



2024:DHC:7783-DB



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

*Reserved on: 1 October 2024
Pronounced on: 8 October 2024*

+ W.P.(C) 5687/2024
SMT USHA DEVI

.....Petitioner

Through: Ms. Sriparna Chatterjee and
Mr. Soumitra Chatterjee, Advs.

versus

UNION OF INDIA AND ANR

.....Respondents

Through: Mr. Manish Kumar, Sr. Panel
Counsel

CORAM:

HON'BLE MR. JUSTICE C. HARI SHANKAR

HON'BLE DR. JUSTICE SUDHIR KUMAR JAIN

JUDGMENT

08.10.20241

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C. HARI SHANKAR, J.

1. The petitioner is the wife of one Pappu, who was working as a Safai Karamchari in a subordinate office of the Ministry of Defence¹ since 1976. Pappu was regularized in 1980. According to the petitioner, Pappu was suffering from psychological issues and was prone to leaving her and her children alone at home for days together, during which period the petitioner remained unaware of his whereabouts. One day, in 1997, it is alleged that Pappu left home, purportedly for office, but never returned.



2. In 1999, the petitioner claims to have come to learn through a third party that Pappu had expired in Pune in 1998. She also obtained a death certificate of Pappu from the local authorities in Pune, which she submitted to Pappu's office. Thereafter, the petitioner claims to have visited Pappu's office on several occasions, seeking grant of compassionate allowance under Rule 41² of the Central Civil Services (Pension) Rules 1972³. The petitioner asserts that Pappu had left behind the petitioner, two sons and two daughters. Both the sons of Pappu are unemployed. The petitioner claims to have been working as a domestic help but was unable to continue to do so owing to her frail health and age. According to the petition, the petitioner is on the verge of starvation. Both her daughters are married and unemployed. The petitioner claims to be living below the poverty line. A BPL⁴ certificate issued by the competent authority has also been filed with the writ petition.

3. After having visited the respondents for days on end, the petitioner moved an application under the Right to Information Act, 2005 enquiring about Pappu. The response received by the petitioner disclosed that Pappu had been dismissed from service, consequent on a disciplinary enquiry, prior to his death. It is asserted that the petitioner tried to obtain the records of the disciplinary proceedings

¹ "the respondents", hereinafter

² **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.

³ the CCS (Pension) Rules



from the respondents but was informed that they had been weeded out. She was, however, provided a copy of the chargesheet dated 18 December 1995 issued to Pappu and the penalty order dated 25 September 1997 whereby he had been dismissed from service.

4. From these documents, the petitioner came to learn that Pappu had been alleged to be absent from duty without authorisation from 5 August 1991 to 21 August 1991, 27 April 1994 to 10 October 1994 and 3 July 1995 to 8 July 1996. He had earlier been punished for remaining unauthorisedly absent from duty *vide* orders dated 18 December 1992 and 24 April 1995. For the last period 3 July 1995 to 8 July 1996, after having remained away from duty without authorisation, Pappu submitted a leave application along with certain documents indicating that he had been undergoing medical treatment. As he was found to be a person who was habitually absent from duty, Pappu was dismissed from service by order dated 25 September 1997.

5. On 30 November 2015, the petitioner represented to Respondent 2, seeking compassionate allowance. The office responded on 14 March 2016, rejecting the petitioner's request on the ground that a Government servant who was dismissed from service forfeited his pensionary entitlements.

6. The petitioner finally submitted a representation on 29 January 2019 reiterating her prayers including the request for compassionate allowance. The petitioner's requests were rejected by an order dated

⁴ Below Poverty Line



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18 April 2019, which, as translated, read thus :

“S. NO. A/49333/C.A.O./A-4(A)
MINISTRY OF DEFENCE
GOVERNMENT OF INDIA
OFFICE OF THE JOINT SECRETARY AND CHIEF
ADMINISTRATIVE OFFICER
E BLOCK, DARA SHIKOH MARG
NEW DELHI-110011
18, APRIL 2019

Smt. Usha
W/o Late Shri Pappu
334, Ekta Vihar
R.K. Puram
New Delhi-110066

IN RELATION TO COMPASSIONATE ALLOWANCE OF
SHRI LATE PAPPU SAFAIWALA

1. Reference to your letter dated January 29, 2019
2. It is informed that the case of granting you compassionate allowance was presented to the competent authority. Since the dismissal from service, Late Shri Pappu Safaiwala did not furnish any claim regarding pension eligibility therefore you cannot be given compassionate allowance in accordance with the current rules.

