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

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Date of decision: 13.02.2023

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W.P.(C) 15128/2022

EX-SI MOHAR PAL KARDAM

..... Petitioner

Through: Mr.A.K. Trivedi & Mr.Naveen
Kumar, Advs.

versus

UNION OF INDIA AND ORS

..... Respondents

Through: Mr.Siddhartha Sinha, SPC with
Mr.Prashant Rawat (GP) &
Mr.Sanjay Kumar, Insp.

CORAM:

HON'BLE MR. JUSTICE SURESH KUMAR KAIT
HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T (oral)

1. Vide the present petition, petitioner prays as under:

- i. *To quash and set aside the impugned order dated 23.04.2022 declaring as illegal, arbitrary and discriminatory and against the rules on the subject;*
- ii. *To direct the competent authority to re-consider the claim of the petitioner and sanction the compassionate allowance @ Rs.12,694/- w.e.f. 16.02.2008 or as admissible as per two-third of his pension entitlement as per rule-41 of CCS (Pension) Rules, 1972 and consequently the petitioner may be entitled for his re-fixation of pension and arrears along with interest @*

12% p.a. till payment.

2. The case of the petitioner is that he was appointed as Direct Entry Sub-Inspector/Exe. in the Central Industrial Security Force on 03.01.1995 and served the CISF till 15.02.2008 (date of removal from service).

3. The petitioner was served with the chargesheet vide memo dated 13.10.2007 and was proceeded in a departmental enquiry and after completion of enquiry, the petitioner was removed from service vide order dated 15.02.2008 without any pensionary benefits. However, in compliance of order dated 03.06.2013, the respondents considered the claim of the petitioner and passed an order dated 03.06.2013 by sanctioning the compassionate allowance of Rs.3500/- under Rule 41 of the CCS(Pension) Rules, 1972 w.e.f. 16.02.2008 and the petitioner is getting the compassionate allowance till date. The said amount was enhanced by PAO New Delhi from Rs.3500/- to Rs.9000/- w.e.f. 01.01.2017 as per 7th CPC guidelines.

4. Counsel for the petitioner submits that as per sub-rule (1) Rule 41 of CCS (Pension) Rules, 1972, the competent authority should sanction a compassionate allowance not exceeding two third of pension or gratuity or both which would have been admissible to him if he had retired on compensation pension. But in case of the petitioner, the compassionate allowance has been sanctioned at the minimum.

5. Provisions to sub-rule (1) of Rule 41 of CCS(Pension) Rules, 1972 cannot be disputed. However, in clause (2) of Rule 41 of the Rules provides that compassionate allowance sanctioned under the proviso to sub-rule (1) shall not be less than the amount of Rs.3500/- per mensem. Accordingly, the

competent authority has passed the order in view of sub-rule (2) of Rule 41 of CCS(Pension) Rules, 1972. The petitioner herein has not challenged the aforesaid provision.

6. Moreover, respondents have considered the case of the petitioner after considering the financial position, responsibility of children and thereafter decided to sanction compassionate allowance of Rs.3500/- to the petitioner which is permissible under clause (2) of Rule 41 of CCS(Pension) Rules, 1972.

7. The said order was passed w.e.f. 16.02.2008, however, the same was also not challenged by the petitioner. Thereafter, the said amount was enhanced by PAO (New Delhi) from Rs.3500/- to Rs.9000/- w.e.f. 01.01.2017 as per 7th CPC guidelines and still the petitioner did not challenge the same.

8. Be that as it may, sub-rule (2) of Rule 41 of CCS(Pension) Rules, 1972 is not under challenge.

9. In view of above, we find no illegality or perversity in the order passed by the respondents.

10. Finding no merit in the present petition, the same is, accordingly, dismissed.

(SURESH KUMAR KAIT)
JUDGE

(NEENA BANSAL KRISHNA)
JUDGE

FEBRUARY 13, 2023/ab