
(2010) 01 DEL CK 0362

In the Delhi High Court

Case No : Writ Petition (Civil) No. 11646 of 2009

Sukha Singh

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 20-01-2010

Acts Referred:

Citation : (2010) 3 ILR Delhi 193 : (2010) 1 SLR 707

Hon'ble Judges : Mukta Gupta, J; Madan B. Lokur, J

Bench : Division Bench

Advocate : A.K. Trivedi, for the Appellant; None, for the Respondent

Final Decision : Dismissed

Judgement

Mukta Gupta, J.—The Petitioner was appointed as Hospital Attendant, in the year 1961 and promoted as Ambulance Driver on 4th January, 1980. On charges of embezzlement of money, disciplinary proceedings were conducted and penalty of removal from service was ordered on 5th June, 1984. The appeal of the Petitioner to the Appellate Authority was also rejected.

2. The Petitioner submitted a representation dated 20th September, 1994 for grant of pension or in the alternate for compassionate allowance. As the Respondent did not decide the said representation, the Petitioner filed an application before the Central Administrative Tribunal u/s 19 of the Administrative Tribunals Act, 1985 being Original Application No. 2477/1995. The said petition was dismissed on 1st September, 1999.

3. Challenging the decision of the Central Administrative Tribunal dated 1st September, 1999, the Petitioner filed C.W.P. No. 13352/2004 before this Court, which was disposed of on 17th November, 2004, with a direction to the Petitioner to make a fresh representation to the Respondents, who were directed to dispose of the same within one month. The said representation of the Petitioner was rejected by the Respondents, vide order dated 27th August, 2005. In the meantime the Petitioner filed a Civil Contempt Petition No. 740/2005, before this

Court, which was dismissed on 5th October, 2005, granting liberty to the Petitioner to seek remedy as per law against the order rejecting Petitioner's representation.

4. The Petitioner thereafter filed Original Application No. 482/2006 for grant of pension/compassionate allowance which was partly allowed by the Tribunal vide order dated 2nd August, 2006 with directions, as under: "25. In the result, what I find that consideration by the respondents to the claim of compassionate allowance made by the applicant was not in accordance with rules. Accordingly, OA is partly allowed. Impugned orders are set aside. Respondents are directed to reconsider the claim of the applicant on merit for grant of compassionate allowance, keeping in light the decision of the High Court in Ex. Constable Daya Nand's case (supra) and the observations made therein. The aforesaid consideration would culminate into within two months from the date of receipt of a copy of this order a reasoned and speaking order. In the event, the applicant is accorded the compassionate allowance, the consequences would follow. No costs."

5. The Petitioner again made a representation to the Respondents. However, the same was rejected vide order dated 12th September, 2006, communicated to the Petitioner vide letter dated 27th September, 2006. On an appeal filed by the Petitioner, against the order dated 12th September, 2006, no reply was given by the Respondents. Challenging the order dated 27th September, 2006 whereby his request for compassionate allowance was rejected, the Petitioner filed Original Application No. 898/2007 before the Central Administrative Tribunal.

6. The original application was heard by the Tribunal. However, the same was dismissed vide order dated 29th November, 2007 which is the subject matter of challenge in the present writ petition.

7. The issue involved in the present petition is whether in terms of Rule 65 of the Railway Service (Pension) Rules, 1993 (hereinafter referred to as "Pension Rules, 1993") the Petitioner is entitled to compassionate allowance. Rule 65 is reproduced as under:

65. Compassionate Allowance:

1. A railway servant who is dismissed or removed from service shall forfeit 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 Rupees three hundred seventy-five rupees per mensem.

8. In the present case the order dated 12 September, 2006 communicated to the Petitioner vide letter dated 27th September, 2006 is a well reasoned order,

clearly spelling out the reasons for rejection of the Petitioner's representation. It was clearly stated in the order that the Petitioner was removed from service on account of embezzlement of government funds with mala fide intention, which caused pecuniary loss to the Government Exchequer. The Petitioner prior to that as well, had been absenting on number of occasions and after enquiries was awarded punishment of leave without pay. The Petitioner did not attend the Territorial Army Camp. The Petitioner even ignored traffic rules while driving medical mobile van on 7th October, 1980 leading to an accident of the mobile van with a DTC bus. While functioning as ambulance driver the Petitioner drew 195 litres of HSD oil on kacha chits without drawing it on proper credit coupons, amounting to embezzlement of government funds. The Respondents thus considering the entire facts concluded as under:

15. Considering the nature and gravity of offence of embezzlement and pecuniary loss to the Govt. Exchequer and you being a habitual offender of Railway Rules as is evident from your available service record, I also consider the ground of limitation, wherein as an applicant you have come after almost 21 years from the date of your removal from service. You have probably managed to survive for such a long years, beside you were repeatedly punished as LPW (Leave without pay) during your tenure of service, so there is no logic which needs to any conclusion of special consideration for the grant of compassionate allowance in his case now.

