



2025:DHC:11044-DB



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

+ **W.P.(C) 16126/2022**

KARAM CHANDPetitioner

Through: Mr. Anand Mishra, Adv.

versus

UNION OF INDIA & ORS.Respondents

Through: Mr. Vikrant N Goyal, Ms. Priyanka S Aneja, Mr. Piyush Wadhwa, Mr. Yash Basoya, Mr. Kunal Dixit, Advs.

CORAM:

HON'BLE MR. JUSTICE C. HARI SHANKAR

HON'BLE MR. JUSTICE OM PRAKASH SHUKLA

JUDGMENT(ORAL)

% **04.12.2025**

C. HARI SHANKAR, J.

1. Rule 41(1) of the Central Civil Services (Pension) Rules 1972¹
reads thus:

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 compassionate pension.

2. Unfortunately, Rule 41(1) does not contain any guideline on the

¹ "CCS(Pension) Rules" hereinafter



basis of which the entitlement of an officer who seeks compassionate allowance could be determined.

3. This lacuna stands filled, however, by the Supreme Court by its judgment in *Mahinder Dutt Sharma v. Union of India*².

4. In *Mahinder Dutt Sharma*, the Supreme Court has clearly discountenance the submission that the gravity of the offence committed by an officer can constitute the basis to deny disability pension.

5. As the Supreme Court has observed, since disability pension is an entitlement even to an officer who are dismissed from service and dismissal would ordinarily be gifted on an officer who has committed grave misconduct, the gravity of the misconduct is not a relevant criteria while assessing an entitlement to disability pension.

6. The Supreme Court has, in para 14 of *Mahinder Dutt Sharma*, illustratively set out circumstances in which compassionate allowance would be impermissible.

(i) The petitioner's entitlement to compassionate allowance has to be assessed in backdrop of these principles.

(ii) The petitioner joined the Border Security Force as Constable in 25 April 1988. On 31 August 1996, disciplinary

² 2014 (11) SCC 684



proceedings were instituted against the petitioner for having assaulted a senior officer namely SI Shiv Chand. These proceedings culminated in an order dated 26 April 1997, dismissing the petitioner from service.

(iii) The petitioner challenged the said order before this Court by way of WP(C) 5421/1997. We deem it appropriate to reproduce paras 2 to 8 of the order dated 1 July 2014 passed by this Court thus:

“2. Learned counsel states that he has only one plea to urge. That the penalty of dismissal from service is grossly disproportionate.

3. We do not think so.

4. Our reasons. The evidence would established that when the petitioner protested of being issued less ration, S.I. Shiv Chand Ram told the petitioner that he could take two chapatis from his quota. The grievance of the petitioner was that as against six chapatis to be issued the cook at the mess had issued him only four chapatis. Evidence establishes tha S.I. Shiv Chand Ram was the post Commander. He attempted to defuse the situation by offering two chapatis from his quota to the petitioner. But what did the petitioner do in response.

5. He threw the dal at S.I. Shiv Chand Ram and for which he would obviously have no reasons to do so. S.I. Shiv Chand Ram, the post Commander was in uniform petitioner did so in front of fellow jawans. Without provocation he picked up a stick and assaulted S.I. Shiv Chand Ram the post Commander in front everybody.

6. The gravity of the acts would: (i) assaulting a superior officer; (ii) the assault being in full public view; (iii) the superior officer being in uniform; and (iv) there being no provocation for the assault.

7. The penalty if at all which can be interdicted by a Court has to be of a kind where judicial conscious is shocked.

8. The only point urged being dealt by us as above we



proceeded to dismiss the writ petition but without any order as to costs.

(iv) Thus, the Division Bench of this Court clearly found that the petitioner had acted in a reprehensible manner with SI Shiv Chand Ram who was admittedly the petitioner's senior.

(v) With no justifiable provocation whatsoever, the petitioner threw *Dal* at SI Shiv Chand Ram and, unmindful of the fact that SI Shiv Chand Ram was in uniform who was the Post Commander, proceeded to assault him in front of his fellow jawans using a stick.

