was dismissed on 27.04.2011 on account of 233 days in four spells coupled with other instances of absence from 02.10.2007 to 11.09.2008. Thereafter, he made an appeal against this punishment and the appellate authority rejected the appeal vide orders dated 06.01.2012. He approached the Tribunal vide OA No.1789/2012 against this punishment which was dismissed on 28.07.2016. Thereafter, quoting Rule 41 of CCS (Pension) Rules, he made a representation for sanction of compassionate allowance. The relevant rule 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 no exceeding two-thirds of pension or gratuity or both which would have been admissible to him if he had retired on compensation pension."

3. While the representation was still under consideration with the respondents, he filed an OA No.429/2017 requesting for this compassionate allowance. This OA was decided on 06.02.2017 with the following orders:

"4. In the circumstances, the OA is disposed of without going into the merits of the case by directing the respondents to consider the said representation dated 31.12.2016 and pass appropriate reasoned and speaking order thereon within 90 days from the date of receipt of a certified copy of this order, in accordance with law. No costs."

4. The said representation had since been rejected by the respondents vide their order dated 27.04.2017. Feeling aggrieved against this rejection order, the applicant has preferred the instant OA.

5. The applicant drew attention to an Apex Court judgment in Mahinder Dutt Sharma vs. Union of India and others, CA No.2111/2009 which was decided on 11.04.2014. In this case, the applicant therein was dismissed from service on account of unauthorised absence from service for about 320 days. He made an appeal against this dismissal after five years delay and this appeal was dismissed on the ground that the same was badly time barred. He approached the Tribunal wherein his petition was dismissed. Thereafter, he filed a writ in the Hon'ble High Court of Delhi, which was, however, withdrawn with liberty to seek compassionate allowance from the respondent. Thereafter, the representation was moved to the respondents for grant of compassionate allowance. The relevant part of this representation as was observed by the Hon'ble Apex Court is reproduced below:

"In his above representation dated 22.3.2005 the appellant asserted, that he had about 24 years of unblemished service during which he was granted 34 good entries, including 2 commendation rolls awarded by the Additional Commissioner of Police, 4 commendation certificates awarded by the Additional Commissioner of Police and 28 commendation cards awarded by the Deputy Commissioner of police and 28commendation cards awarded by the Deputy Commissioner of police. He also place reliance on his discharge certificate, whereunder the character of the appellant was described as 'very good'."

6. This representation was rejected by the respondents. Thereafter, applicant therein again approached the Tribunal for grant of compassionate allowance but the case was dismissed by the Tribunal. The Tribunal's order was challenged by filing a Writ before the Hon'ble High Court of Delhi but the same was dismissed. Thereafter the applicant therein preferred a SLP in the Hon'ble Apex Court. The Hon'ble Apex Court observed:

"12. We are of the considered view, that the adjudication by the Courts below with reference to Rule 41 of the Pension Rules, 1972, is clearly misdirected. The

Rule itself contemplates, payment of compassionate allowance to an employee who has been dismissed or removed from service. Under the punishment rules, the above punishments are of the severest magnitude. These punishments can be inflicted, only for an act of extreme wrongdoing. It is on account of such wrongdoing, that the employee concerned, has already been subjected to the severest form of punishment. Sometimes even for being incorrigible. Despite that, the rule contemplates sanction of a compassionate allowance of, upto two-thirds of the pension or gratuity (or both), which would have been drawn by the punished employee, if he had retired on compassionate pension. The entire consideration upto the present juncture, by the Courts below, is directly or indirectly aimed at determining, whether the delinquency committed by the appellant, was sufficient and appropriate, for the infliction of the punishment of dismissal from service. This determination is relevant for examining the veracity of the punishment order itself. That, however, is not the scope of the exercise contemplated in the present consideration. Insofar as the determination of the admissibility of the benefits contemplated under Rule 41 of the Pension Rules, 1972 is concerned, the same has to be by accepting, that the delinquency committed by the punished employee was of a magnitude which is sufficient for the imposition of the most severe punishments. As in the present case, unauthorized and willful absence of the appellant for a period of 320 days, has resulted in the passing of the order of dismissal from service. The punishment inflicted on the appellant, has been found to be legitimate and genuine, as also, commensurate to the delinquency of the appellant. The issue now is the evaluation of claim of the punished employee under Rule 41 of the Pension Rules, 1972."

