

(2011) 07 DEL CK 0332

Delhi High Court

Case No: Writ Petition (C) 2731 of 1998

Ramesh Kumar

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision: July 12, 2011**Acts Referred:**

- Central Civil Services (Pension) Rules, 1972 - Rule 41

Hon'ble Judges: Sunil Gaur, J; Pradeep Nandrajog, J**Bench:** Division Bench**Advocate:** Ankur Chhibber, for the Appellant; Ashwani Bhardwaj, for the Respondent**Final Decision:** Allowed

Judgement

Pradeep Nandrajog, J.

Notwithstanding all and sundry grounds urged in the writ petition and conceding the same to be without any basis, learned Counsel for the Petitioner, when confronted with the testimony of HC Sri Ram PW-4, Ct.L. Mirandi PW-3, Ct.R. Kumar PW-5 and that of SIJ.S.P. Mishra PW-2, concedes that there is sufficient evidence through the testimony of the said 4 witnesses to establish that the Petitioner as also Naik Driver Sawant Singh had assaulted SIJ.S.P. Mishra at around 21:00 hours on 9.12.1996.

2. We note that the Petitioner and Sawant Singh were tried at a joint departmental enquiry. Article 1 of the charge was of both being under the influence of liquor. Article 2 of the charge was criminally assaulting ASIJ.S.P. Mishra. Sawant Singh was charged for a 3rd misdemeanour i.e. of refusing to get himself medically examined.

3. The Inquiry Officer has absolved Petitioner of the first charge by holding that there was evidence that the alcohol consumed by the Petitioner was in less quantity and the Petitioner was in control of his senses. But, Petitioner has been indicted of the second charge.

4. Penalty levied upon the Petitioner is of dismissal from service. The same has been upheld in the departmental remedies availed of.
5. In view of the testimony of PW-2, PW-3, PW-4 and PW-5, learned Counsel for the Petitioner concedes that it would be difficult for the Petitioner to make good the point urged that the indictment of the Petitioner is without any evidence.
6. However, counsel submits that the Petitioner has 4 children to support; the Petitioner is in a state of penury and prays that while disposing of the writ petition it may be observed that if the Petitioner were to file a representation to the competent authority seeking compassionate allowance under Rule 41 of the CCS Pension Rules, the same would be considered in accordance with law.
7. Learned Counsel for the Respondent would urge that since the Petitioner had not rendered 10 years' service when he was dismissed from service the rule would be inapplicable.
8. Learned Counsel for the Petitioner asserts to the contrary.
9. We are not supposed to decide this issue inasmuch as if the Petitioner were to file a representation and the same was rejected only then said issue would require a judicial determination.
10. Thus, we dispose of the writ petition declining relief as prayed for. But, we direct that if the Petitioner were to file an application, before the competent authority seeking compassionate allowance under Rule 41 of the CCS Pension Rules, the application would be considered as contemplated by the rule and if it is opined that on account of lack of service no compassionate allowance can be paid it would be so brought out. If it is opined that for the service rendered the Petitioner is entitled to be considered for compassionate allowance, matter would be considered whether it is a deserving case or a case requiring compassionate allowance to be sanctioned.
11. If Petitioner files a representation within 6 weeks from today seeking compassionate allowance, the same would be decided as above observed within another 8 weeks thereafter. Decision would be communicated to the Petitioner.
12. No costs.