(vi) The aforesaid decision of the Division Bench of this Court was carried in appeal to the Supreme Court by way of SLP(C) 6970/2015. By order dated 23 February 2015, the Supreme Court dismissed the SLP *in limine*.

(vii) The petitioner, thereafter, applied under Rule 41 of the CCS (Pension) Rules for grant of compassionate allowance. That application stands rejected by the Commandant. Paras 11 and 12 of the said order merit reproduction in *extenso* thus:

11. Whereas in compliance with order dated 06.12.2018 passed by the Hon'ble Delhi High Court the application for compassionate allowance of No.886888892 Ex-CT Karam Chand was taken up for consideration afresh. The length of service and the service records of No.886888892 Ex-CT Karam Chand, the provisions contained in Rule 41 of the CCS (Pension) Rules, 1972 and other provisions pertaining to the grant of pension besides Guiding principles for the grant of Compassionate Allowance as per G.I.M.F. Memo



No. 3(2) R-ii/40 dated 22nd April, 1940 were taken into consideration. The undersigned found that:-

A No.886888892 Ex-CT Karam Chand had committed a serious offence; (I) he had assaulted a superior officer; the assault being in full public view; (iii) the officer being in uniform; and (IV) there being no provocation for the assault;

B The previous record of Ex-CT Karam Chand is not unblemished. He has previously been punished U/S 26 of BFS Act, 1968 i.e. for intoxication.

C No.886888892 Ex-CT Karam Chand has put/rendered only 09 years and 02 days service as on date of dismissal and he is not eligible for pension. As per CCS (Pension) Rules 1972, Pension is admissible to an employee retiring with minimum qualifying service of not less than 10 years;

D The case No.886888892 Ex-CT Karam Chand was not found fit for special consideration. No.886888892 Ex-CT Karam Chand was dismissed from service on account if the gravity of offence committed by him.

(No.886888892 Ex-CT Karam Chand has not produced the relevant documents like the list of assets owned by him and his family members etc. to prove him entitlements for the compassionate allowance)

12. The undersigned gave a thoughtful consideration to all the relevant facts mentioned herein above past record of No.886888892 Ex-CT Karam Chand and the gravity of offence committed by him the guiding principles for the grant of compassionate allowance and the Rule-41 CCS (Pension) Rules, 1972 and finally compassionate allowance that the case of No.886888892 Ex-CT Karam Chand does not deserve for special consideration and he is not entitled for compassionate allowance. Hence the request of No. 886888892 Ex-CT Karam Chand for compassionate allowance is reject.

7. Aggrieved by the aforesaid order, the petitioner has instituted the present writ petition.

8. We have heard Mr. Anand Mishra, learned Counsel for the petitioner and Mr. Goyal, learned SPC for the respondent at length.



9. Mr. Goyal submits that the allegation against the petitioner, on the basis of which he was dismissed from service, would justify invocation of clause (i) in Para 14 of the decision in ***Mahinder Dutt Sharma*** as it would amount to an act of moral turpitude.

10. Mr. Mishra on the other hand submits that there was no moral turpitude involved in the act. He invites the Court to examine the basis for the assault by the petitioner on SI Shiv Chand Ram and further submits that, as the petitioner has already suffered a punishment on that ground, it would be unfair to use the said ground as a basis to deny the compassionate allowance to the petitioner.

11. At the end of the day, compassionate allowance is a matter of discretion. Needless to say, however, administrative discretion, as in all cases, has to be exercised judiciously and, where the Court finds that discretion has not been so exercised, the Court can step in and interfere.

12. It is also clear after the decision in ***Mahinder Dutt Sharma***, that the gravity of the allegation against the officer is not a consideration which would affect his entitlement to compassionate allowance.

13. We, therefore, are clear in our mind that the petitioner's entitlement to compassionate allowance has to be gleaned on the basis of para 14 of ***Mahinder Dutt Sharma***.



