

Dr Naresh Kumar Arora vs National Insurance Company Limited & ... on 1 April, 2025

Author: Prateek Jalan

Bench: Prateek Jalan

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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Decided on: 0

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W.P.(C) 4058/2025

DR NARESH KUMAR ARORA

.....Petition

Through: Ms. Jasvinder Kaur, Advocate.

versus

NATIONAL INSURANCE COMPANY

LIMITED & ANR.

.....Resp

Through: Mr. Sanjay Rawat, Advocate. [M

9810105108]

CORAM:

HON'BLE MR. JUSTICE PRATEEK JALAN

PRATEEK JALAN, J. (ORAL)

1. The petitioner has approached this Court under Article 226 of the Constitution, against an order dated 13.12.2024, by which his request for grant of compassionate allowance has been rejected.

2. The petitioner was in the service of the respondent-National Insurance Company Limited ["NICL"] as a Deputy Manager, when disciplinary proceedings were held against him, and he was dismissed by an order dated 30.06.2010.

3. In the order of dismissal, it was noted that a criminal prosecution was initiated against the petitioner under Section 7 and 13 of the Prevention of Corruption Act, 1988 ["the PC Act"], for demanding illegal gratification for settlement of a motor claim, and that he was caught red-handed while accepting the gratification. The criminal proceedings culminated in an order of conviction, following which the petitioner was sentenced to rigorous imprisonment for the period of three and a half years, alongwith a fine of Rs. 20,000/-.

4. Ms. Jasvinder Kaur, learned counsel for the petitioner, states that the petitioner's appeal against the conviction remains pending in this Court.

5. The petitioner earlier challenged the dismissal order and denial of other allowances by way of W.P.(C) 11719/2015. In the writ petition, at the stage of issuing notice, the petitioner's challenge to the order of dismissal was rejected, and the writ petition proceeded only for payment of arrears of dearness allowance, for the period of suspension.

6. The said petition was disposed of by judgment dated 23.09.2024. At the stage of hearing, it was also submitted on behalf of the petitioner that compassionate allowance may be payable under the Rules. As no specific prayer had been made in the writ petition with regard to compassionate allowance, the Court permitted the petitioner to make a comprehensive representation to NICL, which was to be decided in accordance with law. Specific reference was made to the judgment of the Supreme Court in Mahinder Dutt Sharma v. Union of India¹.

7. Consequently, the petitioner made a representation to the respondent on 25.10.2024, which has been rejected by the impugned communication dated 13.12.2024.

8. I have heard Ms. Kaur, and Mr. Sanjay Rawat, learned counsel for the respondents.

9. The payment of compassionate allowance, to a person dismissed from service, is covered by Clause 32 of the General Insurance [Employees'] Pension Scheme, 1995 ["the Scheme"], which provides as follows:-

"32. Compassionate Allowance -

(1) An employee who is dismissed or removed or compulsorily retired or terminated from service shall forfeit his pension :

Provided that the authority competent to dismiss or remove or compulsorily retire or terminate him from service may, if -

(i) such dismissal, removal, compulsory retirement or termination is on or after the 1st day of November, 1993 and

(ii) the case is deserving a special consideration, sanction a compassionate allowance not exceeding two-thirds of pension which would have been admissible to him on the basis of qualifying service rendered upto the date of his dismissal, removal, compulsory retirement or termination. (2) The compassionate allowance sanctioned under the proviso to sub-paragraph (1) shall not be less than the amount of minimum pension payable under paragraph 35 of this scheme."

10. A pari materia clause in the Central Civil Services (Pension) Rules, 1972 ["CCS Pension Rules"], was considered by the Supreme Court in Mahinder Dutt Sharma. In that case, the allegation upon which the petitioner was dismissed from service pertained to absence from duty. While interpreting Rule 41 of the CCS Pension Rules, the Supreme Court held as follows:-

"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 (2014) 11 SCC 684 [hereinafter, "Mahinder Dutt Sharma"].

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."²

11. In the impugned order, the respondent has noted that the petitioner's dismissal was on account of criminal proceedings which resulted in conviction under Sections 17 and 13(2) of the PC Act, and a consequent sentence of rigorous imprisonment. NICL, therefore, found that the acts of the petitioner reflected "a serious breach of fiduciary duty involving personal enrichment at the cost of public trust". In view of the observation in Mahinder Dutta Sharma, that dismissal on the ground of action which involves moral turpitude or dishonesty may not be considered for compassionate allowance, NICL therefore declined the petitioner's representation.

12. Ms. Kaur submits that the considerations alluded to in the impugned order are misdirected, inasmuch as the grant of compassionate allowance is premised upon the employee having been dismissed from service, which in itself presumes serious allegations against the employee. She submits that the respondent's reliance upon such factors, without reference to the particular circumstances of the petitioner and his family, is tantamount ignoring relevant considerations while making an administrative decision.

Emphasis supplied.

13. Having considered these submissions in the light of the Rules, and the judgment in Mahinder Dutt Sharma, I am unable to agree with Ms. Kaur. Amongst the factors identified by the Supreme Court, as relevant to the consideration of an application for compassionate allowance, is the analysis of the reasons which led to the dismissal or removal from service. The Supreme Court has specifically identified acts of moral turpitude, dishonesty towards the employer, and acts designed to result in personal gains for the employee, as situations in which compassionate allowance may ordinarily be refused. The respondent's analysis of the grounds of dismissal in the present case considers these issues, and comes to the conclusion that the petitioner's case is not deserving of the special consideration which the Scheme reflects. The petitioner having been dismissed pursuant to a criminal conviction for corruption, I do not find any arbitrariness or perversity in this analysis.

14. Ms. Kaur's next submission is that paragraph 15 of Mahinder Dutt Sharma itself uses the word "ordinarily", which suggests that the exclusionary grounds identified in the judgment are not mandatory. It is not necessary to dilate further upon this contention, as I do not find anything extraordinary in the present case for which the writ court should mandate a special treatment outside what is ordinary permissible.

15. For the aforesaid reasons, I am of the view that the petitioner's grievances are entirely unmerited.

16. The writ petition is therefore dismissed.

PRATEEK JALAN, J APRIL 1, 2025/'pv/AD'/