



IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH

225

CWP-23885-2019  
Date of decision: 10.03.2025

BHUPINDER SINGH .....Petitioner

VERSUS

DIRECTOR GENERAL, CRPF AND OTHERS .....Respondents

**CORAM : HON'BLE MR. JUSTICE VINOD S. BHARDWAJ**

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Present: - Mr. Rajeev Anand, Advocate with  
Mr. Aryan Singh, Advocate  
for the petitioner.

Ms. Amrita Singh, Advocate  
for the respondents-Union of India.

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**VINOD S. BHARDWAJ, J. (Oral)**

Challenge in the present writ petition is to the order of May, 2019 whereby the claim of the petitioner for compassionate allowance has been rejected by the respondents.

2. Learned Counsel appearing on behalf of the petitioner contends that the petitioner was removed from the service on account of certain proven charges of misconduct after having rendered 17 years and 05 months of service. He contends that Rule 41 of the Central Civil Services (Pension) Rules, 1972 (hereinafter referred to as Pension Rules, 1972) provide for release of compassionate allowance in favour of an employee who is dismissed or removed from service. The relevant extract thereof reads thus:-

***“41. Compassionate allowance:-***

*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-third of pension or gratuity or which would have been admissible to him if he had retired on compensation pension.*

*(2) A compassionate allowance sanctioned under the provision to sub-rule(1) shall not be less than {amount of Rupees (three hundred and sixty (five) per mensem}”*

3. He submits that the aforesaid Rule 41 of the Pension Rules, 1972 has been interpreted by the Hon'ble Supreme Court in the matter of **“Mahinder Dutt Sharma versus Union of India and others”** reported as **AIR 2014 Supreme Court 2009**. The relevant extract thereof reads thus:-

*“13. We are of the considered view that the adjudication by the courts below with reference to Rule 41 of the Pension Rules, 1972 is clearly misdirected. The Rule itself contemplates payment of compassionate allowance to an employee who has been dismissed or removed from service. Under the punishment rules, the above punishments are of the severest magnitude. These punishments can be inflicted only for an act of extreme wrongdoing. It is on account of such wrongdoing, that the employee concerned has already been subjected to the severest form of punishment. Sometimes even for being incorrigible. Despite that, the Rule contemplates sanction of a compassionate allowance of up to two-thirds of the pension or gratuity (or both), which would have been*

*drawn by the punished employee if he had retired on compassionate pension. The entire consideration up to the present juncture, by the courts below, is directly or indirectly aimed at determining whether the delinquency committed by the appellant was sufficient and appropriate for the infliction of the punishment of dismissal from service. This determination is relevant for examining the veracity of the punishment order itself. That, however, is not the scope of the exercise contemplated in the present consideration. Insofar as the determination of the admissibility of the benefits contemplated under Rule 41 of the Pension Rules, 1972 is concerned, the same has to be by accepting that the delinquency committed by the punished employee was of a magnitude which is sufficient for the imposition of the most severe punishments. As in the present case, unauthorised and wilful absence of the appellant for a period of 320 days has resulted in the passing of the order of dismissal from service. The punishment inflicted on the appellant has been found to be legitimate and genuine as also commensurate to the delinquency of the appellant. The issue now is the evaluation of claim of the punished employee under Rule 41 of the Pension Rules, 1972.*

*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.*

4. Referring to the above, it is argued that the claim for seeking compassionate allowance cannot be declined solely on the basis of gravity of the allegations/charges levied against the petitioner leading to dismissal from service. He contends that the Hon'ble Supreme Court has specifically held that the gravity of the charge leading to dismissal/removal of a person from service has already resulted in the infliction of punishment of being dismissed from service and that the case for compassionate allowance has to be considered on different parameters, some of which have been elucidated by the Hon'ble Supreme Court in Para No. 14 of the aforesaid judgment. It is contended that notwithstanding the specific guidelines laid down by Hon'ble the Supreme Court, the respondent authorities have passed a ministerial order of declining compassionate allowance to the petitioner by reiterating the gravity of allegations leveled against him. He thus contends that the order suffers from non-appreciation of the basic terms of law, the intent behind Rule 41 and the interpretation of the Hon'ble Supreme Court in this regards.

5. Counsel for the respondents-Union of India reiterates that there was a serious dereliction of duty on part of the petitioner and the charge reflects that the petitioner left his weapon unattended in a terrorist prone area, which could have severally compromised the security of other personnel. She contends that the conduct of the petitioner heightened the possibility of a terrorist attack and no leniency can be shown to the petitioner. She further submits that as per the parameters laid down by the authorities, service of at least 20 years is ought to be rendered by an employee, before his case can be considered for compassionate allowance. She argues that the case of the petitioner would not be at par with Mahender Dutt Sharma (supra) since the said person had an unblemished record of more than 24 years and there had only been 01 disciplinary proceeding against him. Other than that, the service record showed a good and satisfactory conduct to the satisfaction of the employer, whereas in the present case, the petitioner has failed to show himself as a disciplined member of the forces and there have been numerous instances of his being in breach of the service rules and the discipline of the unit.

6. The argument with respect to a minimum period of service to be rendered before a compassionate allowance can be claimed for, is responded to by the Counsel for the petitioner by adverting to Rule 49 of the Pension Rules, 1972 as applicable to the present petition, as per which 10 years of service is required to be rendered for pension. He contends that the respondents have failed to refer to any statutory rules/regulations or bye-laws on the basis whereof the period of 20 years of service to be mandatorily rendered before a compassionate allowance can be asked for. He contends that a similar provision is applicable in cases where a person voluntarily

seeks retirement and becomes entitled to claim the pensionary benefits. He contends that the said rules cannot be supplanted into Rule 41.

