

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE V.G.ARUN

FRIDAY, THE 11TH DAY OF FEBRUARY 2022 / 22ND MAGHA, 1943

WP(C) NO. 1214 OF 2020

PETITIONER/S:

S.SURENDRAN,
AGED 70 YEARS
(EX.CONSTABLE NO.7206502),CISF/NFL,NAYA NANGAL
(P.O.), NOW RESIDING AT AMPADI,KOTHAPURAM,KARALI JN.
(P.O.), KOLLAM - 680 521,PH.9497130884.

BY ADVS.
GIRIJA K GOPAL
SMT.K.N.VIGY

RESPONDENT/S:

- 1 THE DIRECTOR GENERAL OF CENTRAL INDUSTRIAL SECURITY
FORCE CISF HQ,
BLOCK NO.13, CGO COMPLEX, LODHI ROAD, NEW DELHI -
110 003.
- 2 THE INSPECTOR GENERAL/NORTH SECTOR CISF NORTH SECTOR
HEAD QUARTERS CISF CAMPUS,
MAHIPALPUR, NEW DELHI - 110 087.

BY ADV SMT.G.MAHESWARY

OTHER PRESENT:

ASGI ADV.S.MANU

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
13.1.2022, THE COURT ON 11.2.2022 DELIVERED THE FOLLOWING:

V.G.ARUN, J.

W.P(C).No. 1214 of 2020

Dated this the 11th day of February, 2022

JUDGMENT

The petitioner was appointed as Security Guard in the Central Industrial Security Force (CISF) on 5.8.1972. While he was posted at the CISF Unit, National Fertilizers Limited, Nangal, petitioner availed earned leave for 11 days from 16.8.1983 to 8.9.1983, followed by half-pay leave w.e.f 9.9.1983 to 19.9.1983. The petitioner failed to report back for duty on 20.9.1983, after expiry of his leave period and kept on overstaying his leave. This resulted in disciplinary proceedings being initiated against the petitioner and the petitioner being removed from service *vide* Exhibit R2(a) order dated 3.7.1984. Thereafter, petitioner was issued with Exhibit P1 discharge certificate dated 12.12.1984. According to the petitioner, he was not served with either a copy of Exhibit R2(a) or any speaking order, disclosing the reason for his discharge. Exhibits P2 to P6 evidences the efforts taken by the petitioner and his wife for obtaining copy of the proceedings by which he was discharged. Having failed in the attempt, petitioner preferred Exhibit P7 representation dated 4.4.2019, requesting to sanction pension and other service benefits.

By Exhibit P9 dated 27.4.2019, the request was rejected on the ground that a Government servant removed from service is not entitled for pension, gratuity or other terminal benefits. Thereupon, petitioner submitted Exhibit P10 representation on 6.7.2019, requesting to grant him compassionate allowance under Rule 41 of the CCS Pension Rules, read with Government of India instructions on the subject. In the absence of any response to Exhibit P10, petitioner preferred W.P(C).No.21751 of 2019 before this Court, leading to Exhibit P11 judgment, directing the 1st respondent to dispose of Exhibit P10 representation in accordance with law. The petitioner was also given liberty to place any material, including binding judgments, before the 1st respondent, while the issue is considered. The respondent issued Exhibit P12 order in purported compliance of Exhibit P11 judgment, rejecting the prayer for compassionate allowance. Aggrieved, the writ petition is filed.

2. Heard Adv.Girija K.Gopal for the petitioner and Advocate G.Maheswary for the Central Government.

3. Learned Counsel for the petitioner contended that Exhibit P12 is liable to be set aside for the sole reason that the order was passed without considering the decision of the Apex Court in ***Mahinder Dutt Sharma v. Union of India and Others*** [(2014) 11 SCC 684]. Attention is drawn to the detailed discussion in ***Mahinder***

Dutt Sharma (supra) and the distinct considerations laid down for determining a claim under Rule 41. It is contended that Rule 41 is intended to mitigate the misery of a deserving Government servant, irrespective of whether such person was dismissed or removed from service. Reliance is placed on the Government of India Decision No.3-X-R dated 3.5.1934 to contend that, whether the Government servant has submitted an application for compassionate allowance or not, on receipt of the order of the competent authority removing that person from service, the Head of Office is bound to consider whether it is a fit case for recommending grant of compassionate allowance and, if the finding is in the affirmative, to fill in the application for pension and send it to the Accounts Officer concerned for report on the title of pension. Reference is made to Exhibit R2(b) assessment of financial status of the petitioner to submit that the respondents have admitted the fact that the petitioner is not having any personal income. It is contended that the petitioner's wife and sons being employed is no reason for the respondents to assume that the petitioner is not facing financial stringency.