Sd/-
(Gopi Krishnan Menon)
Administrative Officer
C.A.O./A-4(A)”

7. As the petitioner and her family were in dire penury and the petitioner’s state of health was also precarious, and the petitioner’s prayers for being granted compassionate allowance had fallen on deaf ears, the petitioner approached the Central Administrative Tribunal⁵ by way of OA 994/2019 praying that the order dated 18 April 2019 be quashed and set aside and that the petitioner’s claim for compassionate allowance be considered under Rule 41 of the CCS



(Pension) Rules read with the judgment of the Supreme Court in *Mahinder Dutt Sharma v UOI*⁶.

8. The said OA stands dismissed by the learned Tribunal by judgment dated 10 May 2022. The reasoning of the learned Tribunal, as contained in paras 13 to 15 of the impugned judgment, reads thus:

“13. The decision of the Hon'ble Supreme Court in the case of *Mahinder Dutt Sharma*, relied upon by the learned counsel for the applicant is distinguishable as the applicant therein had rendered about 24 years of unblemished service during which he was granted 34 good entries, including 2 commendation rolls awarded by Commissioner of Police, 4 commendation certificates awarded by the Additional Commissioner of Police and 28 commendation cards awarded by the Deputy Commissioner of Police. In the instant case, however, the deceased admittedly had been habitual absentee and prior to his dismissal, he had already been punished twice for remaining unauthorizedly absent from duty. Hence the decision relied upon by the applicant is of no help.

14. *In considering the question of compassionate allowance, 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 not been unblemished, there can seldom be any good case for a compassionate allowance. Poverty is not an essential condition precedent to grant compassionate allowance, but special regard is also occasionally 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 grant of compassionate allowance.*

15. *As has been noted above, the deceased during his service had been habitual absentee and even prior to his dismissal, he had admittedly been imposed punishment twice, hence the case of the applicant for grant of compassionate allowances does not deserve special consideration.”*

(Emphasis supplied)

⁵ “the Tribunal”, hereinafter

⁶ (2014) 11 SCC 684



9. Aggrieved by the decision of the learned Tribunal, the petitioner has approached this Court under Article 226 of the Constitution of India.

10. I have heard Ms. Sriparna Chatterjee, learned counsel for the petitioner and Mr. Manish Kumar, learned counsel for the respondents, at length. Ms. Chatterjee cites *Mahinder Dutt Sharma* and the judgments of Division Benches of this Court in *Govt. of NCT of Delhi v Raj Kumari*⁷ and *Additional Deputy Commissioner of Police v Anju*⁸.

11. Mr. Manish Kumar, learned counsel for the respondents, *per contra*, cites the judgment of another Division Bench of this Court in *Hodil Singh v. Govt. of NCT of Delhi*⁹. From the judgments cited at the bar, it is apparent that while some Division Benches of this Court have allowed the claim for compassionate appointment, others have not. There is, therefore, a cleavage in the approach adopted by different Benches of this Court while dealing with the matter.

12. The authoritative pronouncement of the Supreme Court on the issue is, however, unquestionably, *Mahinder Dutt Sharma* and it is appropriate, therefore, to examine what has been said in that decision.

13. *Mahinder Dutt Sharma*

⁷ 2019 SCC Online Del 7124

⁸ 2011 SCC Online Del 1731

⁹ MANU/DE/3048/2021



13.1 The opening paragraph of *Mahinder Dutt Sharma* discloses that Mahinder Dutt Sharma¹⁰ had remained absent for 320 days from 18 January 1995 to 4 December 1995, without authorization. He was, therefore, served with a notice dated 25 May 1995 requiring him to resume duty, failing which departmental action was threatened. Mahinder neither resumed his duties nor responded to the notice. A second notice was issued to him on 24 August 1995 whereafter departmental proceedings were instituted against him. After the departmental proceedings were instituted, Mahinder resumed duties on 5 December 1995. It was, in these circumstances, that the Delhi Armed Police¹¹, where Mahinder was working, dismissed him from service on 17 May 1996, holding him to be an incorrigible absentee from service without authorisation. The period of 320 days from 18 January 1995 to 4 December 1995 during which Mahinder had remained absent without leave was directed to be treated as leave without pay.

