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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Date of Decision : January 07, 2015

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W.P.(C) 2925/2013

BALBIR SINGH

..... Petitioner

Represented by: Mr.A.K.Trivedi and Mr.Ashok
K.Vij, Advocates.

versus

UOI AND ORS

..... Respondents

Represented by: Mr.Vijay Kumar Rout, Pairvi
Officer, CRPF.

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MS. JUSTICE PRATIBHA RANI

PRADEEP NANDRAJOG, J. (Oral)

1. Heard learned counsel for the petitioner and the representative of the Department.
2. Claiming to be born on October 08, 1950 and enrolled as a Constable (GD) in CRPF on August 12, 1969 the petitioner was served with a charge of memo on March 09, 2001 alleging against him that in the character certificate which he had submitted when he took employment and with respect to which character certificate, the department accepted the date of birth as indicated thereon, the petitioner interpolated the year of his birth by changing 1953 into 1950. It was alleged that the same was a serious offence.
3. Post enquiry, penalty of removal from service was inflicted upon the petitioner on January 14, 2002 which penalty of removal from service has attained finality and is not the subject matter of challenge in the instant writ

petition.

4. The petitioner was advised to make a representation to the Competent Authority for considering his case under Rule 41 of the CCS (Pension) Rules, 1972 which 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 (Rupees one thousand two hundred and seventy five from 1-1-1996) per mensem. ’

5. The petitioner made a representation on January 17, 2013 highlighting therein that he had rendered 32 years service during which there was only one blemish which resulted in a minor penalty of withholding one increment for a period of one year with cumulative effect being inflicted upon on January 10, 1990. The petitioner pointed out that he had only two bigha of agricultural land which was barren and it was yielding an income which was insufficient for him to maintain himself, his wife and ailing mother. He pointed out that he was 60 years old.

6. The petitioner referred to various decisions guiding how discretion has to be exercised by the Competent Authority while considering a request for payment of compassionate allowance.

7. Vide order dated March 06, 2013, without indicating reasons which

led to the request for payment of compassionate allowance being sanctioned, the same was declined.

8. The order dated March 06, 2013 reads as under:-

'No.P-8-1/2013-73-ESTT II

DATED 6 MARCH, 2013

TO:

Ex Hav/GD Balbir Singh

S/o Late Sultan Singh

Vill: Bodapur

Post: Dochana

Distt: Mahendergarh

State: Haryana

Sub: In respect of pension and financial benefits

Please refer your representation dated 17/01/2013.

02. You have requested for grant of pension with all financial benefits. You are hereby informed that you have been removed from service vide 73 BN CRPF office order No.P-8-2/2001-Estt-II dated 14/01/2002 wef 14/01/2002. Therefore you are not entitled for any pension and other financial benefits in terms of CCS (Pension) Rules, 1972.

Sd/-

For Commandant-73 BN'

9. A perusal of Rule 41 of CCS (Pension) Rules, 1972 would evince that notwithstanding a government servant being dismissed or removed from service, the Competent Authority can sanction a compassionate allowance if the case is deserving of special consideration.

10. Thus, the focus of the Competent Authority has to be whether objective facts have been disclosed making out a case deserving of special consideration.

11. As noted above the facts which were disclosed by the petitioner warranting consideration whether the same made out a case which was deserving of special consideration were that he had rendered 32 years

service with only one blemish. Further he had a wife and a ailing mother to lookafter. Further, his means of sustenance was two bigha land which was unfertile. The further fact disclosed was that he was 60 years of age and hence would not be able to find gainful employment elsewhere.

12. A Division Bench of this Court on August 26, 2010 disposed of the Writ Petition (Civil) No.2556/2010, Ex.L/NK Mahabir Prasad vs. Union of India & Ors. had succinctly brought out guiding principles as to what would be a case deserving special consideration.

13. Briefly stated the same would be the number of years service rendered, whether there was moral turpitude in the wrong which led to the service being terminated or whether it was of a kind where loss was caused to the public exchequer, means of sustenance and number of family members to support had to be the guiding star.

14. Applying aforesaid principles it is apparent that the writ petition made out a case worthy of being held to be deserving special consideration. It is trite that where the facts warrant a discretion to be exercised, the same must be exercised.

15. Before bringing the curtain down we would like to observe that this Court is repeatedly coming across the cases where at the time of giving employment, para-military forces do not take the stand that the service papers submitted are forged or fabricated for years together and when Jawans, serving the nation, are near retirement the stand taken is that there is some fault in the documents submitted at the time of taking employment. In the instant case the department raised the issue after 32 years.

16. Under the circumstances, we dispose of the writ petition re-calling the order dated March 06, 2013. We direct the Competent Authority to sanction a compassionate allowance to the petitioner. While sanctioning a

compassionate allowance the Competent Authority shall treat it to be a case of deserving special consideration. The only discretion would be to decide what quantum of compassionate allowance has to be sanctioned. The amount sanctioned shall be disbursed to the petitioner within six weeks of the order being passed. The order shall be passed within three months from today.

17. No costs.

(PRADEEP NANDRAJOG)
JUDGE

(PRATIBHA RANI)
JUDGE

JANUARY 05, 2015

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