4. Learned Central Government Counsel submitted that compassionate allowance under Rule 41(1) cannot be claimed as a matter of right. The discretion to decide which are the cases deserving special consideration is vested with the authority and the

authority having exercised that discretion, this Court is not expected to interfere by invoking the extraordinary jurisdiction. On enquiry it was revealed that, the petitioner's wife and two sons are gainfully employed and the overall financial condition of the family is stable. It is contended that the decision in ***Mahinder Dutt Sharma*** (supra) does not apply to the facts of the case. Moreover, the writ petition is liable to be dismissed on the ground of delay since, the claim for compassionate allowance is raised in 2019, after 35 years of petitioner's dismissal.

5. I find the objection on the ground of delay to be unsustainable in the light of Exhibit P11 judgment, wherein this Court directed the petitioner's request for compassionate allowance to be considered in accordance with law. Further, even in Exhibit P12 order rejecting the request, delay is not taken as a reason.

6. Rule 41 of the CCS Pension Rules, 1972, based on which the petitioner is staking claim for compassionate allowance, 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 per mensem."

A close scrutiny of the provision shows that, even though a Government servant dismissed or removed from service is not entitled for pension and gratuity, the competent authority can, in cases deserving special consideration, sanction compassionate allowance. For granting the benefit, 'the case' of the Government servant should be one deserving special consideration. The thrust is on the words 'case deserving special consideration'. In ***Mahindar Dutt Sharma*** (supra) the Apex Court opined that for deciding upon the special circumstance, there has to be some mitigating factor which makes the competent authority to hold that, even though the person was dismissed or removed from service, he ought to be given compassionate allowance. The court indicated the manner in which the process of evaluation should be undertaken and the distinct considerations that would disentitle a Government servant from

being granted compassionate allowance. Being apposite, relevant portion of the judgment in **Mahinder Dutt Sharma** (supra) is extracted hereunder;

“14. In our considered view, the determination of a claim based under Rule 41 of the Pension Rules, 1972 will necessarily have to be sieved through an evaluation based on a series of distinct considerations, some of which are illustratively being expressed hereunder:

(i) Was the act of the delinquent, which resulted in the infliction of the punishment of dismissal or removal from service, an act of moral turpitude? An act of moral turpitude is an act which has an inherent quality of baseness, vileness or depravity with respect to a concerned person's duty towards another, or to the society in general. In criminal law, the phrase is used generally to describe a conduct which is contrary to community standards of justice, honesty and good morals. Any debauched, degenerate or evil behaviour would fall in this classification.

(ii) Was the act of the delinquent, which resulted in the infliction of the punishment of dismissal or removal from service, an act of dishonesty towards his employer? Such an action of dishonesty would emerge from a behaviour which is untrustworthy, deceitful and insincere, resulting in prejudice to the interest of the employer. This could emerge from an unscrupulous, untrustworthy and crooked behaviour, which aims at cheating the employer. Such an act may or may not be aimed at personal gains. It may be aimed at benefiting a third party to the prejudice of the employer.

(iii) Was the act of the delinquent, which resulted in the infliction of the punishment of dismissal or removal from service, an act designed for personal gains from the employer? This would involve acts of corruption, fraud or personal profiteering, through impermissible means by misusing the responsibility bestowed in an employee by an employer. And would include acts of double-dealing or racketeering, or the like. Such an act may or may not be aimed at causing loss to the employer. The benefit of the delinquent could be at the peril and prejudice of a third party.

(iv) Was the act of the delinquent, which resulted in the infliction of the punishment of dismissal or removal from service, aimed at deliberately harming a third-party interest? Situations hereunder would emerge out of acts of disservice causing damage, loss, prejudice or even anguish to third parties, on account of misuse of the employee's authority to control, regulate or administer activities of third parties. Actions of dealing with similar issues differently, or in an iniquitous manner, by adopting double standards or by foul play, would fall in this category.

(v) Was the act of the delinquent, which resulted in the infliction of the punishment of dismissal or removal from service, otherwise unacceptable, for the conferment of the benefits flowing out of Rule 41 of the Pension Rules, 1972? Illustratively, any action which is considered as depraved, perverted, wicked, treacherous or the like, as would disentitle an employee for such compassionate consideration."

7. It may be pertinent to note that in **Mahinder Dutt Sharma**

(supra) also the Government servant was dismissed from service for unauthorised absence. Dilating on that aspect the Apex Court made the following observations;

“17.....Even though the charge proved against the appellant pertains to his unauthorised and wilful 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.”

