

**(2012) 08 DEL CK 0030**

**Delhi High Court**

**Case No:** Writ Petition (C) 5127 of 2012

Ramesh Kumar Singh

APPELLANT

Vs

Union of India and Others

RESPONDENT

**Date of Decision:** Aug. 23, 2012

**Citation:** (2013) LabIC 4

**Hon'ble Judges:** Pradeep Nandrajog, J; Manmohan Singh, J

**Bench:** Division Bench

**Advocate:** Ankur Chhibber, for the Appellant; Ashwani Bhardwaj, for the Respondent

### **Judgement**

Pradeep Nandrajog, J.

Learned counsel who appears for the respondents on advance copy of the writ petition being served states that since a question of law arises for consideration in the writ petition, counter affidavit is not warranted. With respect to the disciplinary action against the petitioner which resulted in a finding of guilt being returned followed by the penalty of dismissal from service, challenge to the penalty vide W.P.(C) No. 2731/1998 Ramesh Kumar Vs. UOI & Ors. failed when said writ petition was dismissed vide order dated July 12, 2011.

2. However, it was observed that the petitioner would be free to file an application to the competent authority seeking compassionate allowance under Rule 41 of the CCS (Pension) Rules.

3. Challenge in the instant writ petition is to the order dated September 15, 2011 passed by the competent authority holding that since the petitioner has not rendered qualifying pensionable service; compassionate allowance cannot be sanctioned.

4. Only recently, i.e. on August 16, 2012, disposing of W.P.(C)No.1989/1999 Ex. Const. Ram Niwas Vs. UOI & Ors. In paragraphs 5 to 9 it was observed as under:

5. Learned counsel for the respondents states that the petitioner joined service in April 1988 and pensionable service being 20 years, the petitioner being dismissed from service on June 22, 1998, he would not be entitled to any compassionate allowance.

6. Now, Rule 41 of the CCS (Pension) Rules 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.

7. It is apparent that the compassionate allowance admissible under the Rule relates itself not to pension but compensation pension. As per the Rule a Compassionate Allowance not exceeding two-third of pension or gratuity admissible if the retirement was on Compensation Pension is admissible. Now, Rule 39 of the CCS (Pension) Rules reads as under:

#### 39. Compensation pension

(1) If a Government servant is selected for discharge owing to the abolition of his permanent post, he shall, unless he is appointed to another post the conditions of which are deemed by the authority competent to discharge him to be at least equal to those of his own, have the option -

(a) of taking compensation pension to which he may be entitled for the service he had rendered, or

(b) of accepting another appointment on such pay as may be offered and continuing to count his previous service for pension.

(2)

(a) Notice of at least three months shall be given to Government servant in permanent employment before his services are dispensed with on the abolition of his permanent post.

(b) Where notice of at least three months is not given and the Government servant has not been provided with other employment on the date on which his services are dispensed with, the authority competent to dispense with his services may sanction the payment of a sum not exceeding the pay and allowances for the period by which

the notice actually given to him falls short of three months.

(c) No compensation pension shall be payable for the period in respect of which he receives pay and allowance in lieu of notice.

(3) In case a Government servant is granted pay and allowances for the period by which the notice given to him falls short of three months and he is re-employed before the expiry of the period for which he has received pay and allowances, he shall refund the pay and allowances so received for the period following his re-employment.

(4) If a Government servant who is entitled to compensation pension accepts instead another appointment under the Government and subsequently becomes entitled to receive a pension of any class, the amount of such pension shall not be less than the compensation pension which he could have claimed if he had not accepted the appointment.

8. Suffice would it be to state that compensation pension is not related to any length of service rendered. Compensation pension is to be paid if a government servant is discharged owing to a permanent post being abolished and the quantum is relatable to the years of service rendered.

9. Thus, declaring that the Compassionate Allowance is referable to Compensation Pension, which pension has no concern to a minimum number of years served but is payable with reference to the number of years of service rendered, we dispose of the writ petition directing the Competent Authority to pass an order with respect to Compensation Allowance and for which we may note that the same is not a matter of right but a matter of a considered decision and if it is shown that the case is deserving of special consideration, which obviously would have to be the financial condition of the government servant concerned; and thus requiring the petitioner to submit a proper application addressed to the Director General BSF. We guide the petitioner that in the application he should bring out such circumstances which he considers would make out a deserving case for Compensation Allowance to be paid to him. Upon the application being filed, and for which we grant petitioner 12 weeks time, the same shall be decided within further 12 weeks thereafter.

5. Adopting the reasoning as aforesaid, we dispose of the instant writ petition quashing the impugned order dated September 15, 2011 and simultaneously direct the competent authority to treat the petitioner eligible for payment of compassionate allowance and, in view of the eligibility, pass necessary order within six weeks from today. No costs.