7. While responding to the argument of the respondent that the petitioner has continuous bad record, he refers to Para 10 of the judgment in the matter "***Mahinder Dutt Sharma versus Union of India and others***" (*supra*) which reads thus:-

*10. By an order dated 25-4-2005, the Deputy Commissioner of Police, IInd Battation, Delhi Armed Police, Delhi, rejected the prayer made by the appellant for the grant of compassionate allowance. The operative part of the order dated 25-4-2005, rejecting the appellant's claim for compassionate allowance is being extracted hereunder:*

*"4. As regards your claim for compassionate allowance, you do not have unblemished record because you have been found absent on several occasions and your period was treated as 'leave without pay'. You were also censured during the tenure of your service and certain other punishments also exist in your service record. Hence, due to indifferent service record and the facts of the case no compassionate allowance can be granted."*

8. Referring to the above, he contends that even in the said case the order of the competent authority recorded several prior instances of the employee having absented without leave and censure having been awarded to him, apart from other punishments that existed in the service record. He thus contends that the submission about the petitioner in Mahender Dutt Sharma having an unblemished career record are not based upon correct understanding of the facts.

9. I have heard learned Counsel appearing on behalf of the respective parties and have also gone through the documents available on record including the impugned order that have been passed by the competent authority on an application submitted by the petitioner for grant of compassionate allowance. The following reasons have been cited by the respondents for denial of the compassionate allowance. The relevant extract thereof reads thus:-

*“AND WHEREAS, I have carefully gone through the DE proceedings, Court order dated 31.10.2018, records relevant to the case vis-à-vis averments of the petitioner and following have merged:-*

*a) No. 971441817 CT/GD Bhupender Singh was posted in G-Coy of 96 Bn. G-Coy of 96 Bn was assigned active duty in highly sensitive and militancy prone area of Chittisinghpura of Distt. Anantnag (J&K). On 11.3.2015, at about 1830 hours, No. 971441817 CT/GD Bhupender Singh deserted Jawanpora out-post, Mattan, Distt. Anantnag (J&K) and left his personal weapon Butt NO. 496, Body No. 16618422, Insas Rifle alongwith 3 magazines and 60 live rounds unattended in the lines carelessly and compromised the security and put the life of his counterparts in extreme danger.*

*b) A DE was initiated against him vide memorandum of charges dated 13.6.2015. He was given opportunity to participate in the enquiry by the IO, but he did not appear before the I.O. Hence, the DE was conducted ex-parte.*

*c) The charges framed under Article-I to V were held as proved. After completion of DE, he was awarded penalty of "Dismissal from service" wef 1.1.2016 vide Comdt-96 Bn, CRPF order dated 1.1.2016. His appeal,*

*revision petition and petition to SDG were considered but rejected by the respective authority.*

*d) The petitioner is himself responsible for his present condition i.e. financial hardship etc.*

*e) The petitioner is habitual of remaining absent from duty. Hence, averment of the petitioner that his performance remained satisfactory and he had an unblemished service record is not acceptable.*

*f) In compliance of Court order dated 31.10.2018 issued by the Hon'ble High Court of Punjab and Haryana, at Chandigarh, the representation dated 11.4.2018 of the petitioner has been examined. The petitioner does not deserve any special consideration for grant of compassionate allowance as the case titled Mahinder Dutt vs Union of India wherein judgment has been passed by the Supreme Court of India on 11.4.2014 is related to absence from duty for 320 days in r/o CT Mahinder Dutt Sharma of 2nd Batalion, Delhi Armed Police, Delhi who had put in more than 24 years of unblemished service and he was granted 34 good entries. Whereas in the instant case, petitioner who was posted in a sensitive area of Jammu and Kashmir committed act of grave misconduct in that on 11.3.2015, he deserted Jawanpora out-post, Mattan, Distt. Anantnag (J&K) of G-f 96 Bn and left his Insas Rifle 3 magazines and 60 live rounds unattended in lines carelessly and compromised the camp security and the security of personnel of his Coy. Thus, the nature of offence committed by the petitioner is different from the case titled Mahinder Dutt vs UOI. Hence, the plea of the petitioner to allow him Compassionate allowance is not tenable.g) Keeping in view the gravity of misconduct committed by Ex-CT/GD Bhupender Singh, his representation dated 11.4.2018 for*

*grant of Compassionate Allowance is liable to be rejected being devoid of merits.”*

10. A perusal of the same shows that the reasons which found basis for rejection of a claim for compassionate allowance under Rule 41 are in relation to the misconduct itself. Invariably, the said considerations for denial of benefit of compassionate allowance under Rule 41 have been already held to be bad by the Hon’ble Supreme Court in the judgment of ***Mahinder Dutt Sharma (supra)***. I find that the impugned order does not conform to the guidelines prescribed in ***Mahinder Dutt Sharma (supra)***.

11. Consequently, the present writ petition is allowed and the impugned order of May, 2019 (Annexure P-6) appended alongwith the present writ petition is set aside. The matter is remanded and the respondents are accordingly directed to pass a fresh order with respect to entitlement of the petitioner for grant of compassionate allowance, after dealing with the parameters/guidelines laid down by the Hon’ble Supreme Court in the matter of ***“Mahinder Dutt Sharma (supra,)*** for grant of compassionate allowance.

12. Let the needful be done within a period of three months of receipt of certified copy of this order and on granting of opportunity of hearing to the petitioner, if so prescribed.

(VINOD S. BHARDWAJ)  
JUDGE

MARCH 10, 2025

*Vishal Sharma*

Whether speaking/reasoned : Yes/No  
Whether Reportable : Yes/No