8. Here also the petitioner was dismissed from service for unauthorised absence, which does not fall under any of the illustrations in **Mahinder Dutt Sharma** (supra). The petitioner's wife and children being employed cannot, by itself, lead to the conclusion that the the petitioner's case does not deserve special consideration. In this regard, the following observations in Exhibit R2(b) report of assessment assumes relevance:

"...He told both of his sons are married and living independently away from his residence. He further stated that he had undergone five surgeries related to fistula, prostrate, hernia etc. and his health is in poor state. He told he is a dependent of his employed wife and don't have his own income and he has to request his wife for financial assistance to meet his own day to day needs which is embarrassing."

9. Surprisingly, no reference is made to **Mahinder Dutt Sharma** (supra) in Exhibit P12 order, in spite of the judgment having been placed before the authority. Even in the counter affidavit, there is nothing other than a bare statement that the decision in **Mahinder Dutt Sharma** (supra) is not applicable to the facts of the case. The petitioner's entitlement for compassionate allowance being indisputable in the light of **Mahinder Dutt Sharma** (supra), I am compelled to set aside Exhibit P12.

In the result, the writ petition is allowed, Exhibit P12 order is set aside and the 1st respondent is directed to reconsider the petitioner's request for compassionate allowance and pass orders thereon within two months of receipt of a copy of this judgment.

Sd/-
V.G.ARUN, JUDGE

vgs

APPENDIX OF WP(C) 1214/2020

PETITIONER EXHIBITS

- EXHIBIT P1 TRUE COPY OF THE DISCHARGE CERTIFICATE DATED 12/12/1984 ISSUED BY THE ASSISTANT COMMANDANT CISF, NFL NAYA NANGAL, PUNJAB.
- EXHIBIT P2 TRUE COPY OF THE REQUEST DATED 5/12/2018 SUBMITTED BY THE WIFE OF THE PETITIONER TO THE DIG/OPS, CENTRAL PUBLIC INFORMATION OFFICER OF THE CISF DIRECTORATE, 13-CGO COMPLEX, LODHI ROAD, NEW DELHI.
- EXHIBIT P3 TRUE COPY OF THE COMMUNICATION DATED 17/12/2018.
- EXHIBIT P4 TRUE COPY OF THE APPEAL DATED 28/12/2018.
- EXHIBIT P5 TRUE COPY OF THE COMMUNICATION DATED 8/1/2019 ISSUED TO THE PETITIONER'S WIFE BY THE APPELLATE AUTHORITY UNDER THE RTI ACT.
- EXHIBIT P5 (A) ENGLISH TRANSLATION OF EXT.P5.
- EXHIBIT P6 TRUE COPY OF THE REPRESENTATION DATED 21/1/2019 TO THE CENTRAL INFORMATION COMMISSION, BABA GANG MATH MARG, MUNIRKA, NEW DELHI - 110 067.
- EXHIBIT P7 TRUE COPY OF THE REPRESENTATION DATED 4/4/2019 SUBMITTED BEFORE THE 1ST RESPONDENT.
- EXHIBIT P8 TRUE COPY OF THE REPRESENTATION DATED 30/4/2019.
- EXHIBIT P9 TRUE COPY OF THE COMMUNICATION DATED 27/4/2019 ISSUED BY THE DEPUTY COMMANDANT CISF UNIT NFL NANGAL (PB) TO THE AIG (WELFARE) CISF HEAD QUARTERS, NEW DELHI.
- EXHIBIT P10 TRUE COPY OF THE REPRESENTATION DATED

6/7/2019 SUBMITTED BY THE PETITIONER
BEFORE THE 1ST RESPONDENT FOR GRANT OF
COMPASSIONATE ALLOWANCE.

EXHIBIT P11 A TRUE COPY OF THE JUDGMENT IN WP(C)
21751/2019 DATED 19/8/2019.

EXHIBIT P12 A TRUE COPY OF THE ORDER NO.V
14013/245/2018/L&R 1017 DATED 21/11/2019
ISSUED BY THE FIRST RESPONDENT.

RESPONDENT EXHIBITS

EXHIBIT R2 A TRUE COPY OF THEFINAL ORDER NO-V-
15014/84/AST/SS/ DATED 30.8.1984 WITH
READABLE COPY.

EXHIBIT R2 B TRUE COPY OF THE ENQUIRT REPORT DATED
20.9.2019 SUBMITTED BY THE CONCERNED
OFFICER