13.2 Mahinder thereafter applied for compassionate allowance under Rule 41 of the CCS (Pension) Rules on 22 March 2005. Paras 7 and 8 of the judgment of the learned Tribunal, which Mahinder petitioned, in the first instance, read thus:

“7. Reading of the above Rules shows that in normal circumstances when a government servant is removed or dismissed from service, he forfeits his past service, including pension and gratuity *but it is only by way of an exception that a proviso is added in Rule 41 which states, the competent authority may, if the case is deserving of special consideration, sanction a*

¹⁰ “Mahinder”, hereinafter

¹¹ “DAP”, hereinafter



compassionate allowance. From this, it would further emerge that compassionate allowance can be given only in exceptional circumstances where case is found to be deserving of special consideration. The person, who has to decide, whether it is a deserving case or not, is the competent authority. Under the Government of India's decisions, poverty is not an essential condition precedent to the grant of a compassionate allowance, but special regard is also occasionally paid to the fact that the officer has a wife and children dependent upon him, though the factor by itself is not, except perhaps in the most exceptional circumstances, sufficient for the grant of a compassionate allowance. In other words, there has to be some mitigating factor which makes the competent authority to come to the conclusion that even though the person has to be dismissed or removed from service but looking at the special mitigating circumstances, the person may be given compassionate allowance. It goes without saying when it is an exception, it cannot be given as matter of course in every case where a government servant has been dismissed or removed, otherwise it will defeat the main rule itself which can never be the intention of the legislature. Provisos are added to deal with a particular situation only to avoid undue hardship to a deserving case where mitigating circumstances are existing.

8. With this background, if the facts of this case are examined, as stated by the applicant in his representation, *I find only three grounds have been taken by the applicant, namely, he had put in 24 years of unblemished service, there were three deaths in the family after he was dismissed and he has become a diabetic patient and is in a pathetic condition.* His ground for condoning the delay was not considered by the appellate authority in the right spirit. Let me examine all these three points. When the applicant had challenged his dismissal and appellate order before the Tribunal in OA No. 3132 of 2002, the question of delay was specifically dealt with by the Tribunal in para 8 (pp. 19 to 22). It was specifically stated as under:

“On this count, we need not prove further in detail. Even if we accept the contention of the applicant to be gospel truth, still he has to explain each day's delay after the period of limitation expired. As per his own showing, all these unfortunate incidents took place before the year 2000. He was also acquitted by the court of competent jurisdiction in the same year. Still he did not deem it necessary to file an appeal within the period of limitation from that date.”

13.3 The learned Tribunal also found that Mahinder had remained on



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leave without pay for 3 days from 30 September 1979 to 2 October 1979, 66 days from 15 October 1979 to 19 December 1979, 19 days from 6 February 1981 to 24 February 1981, 20 days from 29 August 1984 to 17 September 1984, 83 days from 20 September 1984 to 11 December 1984 and 110 days from 3 January 1996 to 22 April 1996. Holding that compassionate allowance was not a matter of right, and could be granted only in exceptional circumstances, the Tribunal held that no such exceptional circumstance existed in Mahinder's case.

13.4 Mahinder challenged the decision of the Tribunal before this Court by way of a writ petition, which was dismissed on 13 November 2006. Aggrieved, Mahinder moved the Supreme Court. The Supreme Court held 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.

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 unlimited, keeping in mind unlimited 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.

16. We shall now venture to apply the aforesaid criterion, to the facts and circumstances of the case in hand, and decipher therefrom, whether the appellant before this Court ought to have been granted compassionate allowance under Rule 41 of the Pension Rules, 1972. The appellant was punished by an order dated 17-5-1996 with dismissal from service. The accusations levelled against the appellant were limited to his unauthorised and wilful absence from service from 18-1-1995 to 4-12-1995 (i.e. for a period of 320 days, 18 hours and 30 minutes). The above order of punishment also notices that not taking stern action against the appellant, would create a bad impression on the new entrants in the