9. The impugned order of the Tribunal dated 29th November, 2007 has also considered the facts and legal position and has observed as under:

7. Perusal of above provision makes it clear that compassionate allowance cannot be sought as a matter of right. It is the discretion of the authorities to sanction it, on being satisfied that the case deserves special consideration. In this backdrop, let us examine the case put up by applicant. He has stated he has put in 22 years of service to the entire satisfaction of seniors. He is an old man having no other source of income. Case is covered by the judgment of Ex-Constable Dayanand.

8. The question is whether it can be said that applicant had put in 22 years of service to the entire satisfaction of superiors. According to me the clear answer is "No" because not only applicant was a habitual offender, was dealt with enquiries on number of occasions, punished for same. Most important is ultimately he was removed from service on account of embezzlement of government funds which is a serious matter. All the details have been given in the speaking order. It is thus clear that applicant cannot be said to have served 22 years to the entire satisfaction of superiors.

9. His second point is that he has no source of income. The very fact that applicant has been indulging in litigation right from 1984 till date would show, he is not without any source of Income. To be precise when he was removed from service he filed case right upto Hon'ble Supreme Court and lost. Thereafter from

1994 he has filed three OAs, one Writ Petition one Contempt Petition before Hon"ble High Court. All this would not have been possible unless he has some source of income. Moreover, respondents have rightly pointed out that he has survived for the last 21 years without any help so his condition cannot be said to be one of those, which require special consideration, on this ground that he has no other source of income, therefore, second ground also fails.

10. The last ground taken by him is that his case is covered by Ex-Constable Dayanand's Judgment. In fact, in the previous OA decided on 02.08.2006 much reliance was placed on Dayanand's judgment but probably the earlier bench was not aware that Dayanand's judgment given by Hon"ble High Court was challenged before the Hon"ble Supreme Court when Hon"ble Supreme Court was pleased to pass the following order:

Delay condoned.

The apprehension of the learned Counsel is that the impugned order would be cited as a precedent in all cases of dismissal in future. We make it clear that this order will not become a precedent as the question of compassionate allowance under Rule 41 will be considered on merits whenever any new claim is made. With these observations the SLP is disposed of.

Therefore, applicant cannot even get any benefit on the basis of judgment of Day anand also.

10. In support of his arguments before us the Petitioner has relied upon the decision of the Bombay High Court in the case of Anna Deoram Londhe v. State of Maharashtra 1998 (5) SLR 480. In the said decision the Petitioner therein was removed from service on account of conviction for offence punishable u/s 324 IPC. The Court held that the said conduct was not connected with the discharge of his duties and that since the Petitioner therein had put in more than thirty years of service, he was otherwise eligible for superannuation or retiring pension. In the present case, no such factual position is available to the Petitioner. The Petitioner has, in fact, been removed from service in view of his grave misconduct of embezzlement of public money relating to his service and prior thereto also he was awarded penalties for his dereliction of duty. Thus, the said decision is of no help to the Petitioner.

11. The Petitioner also relies upon the decision in the case of Mithlesh Sharan Sharma v. State of Rajasthan 2004 (3) SLR 485. In the said case the Rajasthan High Court allowed compensation on the ground that the Petitioner therein was removed from service after approximately thirty years, which is more than the qualifying service and thus it was held that he was otherwise entitled to pensionary and other benefits. The other reason for grant of compassionate allowance was that the peculiar facts of the case as the Court was of the view that the learned Single Judge had reversed its earlier order denying the Petitioner of his rights to get his retiral benefits already allowed, which has caused prejudice to the Petitioner and that no act of Courts should prejudice any

man. The said decision is also of no avail to the Petitioner.

12. The Petitioner further relies upon a decision rendered by this Court in the case of Ex. ASI Shadi Ram v. Government of NCT of Delhi and Ors. W.P. (C) No. 5544/2007. In the said decision this Court was considering Rule 41 of Central Civil Services (Pension) Rules, 1972 and "Guiding principles for grant of Compassionate Allowance" formulated by the Government of India in Office Memorandum dated 22nd April, 1940. The said office memorandum is reproduced as under:

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 occasional 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.]

This Court, in view of the said office memorandum and the guiding principles also held that it is not only the misconduct which is the main reason for the Petitioner's dismissal that has to be considered but the entire service record of the Petitioner has to be considered, to come to the conclusion whether the delinquent officer is entitled to compassionate allowance or not.

13. In our view, compassionate allowance is not a matter of right. In cases where a person is dismissed or removed not on account of serious misconduct relating to service conditions and the circumstances also show that he has no means of livelihood or to survive, the authorities may consider him giving a compassionate pension, if the case deserves a special consideration, having regard to the entire service record. The Petitioner in the present case has been dismissed on account of embezzlement of Government funds, a serious misconduct relating to the service. Besides his entire service record has also not been satisfactory, as he had been habitually absenting, resulting in being dealt with leaves without pay. The Petitioner has been litigating right from 1984 for

this allowance. As a matter of fact, the Petitioner has been able to survive for 25 years without the compassionate allowance.

14. For the reasons aforesaid mentioned, we do not find any infirmity in the impugned order of the Tribunal dated 29th November, 2007.

15. Hence the writ petition is dismissed.