

***Before Rajiv Sharma & Kuldeep Singh, JJ.***

**S.C. SHARMA—Petitioner**

*versus*

**UNION OF INDIA AND OTHERS—Respondents**

**CWP No.6582 of 2019**

March 19, 2019

***Central Civil Services (Pension) Rules, 1972— RI. 41— Compassionate Allowance—Cannot be claimed as a matter of right— Authorities to sanction allowance if case deserves special consideration—Pensionary benefits denied due to dismissal of service on account of misconduct—Previous service forfeited-misconduct reflects disloyalty and dishonesty—Hence unpardonable—Petition dismissed.***

*Held that*, perusal of said Rule which is applicable to applicant-petitioner shows that in case, an employee is dismissed or removed from service, if the case is deserving of special consideration, the authority can sanction 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.

(Para 7)

*Further held that*, on account of dismissal from service, his past service is forfeited and he was not granted pensionary benefits. The authorities have taken the view that poverty is not essential condition precedent to the grant of compassionate allowance. The authorities have considered his mis-conduct. Applicant-petitioner was a Principal in the school. The authorities are also of the view that mis-conduct of applicant- petitioner is of grave nature reflecting disloyalty to his duty and organization and, therefore, unpardonable. It also held that it tantamount to dishonesty towards his duties.

(Para 10)

*Further held that*, Tribunal or this Court cannot sit on the judgment of authorities. Compassionate allowance under Rule 41 (supra) cannot be claimed as a matter of right. It is for authorities to consider. The authorities have considered the same and decided not to grant compassionate allowance to him. Therefore, there is no illegality or infirmity in impugned order dated 9.10.2018 (Annexure-P-4), passed by Tribunal, declining to interfere in the same. Consequently, we do

not find any merit in the present petition and same is accordingly dismissed.

(Para 11)

Petitioner in person.

### **KULDIP SINGH, J.**

(1) Petitioner-applicant has sought quashing of impugned order dated 9.10.2018 (Annexure-P-4), vide which his prayer for grant of compassionate allowance under Rule 41 of Central Civil Services (Pension) Rules, 1972, (hereinafter referred to as 'the Pension Rules, 1972') has been dismissed by respondents. Applicant-petitioner also seeks appropriate directions to respondents to comply with orders dated 5.1.2017 (Annexure-A-2) and 20.11.2015 (Annexure-A-3), passed by Central Administrative Tribunal, Chandigarh Bench, Chandigarh, (hereinafter referred to as 'the Tribunal'), seeking post retiral benefits for his entire service.

(2) The undisputed facts are that applicant-petitioner was appointed as Principal in Kendriya Vidyalaya Sangathan (hereinafter referred to as 'KVS') on 18.11.1986. He unauthorizedly absented himself from duty w.e.f. 10.3.1997 onwards and left for foreign country without obtaining no objection certificate from competent authority. Since he did not respond despite public notices dated 12.7.1997 and 1.2.1999, published in daily newspaper and failed to report on duty, therefore, he was dismissed from service, vide order dated 5.5.1999. Said order was challenged by applicant petitioner before tribunal in OA No.124/HR/200. The tribunal, vide order dated 27.11.2002, directed respondents to reinstate him in service with all consequential benefits and gave liberty to KVS to initiate disciplinary proceedings against him from the stage of serving of chargesheet. Writ petition against said order was upheld by the High Court on 21.2.2003. Consequently, applicant-petitioner was reinstated in service, vide order dated 13.12.2004. The KVS initiated departmental proceedings by issuing chargesheet on 9.3.2005 on the charge of leaving the station without obtaining no objection certificate from the competent authority as well as remaining unauthorizedly absent from duty w.e.f. 10.3.1997 to 19.5.1997. He was also chargesheeted for failing to report at his new headquarters during the period of suspension.