police service. The punishing authority while making a choice of the punishment imposed on the appellant, also recorded, that the appellant's behaviour was incorrigible. Thus viewed, *there can be no doubt, that the order of dismissal from service imposed on the appellant was fully justified.* For determining the question of compassionate allowance, so as to bring it within the realm of the parameters laid down in Rule 41 of the Pension Rules, 1972, it is first necessary to evaluate, whether the wrongdoing alleged against the appellant, was of a nature expressed in para 14 of the instant judgment. Having given our thoughtful consideration on the above aspect of the matter, *we do not find the delinquency for which the appellant was punished, as being one which can be described as an act of moral turpitude, nor can it be concluded that the allegations made against the appellant constituted acts of dishonesty towards his employer. The appellant's behaviour was not one which can be expressed as an act designed for illegitimate personal gains from his employer. The appellant cannot also be stated to have indulged in an activity to harm a third-party interest, based on the authority vested in him, nor was the behaviour of the appellant depraved, perverted, wicked or treacherous. Accordingly, even though the delinquency alleged and proved against the appellant was sufficient for imposition of punishment of dismissal from service, it does not fall in any of the classifications/categories depicted in para 13 of the instant judgment. Therefore, the availability of compassionate consideration, even of a lesser degree should ordinarily satisfy the competent authority, about the appellant's deservedness for an affirmative consideration.*

17. We shall only endeavour to delineate a few of the considerations which ought to have been considered, in the present case for determining whether or not, the appellant was entitled to compassionate allowance under Rule 41 of the Pension Rules, 1972. *In this behalf it may be noticed that the appellant had rendered about 24 years of service prior to his dismissal from service, vide order dated 17-5-1996. During the above tenure, he was granted 34 good entries, including 2 commendation rolls awarded by the Commissioner of Police, 4 commendation certificates awarded by the Additional Commissioner of Police and 28 commendation cards awarded by the Deputy Commissioner of Police. 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.

18. None of the authorities on the administrative side, not even the Tribunal or the High Court, applied the above parameters to determine the claim of the appellant for compassionate allowance. We are of the view that the consideration of the appellant's claim was clearly misdirected. All the authorities merely examined the legitimacy of the order of dismissal. And also, whether the delay by the appellant, in filing the appeal against the punishment order dated 17-5-1996, was legitimate. The basis, as well as the manner of consideration, for a claim for compassionate allowance, has nothing to do with the above aspects. Accordingly, while accepting the instant appeal, we set aside the order dated 25-4-2005 (passed by the Deputy Commissioner of Police, IInd Battalion, Delhi Armed Police, Delhi), rejecting the prayer made by the appellant for grant of compassionate allowance. The order passed by the Tribunal dated 28-2-2006, and the order passed by the High Court dated 13-11-2006 [*Mahinder Dutt Sharma v. Union of India*, WP (C) No. 14924 of 2006, order dated 13-11-2006 (Del)], are also accordingly hereby set aside. Having held as above, we direct the competent authority to reconsider the claim of the appellant, for the grant of compassionate allowance under Rule 41 of the Pension Rules, 1972, based on the parameters laid down hereinabove.”

13.5 The following principles emerge from the passages from the judgment of the Supreme Court in *Mahinder Dutt Sharma*, extracted *supra*:

(i) The *severity* of the misconduct which resulted in the awarding, to the employee, of the punishment of dismissal or removal from service, *is totally irrelevant* to the issue of his entitlement to compassionate allowance.

(ii) Where the misconduct committed by the employee,



which resulted in his dismissal or removal from service, is

- (a) an act of moral turpitude, or
- (b) an act of dishonesty towards his employer, or
- (c) an act designed for obtaining personal gains from the employer, or
- (d) an act aimed at deliberately harming a third party interest, or
- (e) otherwise unacceptable, such as an act which is depraved, perverted, wicked or treacherous,

the employee is ordinarily disentitled to compassionate allowance.

(iii) *Where the misconduct does not fall within any of these categories, surely (to employ the expression used by the Supreme Court itself) it would be easier to extend the benefit of compassionate allowance to the punished employee, subject to existence of factors warranting compassionate consideration.*

(iv) The entitlement of the employee to compassionate allowance would have to be determined by examining, in the first instance, whether any of the above disentitling factors apply. If they do not, it would have to be seen whether any special considerations exist, as would warrant grant of compassionate allowance. While examining this latter aspect, however, the approach of the Court is required, in our view, to be expansive, rather than narrow. We say this because of the following two observations, which find place in *Mahinder Dutt*



Sharma:

“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.” (in para 15 of the report)