14. Mr. Goyal, as we have noted, invokes clause (i) in para 14 of the *Mahinder Dutt Sharma* which deal with acts committed which suffer from moral turpitude.

15. The Supreme Court has also explained what it intended to mean when it used the expression moral turpitude, an act which has inherent quality of baseness, vileness or depravity with respect to the concerned person's duty towards another or to society in general.

16. It goes on to state that any debauched, degenerate or evil behaviour would constitute moral turpitude.

17. The clause, to our mind, is worded in wide in terms and would travel beyond the limited confines of the expression "moral turpitude".

18. All acts, which are base, vile, deprave, debauch, degenerate or evil *vis-à-vis*, another officer or *vis-à-vis* society in general would fall within the said definition.

19. Thus viewed, the act of assault by the petitioner on SI Shiv Chand Ram, who was the Post Commander, even while SI Shiv Chand Ram was in uniform, without any justifiable provocation whatsoever would, in our view, fall within the broad definition of the expression "moral turpitude" as understood in Para 14 of *Mahinder Dutt Sharma*.

20. We must emphasize, here, that we are exercising Article 226



jurisdiction.

21. The province of jurisdiction under Article 226 is not appellate in nature.

22. We are essentially concerned with whether the respondent has acted fairly and after following due procedure.

23. No doubt, if the impugned action of the respondent is one which we feel to be unreasonable or arbitrary, we could step in even if it is otherwise procedurally proper.

24. In the present case, however, the act of the petitioner in assaulting SI Shiv Chand Ram, as explained by this Court in Paras 2 to 8 of the judgment dated 1 July 2014 would fall within an act which has an inherent quality of being base or vile with respect to his duty towards SI Shiv Chand Ram.

25. In that view of the matter, we cannot fault the respondent for denying compassionate ground to the petitioner.

26. Mr. Mishra also placed reliance on an Office Memorandum dated 22 April 1940 issued by the Government of India, Finance Department³, which reads thus:

“Guiding principles for recommending compassionate allowance.- With a view to clearing the doubts that appear to exist

³ “GIFD” hereinafter



in respect of the factors that generally guide the Government is dealing with the application for compassionate allowance and the consequent difficulties experienced by the Department in making recommendation in this behalf, the Government of India Finance Department have laid down following instructions.

It is practically impossible in view of the wide variations that naturally exist in the circumstances attending each case, to lay down categorically precise principles that can uniformly be applied to individual cases. Each case has, therefore, to be considered on its merits and a conclusion has to be reached on the question whether there were any such extenuating features in the case as would make the punishment awarded, though it may have been necessary in interests of Government, unduly hard on the individual. In considering the question 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 been dishonest, there can seldom be any good case for a compassionate allowance. 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 this factor by itself is not, except perhaps in the most exceptional circumstances, sufficient for the grant of a compassionate allowance. [G.I.F.D., Office Memo. No 3 (2)-R-II/40, dated 22nd April, 1940].

27. Mr. Mishra's contention is that, in accordance with the aforesaid guidelines, the petitioner's past service and his general character have to be borne in mind while deciding on the aspect of compassionate allowance.

28. A reading of the aforesaid guideline, which is today of nearly more than 80 years vintage, reveals that it only states that apart from the actual misconduct committed by the officer, the course of the misconduct and the kind of service rendered by the officer are relevant considerations while assessing his case of compassionate appointment.



29. At the same time, the OM also states that there can be no categorically laid down precise principles which uniformly applied to individual cases and that each case has to be considered on merits.

30. Much after the issuance of the aforesaid OM, the Supreme Court has clarified the legal position in mind in *Mahinder Dutt Sharma*.

31. We have already held that the decision to reject the petitioner's prayer for compassionate allowance is in sync with the expostulation of the law in *Mahinder Dutt Sharma*.

32. Accordingly, the writ petition is dismissed.

C. HARI SHANKAR, J

OM PRAKASH SHUKLA, J

DECEMBER 4, 2025/AT