(3) After inquiry, charges were proved and dismissal order was passed. The entire period of his unauthorized absence from 10.3.1997 to 27.8.2005 was treated as dies-non. Appeal against said order was

rejected. Applicant-petitioner approached the Tribunal against said order, which also dismissed his application on 14.12.2010. The orders were upheld by the High Court as well as Apex Court and has become final after the dismissal of Slip on 2.1.2013. Applicant-petitioner moved application on 3.3.2014 for grant of pension on compassionate ground under Rule, 1972, which was rejected, vide order dated 12.3.2014. Applicant-petitioner filed OA No. 60/740/2014 for granting compassionate allowance, in which order dated 27.5.2015 and final order dated 20.11.2015 was passed by Tribunal directing respondents to reconsider the case of the applicant-petitioner and pass a well reasoned speaking order. In compliance of said order, impugned order dated 26.11.2015 was passed, which was conveyed to applicant-petitioner, vide letter dated 5.4.2016. Applicant-petitioner again approached Tribunal, which again quashed the said order on 5.1.2017 directing respondents to pass fresh orders in the light of order dated 20.11.2015 within a period of three weeks, vide order dated 30.1.2017.

(4) According to applicant-petitioner, he is 69 years old, a diabetic patient and is suffering from multiple ailments. He was dismissed from service on 5.5.1999 on clumsy grounds and had to fight the litigation. He had meritorious services on 5.5.1999 on clumsy grounds and had to fight the litigation. He had meritorious services in KVS, which had been ignored. Therefore, he is entitled to compassionate allowance under Rule 41 of the Pension Rules, 1972.

(5) We have heard the learned counsel for parties and have also carefully gone through case file.

(6) Rule 41 of the Pension Rules, 1972, under which compassionate allowance is claimed, is reproduced 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 compensation pension.'

(7) Perusal of said Rule which is applicable to applicant-petitioner shows that in case, an employee is dismissed or removed from service, if the case is deserving of special consideration, the authority can sanction 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.

(8) In this case, applicant-petitioner was dismissed from service for absenting himself from duty and leaving for foreign country without obtaining no objection certificate from competent authority. The claim of applicant-petitioner is that he had meritorious service which should have been considered. Applicant-petitioner has further stated that orders of Tribunal have not been complied with and same orders have been passed without giving sufficient reasons. Therefore, order dated 20.11.2015, passed by Tribunal, has not been complied with.

(9) Perusal of impugned order dated 30.1.2017 shows that authorities considered the case of applicant-petitioner. The allegations against applicant-petitioner were absence from duty and leaving for foreign country without obtaining no objection certificate from competent authority. His financial condition was also considered. The operative part of said order is reproduced as under :-

'The matter for grant of compassionate allowance to Shri S.C. Sharma is also re-examined and observed that it has been stipulated in Government of India's Decisions Para 1 below Rule 41 of the CCS (Pension) Rules, 1972, "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 grant of compassionate allowance. Poverty is not essential condition precedent to grant of compassionate allowance". In the instant case, being a responsible officer and Head of the Institution while in service, Shri S.C. Sharma left the Vidyalaya and the Country without procuring the permission from the Authority of KVS. He did not bother to respond to any of the communication sent to him in this regard. The misconduct committed by Shri S.C. Sharma was of grave nature reflecting disloyalty to his duty and Organization and, therefore, unpardonable. Such an act on his part was tantamount to his dishonesty towards his duties, whereupon a major penalty of dismissal from service was imposed upon him. His appeal and revision petition were duly considered and rejected by the concerned Authorities for being devoid of merits. A such, Shri S.C. Sharma, Ex-Principal is not entitled for compassionate allowance in terms of the aforesaid provisions of GOI."

(10) In this case, on account of dismissal from service, his past service is forfeited and he was not granted pensionary benefits. The authorities have taken the view that poverty is not essential condition precedent to the grant of compassionate allowance. The authorities have considered his mis-conduct. Applicant-petitioner was a Principal in the school. The authorities are also of the view that mis-conduct of applicant-petitioner is of grave nature reflecting disloyalty to his duty and organization and, therefore, unpardonable. It also held that it tantamount to dishonesty towards his duties.

(11) We are of the view that Tribunal or this Court cannot sit on the judgment of authorities. Compassionate allowance under Rule 41 (supra) cannot be claimed as a matter of right. It is for authorities to consider. The authorities have considered the same and decided not to grant compassionate allowance to him. Therefore, there is no illegality or infirmity in impugned order dated 9.10.2018 (Annexure-P-4), passed by Tribunal, declining to interfere in the same. Consequently, we do not find any merit in the present petition and same is accordingly dismissed.

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*Dr. Payel Mehta*