“Accordingly, even though the delinquency alleged and proved against the appellant was sufficient for imposition of punishment of dismissal from service, it does not fall in any of the classifications/categories depicted in para 13 of the instant judgment. Therefore, *the availability of compassionate consideration, even of a lesser degree should ordinarily satisfy the competent authority, about the appellant's deservedness for an affirmative consideration.*” (in para 16 of the report)

(Emphasis supplied)

(v) Approaching the issue thus, the factors which were found, in ***Mahinder Dutt Sharma***, to justify grant of compassionate allowance to Mahinder were the fact that

- (a) Mahinder had rendered about 24 years' service prior to dismissal,
- (b) during this period, he was granted 34 good entries, including two commendation rolls awarded by the Commissioner of Police, four commendation certificates awarded by the Additional Commissioner of Police and 28 commendation cards awarded by the Deputy Commissioner of Police,
- (c) there was nothing to indicate that Mahinder's absence from service was aimed at seeking better pastures everywhere,



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- (d) given the length of service rendered by Mahinder, no such was, even otherwise, possible,
- (e) Mahinder was involved in a criminal case during the period under consideration, from which he was subsequently acquitted,
- (f) one of Mahinder's brothers had died,
- (g) later, Mahinder's father and sister-in-law also died,
- (h) Mahinder's wife was suffering from cancer, and
- (i) as a result, Mahinder's health was also poor, and he was suffering from hypertension and diabetes.

According to the Supreme Court, these were the considerations which ought to have weighed with the authorities when deciding Mahinder's claim for compassionate allowance.

Inasmuch as neither the authorities, nor the Tribunal or the High Court, had considered these factors, but had concentrated on the legitimacy of Mahinder's dismissal from service, which was entirely irrelevant, the Supreme Court remitted the claim to the competent authority for a reconsideration.

14. As the position in law is so clearly enunciated in *Mahinder Dutt Sharma*, no real occasion arises to refer to other decisions, even if rendered by coordinate Division Benches of this Court. *Hodil Singh* has, however, been cited by Mr. Manish Kumar, and a brief reference to the decision would, therefore, be apposite.



15. Hodil Singh¹², the appellant before this Court, was dismissed from service on 19 July 2011 on the ground of continued unauthorized absence from service. He represented to the GNCTD for grant of compassionate allowance under Rule 41 of the CCS (Pension) Rules and, on his representation being rejected, petitioned the learned Tribunal. In his representation, Hodil claimed to have been suffering from “some disease” due to which he could not attend duty. He claimed to be a poor person with no source of income whereby he could support his wife and one minor child, both of whom were dependent on him. He further submitted that he had no movable and immovable property. He therefore sought compassionate allowance on humanitarian grounds.

16. Hodil’s representation was rejected by the department on 14 November 2017. Hodil approached the learned Tribunal against the said decision and, on his OA being dismissed, petitioned this Court.

17. The Division Bench of this Court noted that while, in his representation seeking compassionate allowance, Hodil had claimed to be afflicted with “some disease”, the nature of which was not disclosed, in the OA filed before the learned Tribunal, in which he averred that he was suffering from mental illness. No record of mental illness was filed before the learned Tribunal. It was further observed that, though Hodil’s son had died on 1 January 2011 and brother had died on 16 July 2011, he approached the learned Tribunal only in 2016, with no explanation as to how he and his family

¹² “Hodil”, hereinafter



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survived in the *interregnum*.

18. In these circumstances, this Court held that the case did not deserve any “special consideration”, for grant of compassionate allowance.

19. Apropos *Mahinder Dutt Sharma*, the Division Bench correctly observed that, the Supreme Court had, in the said decision, held the grounds on which the employee was dismissed or removed from services, to be irrelevant to the issue of his entitlement to compassionate allowance, save and except for the five circumstances enumerated in para 14 of the report in that case. Further, noted the Division Bench, in para 8.3 of the report in *Hodil Singh*, “as per the dicta laid down in *Mahinder Dutt Sharma* case, where the representationist is able to demonstrate that, before the act of delinquency which led to his dismissal, his service record was exceptional – that should weigh with the authority dealing with the plea for grant of compassionate allowance”.

20. The Division Bench thereafter proceeded to observe that the past record of Mahinder, prior to his dismissal from service, had been exemplary and that no such exceptional record of Hodil had been placed before the court. The Division Bench further noted that one of the main considerations which weighed with the Supreme Court to hold in Mahinder’s favour was the fact that the authorities had taken into account irrelevant considerations while rejecting his application.