Thereafter, the Apex Court listed some of the distinct consideration which may be of relevance while considering the cases of grant of compassionate allowance to the dismissed employee. The Apex Court thus observed as under:

"14. 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 is deserving of special consideration...". Where the delinquency leading to punishment, falls in one of the five classifications delineated in the foregoing paragraph, it would ordinarily disentitle an employee from such compassionate consideration. An employee who falls in any of the above five categories, would therefore ordinarily not be a deserving employee, for the grant of compassionate allowance. In a situation like this, the deserving special consideration, will have to be momentous. It is not possible to effectively define the term "deserving special consideration" used in Rule 41 of the Pension Rules, 1972. We shall therefore not endeavour any attempt in the said direction. Circumstances deserving special consideration, would ordinarily be unlimited, keeping in mind unlimited variability of human environment. But surely where the delinquency leveled and proved against the punished employee, does not fall in the realm of misdemeanour illustratively categorized in the foregoing paragraph, it would be easier than otherwise, to extend such benefit to the

punished employee, of course, subject to availability of factors of compassionate consideration.

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16. We shall only endeavour to delineate a few of the considerations which ought to have been considered, in the present case for determining whether or not, the appellant was entitled to compassionate allowance under Rule 41 of the Pension Rules, 1972. In this behalf it may be noticed, that the appellant had rendered about 24 years of service, prior to his dismissal from service, vide order dated 17.5.1996. During the above tenure, he was granted 34 good entries, including 2 commendation rolls awarded by Commissioner of Police, 4 commendation certificates awarded by the Additional Commissioner of Police and 28 commendation cards awarded by the Deputy Commissioner of Police. Even though the charge proved against the appellant pertains to his unauthorized and willful absence from service, there is nothing on the record to reveal, that his absence from service was aimed at seeking better pastures elsewhere. No such inference is even otherwise possible, keeping in view the length of service rendered by the appellant. There is no denial, that the appellant was involved, during the period under consideration, in a criminal case, from which he was subsequently acquitted. One of his brothers died, and thereafter, his father and brother's wife also passed away. His own wife was suffering from cancer. All these tribulations led to his own ill-health, decipherable from the fact that he was suffering from hypertension and diabetes. It is these considerations, which ought to have been evaluated by the competent authority, to determine whether the claim of the appellant deserved special consideration, as would entitle him to compassionate allowance under Rule 41 of the Pension Rules, 1972.

17. None of the authorities on the administrative side, not even the Tribunal or the High Court, applied the above parameters to determine the claim of the appellant for compassionate allowance. We are of the view, that the consideration of the appellant's claim, was clearly misdirected. All the authorities merely examined the legitimacy of the order of dismissal. Having held as above, we direct the competent authority to reconsider the claim of the appellant, for the grant of compassionate allowance under Rule 41 of the Pension Rules, 1972, based on the parameters laid down hereinabove.

18. Allowed in the aforesaid terms."

It was, therefore, held by Hon'ble Apex Court that there was legislative intent to consider compassionate allowance even in cases of Removal and Dismissal if there were adequate reasons and certain relevant considerations were enumerated by Apex Court.

7. In view of the foregoing, the instant applicant while making a representation to the respondents for consideration of compassionate allowance, had already mentioned this judgment by the Hon'ble Apex Court and brought out certain special circumstances in his case and requested for grant of compassionate

allowance. Since this request has been rejected by the respondents vide their order dated 27.04.2017, this is the grievance being ventilated in the instant OA.

8. Learned counsel for respondents brought out that in the instant case the applicant was awarded a major punishment of forfeiture of two years approved service permanently in the past vide DCP/7th Bn. DAP Delhi's Order No.363-83/HAP-7th Bn. DAP dated 30.01.2003 on account of unauthorised absence for a prolonged period of time. Despite this previous major punishment, applicant had not mended his ways and he had again become unauthorisedly absent from duty for long and as a result thereof, the dismissal order was imposed.

9. The respondents also drew attention to the representation by the applicant dated 27.12.2016 which was made to the respondents for grant of compassionate allowance. In this representation also, even though Apex Court judgment (para 6 supra) was referred but the only special circumstance brought out by the applicant was as under:

"5. That the absence of the applicant has been due to medical reasons of his illness for which the applicant has already submitted medical certificates."

