

(2012) 08 DEL CK 0208
In the Delhi High Court
Case No : Writ Petition (C) 2107 of 1999

Sohan Bir Singh	Vs	APPELLANT
UOI and Others		RESPONDENT

Date of Decision : 23-08-2012

Acts Referred:

Citation : (2012) 08 DEL CK 0208

Hon'ble Judges : Pradeep Nandrajog, J; Manmohan Singh, J

Bench : Division Bench

Advocate : Meenu Mainee, for the Appellant; Archana Gaur, for the Respondent

Judgement

Pradeep Nandrajog, J.

CM No. 4151/2012

1. Delay occasioned in filing application seeking restoration of the writ petition is condoned.
2. Application stands disposed of.

CM No. 4150/2012

1. For the reasons stated in the application, the application is allowed.
2. Writ petition restored and is set down for hearing today.

WP(C) No. 2107/1999

1. Conceding to the penalty levied upon the petitioner being just and valid and supported by evidence on record, learned counsel for the petitioner urges that keeping in view the fact that the petitioner served from March 12, 1982 till he was dismissed from service on December 26, 1994 and that he has a family to support, directions be issued to the respondents to sympathetically consider, and pay compassionate allowance to the petitioner under Rule 41 of the CCS (Pension) Rules. 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.

2. 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.

3. 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.

4. Accordingly, it would be apparent that the petitioner would be entitled to lay a claim to be paid compassionate allowance, notwithstanding he being dismissed from service, for the reason Rule 41 of the CCS (Pension) Rules permits so. However, entitled to be considered is a distinct subject vis-à-vis entitled to be paid. On the entitlement to be paid, as per the proviso to sub-rule (1) of Rule 41 of the CCS (Pension) Rules, the petitioner would have to make out a deserving case requiring special consideration, and which needless to state would be the financial condition of the petitioner, and this would include the family which he has to support and his current means of livelihood.

5. We dispose of the petition upholding the penalty levied upon the petitioner but would simultaneously direct that upon the petitioner filing a representation praying that compassionate allowance be paid to him commensurate to 12 years service rendered by him, the said representation be considered by the Competent Authority and decided within 12 weeks from the date of receipt of the representation, and needless to state, if compassionate allowance is sanctioned the same be paid, and if denied, reasons for denial be recorded. No costs.