21. For these reasons, the Division Bench held *Mahinder Dutt Sharma* to be distinguishable and, therefore, declined to interfere with the order passed by the learned Tribunal.

22. Before advancing any observation with respect to the decision in *Hodil Singh*, one may note another decision, also of a Division Bench of this Court, in *Raj Kumari*. As in the present case, *Raj Kumari* was seeking compassionate allowance, as was due to her husband *Raj Kumar Singh*¹³ after his demise. *Raj Kumar* had also been dismissed from service on the ground of unauthorized absence, after holding the inquiry, which revealed him to be a habitual absentee. Consequent on her application for compassionate allowance being rejected by the department, *Raj Kumari* approached the learned Tribunal, which allowed her application, following *Mahinder Dutt Sharma*.

23. The GNCTD challenged the said decision before this Court. Paras 5 and 6 of the report in *Raj Kumari* read thus:

“5. From the above it would be seen that though there is no vested right in a dismissed or removed government servant to demand, as a matter of right, that he be granted Compassionate Allowance, and it lies within the discretion of the Government to grant the same upon examination of the facts of each case, the exercise of that discretion has to be based on relevant, germane and reasonable considerations. Where the conduct of the government servant is not found to be dishonest, corrupt, or involving moral turpitude, and the conduct of the Government servant does not qualify as base; suffering from the depravity, or; dishonesty, and where he is not found to have acted with a design to make personal gains by involving himself in acts of corruption, fraud or personal profiteering, his claim may be favourably considered.

¹³ “*Raj Kumar*”, hereinafter



6. In the present case, since the conduct of the late husband of the respondent was not found to be of the kind which would attract rejection of the claim for Compassionate Allowance, the Tribunal has allowed the same. No doubt, the respondent's husband was habituated to remain unauthorisedly absent. He suffered the consequence thereof as he was dismissed from service. There was no other allegation of corruption, or dishonesty or conduct involving moral turpitude made against him. The whole premise on which the Rule-41 is based, is that the Government is empowered, coupled with the duty to act fairly in the matter of grant of Compassionate Allowance, to the dismissed or removed employee. The rejection of the claim for Compassionate Allowance in the present case is solely based on the habituated unauthorized absence of the respondent's husband. That is not a reason good enough to deny Compassionate Allowance as the case is not of a kind elaborated in ***Mahinder Dutt Sharma***.”

24. Between the decision in ***Hodil Singh*** and that in ***Raj Kumari***, it is quite clear that, if one decision looks east, the other looks west.

25. No occasion, however, arises to refer the matter to any larger Bench and thereby leave the whole issue in a state of flux, as we have with us, the benefit of the parent decision in ***Mahinder Dutt Sharma***. ***Mahinder Dutt Sharma*** binds us and, if the controversy in the present case can be decided on the basis of the decision in ***Mahinder Dutt Sharma***, there is really no necessity to refer either to ***Hodil Singh*** or to ***Raj Kumari***.

26. We have already distilled, in para 13.5 *supra*, the salient features of the decision in ***Mahinder Dutt Sharma***. When one applies the said decision to the facts of the present case, it is immediately apparent that the impugned judgment of the learned Tribunal cannot sustain.



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27. The learned Tribunal has, in paras 13 to 15 of the impugned judgment, clearly allowed itself to be influenced by the misconduct which had led to the dismissal of Pappu from service. In fact, in para 14, the learned Tribunal observes that, in considering the question of compassionate allowance, “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”, and “where the course of misconduct carries with it the legitimate inference that the officer’s service has not been unblemished, there can seldom be any good case for compassionate allowance”. These observations are directly contrary to the law laid down in *Mahinder Dutt Sharma*, which specifically holds that the misconduct which led to the dismissal or removal of the employee from service is entirely irrelevant while examining the employee’s right to compassionate allowance, except to the extent of ascertaining whether the misconduct fell within one of the five categorized misconducts enumerated in para 14 of the decision.