While rejecting the representation for grant for compassionate allowance, the competent authority had also recorded as under:

"The Ex. Head Constable was dismissed from service vide this office order No.5986-6086/HAP/AC-II/C dated 27.04.2011 on the finalization of a regular departmental enquiry initiated against him vide order No.2896-2915/HAP/AC-II/C, dated 14.05.2009 on the charge that he absented himself from duty wilfully & unauthorizedly at his own, proved by the Enquiry Officer during the course of departmental enquiry through his finding. The copy of the finding was served to the applicant Ex. Head Constable Sant Ram, No.12/C (PIS No. 28821567) vide this office U.O. No.4150/HAP/AC-II), dated 21.03.2011 for submitting his written reply/representation within 15 days from the date of receipt of finding. He received the finding on 25.03.2011 against proper receipt and as such his reply/representation, if any required to reach on or before 10.04.2011 but he did not bother to submit the same. Besides, for fair play & justice, the applicant was also asked to appear for orderly room on 21.04.2011 to put/explain his reply/grievance in person. During O.R., he only stated he was ill but did not submit any medical paper in support of his version. Even though the applicant was awarded a major punishment of forfeiture of two years approved service permanently vide DCP/7th Bn. DAP, Delhi's Order No.363-83/HAP-7th Bn. DAP, dated 30.01.2003, the applicant had failed to mend his ways and remained/found absent repeatedly from duty wilfully and unauthorisedly for a prolonged period of time."

Thus at the relevant point of dismissal even though the applicant claimed to be not well yet he did not submit any medical papers in support of his claim. This reason could therefore not be accepted in view of non-submission of supporting documents.

10. The respondents also drew attention that even the Apex Court had noted that it is not possible to effectively define the term 'deserving special consideration' used in Rule 41 of the CCS Pension Rules, 1972 and even in the case of Mahender Dutt Sharma (para 6 supra) also, the Apex Court had only directed the respondents to reconsider his case for grant of compassionate allowance, keeping in view special circumstances.

11. In the instant case, no such special reasons to help consideration has been brought out by the applicant, as brought out above. The applicant was given a major punishment in the past and despite this he did not mend his ways and was again unauthorisedly absent and the competent authority while passing the orders dated 27.04.2017 has specially mentioned the Apex Court judgment in the case of Mahender Dutt Sharma (para 6 supra) and considered the applicant's case. However, no reason for taking a lenient view or deserving any special consideration for grant of compassionate allowance under Rule 41 of CCS (Pension) Rules, 1972 was found to favour the applicant and hence the said representation of the applicant was rejected. In view of the foregoing, the present application is not maintainable and needs to be dismissed.

12. Matter was heard at length. This is a case wherein the punishment has been imposed by the disciplinary authority and thereafter, the application challenging the same was dismissed by the Tribunal. The applicant had not preferred any petition to the Hon'ble High Court. The grant of compassionate allowance as per Rule 41 is in very special circumstances. However, even after his representation seeking such an allowance was rejected in the first instance, nothing has been brought out by the applicant in his second representation except indicating that he was not well (that also without supporting documents) even though he relied upon and quoted judgment by Apex Court which enumerated the consideration to be kept in view by Respondents.

In the case of Mahender Dutt Sharma (para 6 supra), it was noted by the Apex Court that there were many bereavements in the family of said Shri Mahender Dutt Sharma, therefore, he was in tension and suffered illness on account of hypertension which were considered adequate special circumstances and it was only thereafter that the Apex Court had directed respondents to reconsider his case. The Tribunal does not find any such ratio in the case of the instant applicant. Further, the applicability or otherwise of Mahender Dutt Sharma (para 6 supra) in the case of present applicant has already been considered by the respondents and a detailed order passed.

13. The applicant was working in the Police Department where maintenance of discipline is of paramount importance. In the instant case, the applicant has not mended his ways despite a major punishment imposed in 2003 and thereafter again he became unauthorisedly absent in 2008 which led to his dismissal in 2011.

14. It is the view of the Tribunal that appropriate consideration had already been

extended in the case of applicant and the pleas of applicant do not sustain and present OA needs to be dismissed being devoid of merit.

In view of the foregoing, this OA is dismissed being devoid of merit. No order as to costs.