



GAHC010255012014

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THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/1001/2014

KARUNA CHANDRA ROY
S/O LT. KUNJALAL ROY R/O VILL- GAJALGHAT P.O. DEVIPUR P.S. DHOLAI
DIST. CACHAR, ASSAM.

VERSUS

THE UNION OF INDIA and 6 ORS
REP.B Y THE COMMISSIONER AND SECRETARY TO THE MINISTRY OF
DEFENCE

2:THE MINISTRY OF DEFENCE

GOVT OF INDIA
'D' PENSION GRIEVANCE 227 B WING
SENA BHAWAN
NEW DELHI-110011.

3:THE MINISTRY OF HOME AFFAIRS

DEPTT. OF PUBLIC GRIEVANCES AND PENSION ETC. LOK NAYAK
BHAWAN
KHAN MARKET
NEW DELHI- 110003.

4:THE DIRECTOR GENERAL BORDER ROADS
SENA SADAK BHAWAN RING ROAD
DELHI CANTT. NEW DELHI- 110010.

5:THE ADJUTANT GENERAL

ADJUTANT GENERAL BRANCH R and W SECTIION ARMY H.Q. DHD P.O.
NEW DELHI- 110011.



6:THE CHIEF ENGINEER
PROJECT BEACON PIN- 931706
C/O 56 A.P.O.

7:GREE RECORDS

DIGHI CAMP PUNE-400015
MAHARASTRA STATE

Advocate for the Petitioner : MR. S ALAM

Advocate for the Respondent : MR.S C KEYAL

B E F O R E

HON'BLE MR. JUSTICE SANJAY KUMAR MEDHI

Date of hearing & judgment : **18.11.2021**

JUDGMENT & ORDER (ORAL)

Vide an order dated 05.03.2009 issued by the Chief Engineer, BRTF by which the petitioner was removed from service is the subject matter of challenge. While the petitioner has prayed for intervention with the said order, a prayer was also made for a direction to provide all the past services benefit including the pensionary benefit and regularization of the pension.

2. The petitioner was initially appointed in the year, 1987 and was serving as GS-167942 X PNR of 1646 PNR Coy / 760 BRTF. It is the case of the petitioner that he had rendered dedicated service for almost 20 years. On 14.01.2007 he was transferred but immediately thereafter he suffered from some ailments for which he was not able to join his duty. Since, there was no intimation given to the authorities, a proceeding was initiated against him for overstay which had culminated in an order of "Removal from Service" dated 05.03.2009. The case of the petitioner is that the aforesaid proceeding was held *ex parte* whereby he was denied of the opportunity to defend himself for which grave prejudice has been suffered by

3. I have heard Shri A.R. Sikdar, learned counsel for the petitioner whereas the respondents are represented by Shri R.K.D. Choudhury, learned Assistant Solicitor General of India (in short, ASGI).

4. At the outset, the learned counsel for the petitioner has submitted that at the time of filing of the writ petition in the year, 2014 the petitioner was 58 years of age and therefore the scope of maintaining the prayer of reinstatement is not presently there. The learned counsel has therefore submitted that the prayer would be confined to a direction for consideration of grant of Compassionate Allowances, as provided in Rule 41 of the CCS (Pension) Rules. The learned counsel for the petitioner has submitted that as per his knowledge no such exercise has been undertaken and taking into consideration the long period of unblemished service and also the fact that it was a solitary incident for which he has been removed from service, his case would fall within the ambit of the Rule 41.

5. The learned counsel for the petitioner further submits that in exercise of powers under Article 226 of the Constitution of India, the relief can be moulded in the facts and circumstances of the case.

6. *Per contra*, Shri R.K.D. Choudhury, the learned ASGI submits that the proceeding was had to be conducted *ex parte* as there was no response from the petitioner. He has further submitted that though the period of overstay was from 14.06.2007 till 28.03.2008, till the date of removal i.e. 05.03.2009, the petitioner did not join his service without any explanation. The learned State Counsel fairly submits that on perusal of the records, no blemish has been found in the service career of the petitioner on earlier occasions. However, he additionally submits that an exercise under Rule 41 was already undertaken which resultant in a decision that the petitioner is not entitled to Compassionate Allowances.

7. Shri Choudhury, the learned ASGI accordingly submits that no relief can be granted to the petitioner in the present case and in the present stage.

8. The rival contentions of the learned counsel have been duly considered and the materials placed before this Court have been carefully examined.

9. Since the present relief is confining to a claim for Compassionate Allowances under Rule 41 of the Rules, it would be convenient to refer to the said Rules, which is extracted hereinbelow-

“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 thousand five hundred) per mensem.”

10. The Hon'ble Supreme Court in the case of **Mahinder Dutta Sharma Vs. Union**, reported in **(2014) 11 SCC 684** while dealing with the aforesaid provision of law has laid down as follows:

“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:

14.1. (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.

14.2. (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.

14.3. (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.

14.4. (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.

14.5. (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.

15. 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 unblemished, keeping in mind unblemished variability of human environment. But surely where the delinquency levelled and proved against the punished employee, does not fall in the realm of misdemeanour illustratively categorised 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."

11. So far as the power of the High Court in moulding relief under Article 226 of the Constitution of India is concerned, one may gainfully refer to the decision of the Hon'ble Supreme Court in the ***B.C. Chaturvedi v. Union of India***, reported in **(1995) 6 SCC 749**, Hon'ble Mr. Justice B.L. Hansaria in his concurring Judgment has laid down as follows:

"23. It deserves to be pointed out that the mere fact that there is no provision parallel to Article 142 relating to the High Courts, can be no ground to think that they have not to do complete justice, and if moulding of relief would do complete justice between the parties, the same cannot be ordered. Absence of provision like Article 142 is not material, according to me. This may be illustrated by pointing out that despite there being no provision in the Constitution parallel to Article 137 conferring power of review on the High Court, this Court held as early as 1961 in Shivdeo Singh case that the High Courts too can exercise power of review, which inheres in every court of plenary jurisdiction. I would say that power to do complete justice also inheres in every court, not to speak of a court of plenary jurisdiction like a High Court. Of course, this power is not as wide as which this Court has under Article 142. That, however, is a different matter."



12. A bare reading of the Rules read with the interpretation of the Hon'ble Supreme Court mentioned above would reveal that the substantive portion is forfeiture of pension and gratuity by a Government Servant, who is dismissed or removed from service. However, the proviso to the Rule 41(1) gives a power of jurisdiction to the authority to sanction of Compassionate Allowance at the prescribed rate on being satisfied that the case deserves special consideration. What would constitute special consideration do not define would depend on the facts and circumstances of the case and the in the opinion of this Court, a long period of unblemished service may also be one of special consideration. Though, an exercise under the aforesaid Section of law has already been undertaken, considering the fact that the principal prayer of the petition is not liable to be considered at this stage due to efflux of time, the interest of justice would be met if the matter is remanded back to the authorities for a fresh consideration under Rule 41 of the Rules. As indicated above, the fact of rendering a long period of service would a relevant factor which may be taken into consideration while undertaking the aforesaid exercise.

13. The aforesaid exercise, as directed above, be initiated and completed as expeditiously as possible and preferably within an outer limit of 60 (sixty) days from the date of receipt of a certified copy of this order.

14. It is needless to state that the outcome of such consideration be informed to the petitioner by way of a speaking order.

15. The writ petition is accordingly disposed of.

JUDGE

Comparing Assistant