28. Unfortunately, the learned Tribunal has not even adverted to these aspects of the matter. There is no consideration of whether the misconduct committed by Pappu, which led to his dismissal from service, was one of the categories of misconducts envisaged in para 14 of the decision in *Mahinder Dutt Sharma*. As in the case of *Raj Kumari* and, in fact, even *Hodil Singh*, it is clear that the misconduct committed by Pappu, viz., unauthorized absence from service, does not fall within any one of the five categories of misconduct as categorized in paras 14.1 to 14.5 of *Mahinder Dutt Sharma*.



29. Even for not having considered this factor, which is in fact almost dispositive of the employee's right to compassionate allowance, the impugned judgment of the learned Tribunal is liable to be characterized as suffering from perversity in law. As has been noted earlier in this judgment, where the misconduct committed by the employee does not fall within one of the five categories of misconduct enumerated in paras 14.1 to 14.5 of *Mahinder Dutt Sharma*, ordinarily, the employee cannot be entitled to compassionate allowance, unless there were no factors which supported his case.

30. In the present case, the respondent has not chosen to question the financial and other straitened circumstances in which the petitioner claims to be placed. As per the averments in the petition, the petitioner was working as a domestic help but could not continue to do so owing to her frail health and age. She claims to be on the verge of starvation, with two married and unemployed daughters. These facts have not been traversed by the respondent. In the OA filed before the learned Tribunal, the petitioner further submitted that she was now around 65 years of age, suffering cardiac issues for which she is under treatment in the Safdarjung Hospital. It is further averred that, towards the end of 1997 and beginning of 1998, torrential flood waters entered her house as a result of which many of her belongings were washed away. A certificate from the local Pradhan of the area was also placed on record. Most importantly, the petitioner also placed on record a BPL card issued by the municipal authorities certifying that she was living below the poverty line.



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31. In the counter-affidavit filed before the learned Tribunal by way of response to the petitioner's OA, these facts have not been traversed by the respondent. They may, therefore, be treated as not denied.

32. The circumstances in which the petitioner is placed clearly makes out a case for special consideration for award of compassionate allowance.

33. Insofar as the decisions in *Hodil Singh* and *Raj Kumari* are concerned, we are of the considered opinion that the decision in *Raj Kumari* is more in accord with the principles postulated in *Mahinder Dutt Sharma* and enumerated in para 13.5 *supra*. Paras 5 and 6 of the decision in *Raj Kumari* correctly observed that "where the conduct of the government servant is not found to be dishonest, corrupt, or involving moral turpitude, and the conduct of the Government servant does not qualify as base; suffering from the depravity, or; dishonesty, and where he is not found to have acted with a design to make personal gains by involving himself in acts of corruption, fraud or personal profiteering, his claim may be favourably considered". The decision further observes, correctly that, once the employee had already suffered dismissal from service on account of unauthorized absence, that sin stood expiated and was no longer a relevant consideration while assessing his case for grant of compassionate allowance.

34. In any event, as already observed, once we have with us the



judgment of the Supreme Court in *Mahinder Dutt Sharma*, reference to decisions of Division Benches of this Court is not necessary. For the reasons already stated earlier, the petitioner is entitled to compassionate allowance consequent on the death of her husband.

35. We deliberated on whether the matter should be remanded to the respondents for considering the petitioner's case on merits. Nearly 9 years have elapsed since the petitioner applied for compassionate allowance. She has not received any compassionate allowance till date. Given the fact that, in the reply filed before the learned Tribunal, the respondents have not disputed the assertions in the OA regarding the impecunious and distraught condition in which the petitioner and her family members are placed, we are of the opinion that relegating the petitioner once again to the mercy of the respondents would result in injustice. As the petitioner is, tested on the anvil of *Mahinder Dutt Sharma*, found eligible for grant of compassionate allowance, we deem it appropriate to direct accordingly.

Conclusion

36. For the aforesaid reasons, the impugned judgment dated 10 May 2022 of the learned Tribunal is quashed and set aside. The petitioner is held to be entitled to compassionate allowance in accordance with the rules and policy applicable in that regard.

37. Let a decision on the amount of compassionate allowance payable to the writ petitioner be taken up by the respondents



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positively within a period of four weeks from today and communicated to the petitioner forthwith.

38. Should the petitioner continue to remain aggrieved, the right to take further steps in accordance with law would remain open.

39. The writ petition is allowed accordingly with no orders as to costs.

C.HARI SHANKAR, J.

DR. SUDHIR KUMAR JAIN, J.

OCTOBER 8, 2024

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[Click here to check corrigendum, if any](#)