

IN THE SUPREME COURT OF INDIA  
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 1821 OF 2014  
(arising out of SLP(C) No.24870 of 2013)

LAXMAN CHANDRA SARKAR . . . . APPELLANT(S)  
VERSUS  
UNION OF INDIA AND OTHERS . . . RESPONDENT(S)

O R D E R

1. Delay condoned.
2. Leave granted.
3. Heard the appellant who is appearing in person and the learned counsel appearing for the respondents.
4. Aggrieved by the judgment and order dated 29.07.2011 passed by the Division Bench of the Delhi High Court in a writ petition the instant appeal has been filed by the appellant seeking quashing of penalty of dismissal from service.
5. The appellant was enrolled as constable (Radio Mechanic) in BSF in the year 1973 and was attached to 173 Battalion. He was transferred from 173 Battalion to 127 Battalion some time in the year 1997 and was deployed at Calcutta. In the year 1998 the appellant was transferred to 49th Battalion which order was, however, challenged by him in Calcutta High Court in WPC No.12979 of 1998 and obtained an ex-parte stay against his transfer. Because of the stay order passed by the Calcutta High Court the transfer order from 127 Battalion to 49th Battalion was not given effect to. In the year 1999 the whole 127 Battalion was moved to Srinagar. On the basis of ex-parte stay order which had nothing to do with the extent of moving to Srinagar, the appellant absented himself. The appellant brought to the notice of the Calcutta High Court the 1999 movement order on the basis of ex-parte stay but it was found that the application was misconceived and was ultimately dismissed. Seeing the conduct of the appellant absenting himself from duty, a court of inquiry was convened and it was decided to take action against him. Realising his mistake the appellant reported at the Battalion Head Quarter of 127 Battalion in Bareilly on 31.05.2011 i.e. after 558 days of unauthorized absence. However, he was directed to join the Unit at Srinagar which order he disobeyed and never joined in Srinagar. This resulted in the issuance of charge sheet against the appellant and finally he was dismissed from service. The appellant filed a mercy petition before the authority for commutation of sentence awarded to him to one of voluntary retirement which petition was dismissed.
6. This appeal was heard at length on 31.07.2013 and this Court passed the following order :-  
"Issue notice limited on the quantum of punishment as to whether the punishment can be substituted with the punishment of compulsory retirement as well as on the application for condonation of delay in filing the petition.  
  
List on 6th September, 2013"
7. Hence this appeal is confined only to consider whether the punishment of dismissal from service can be substituted to compulsory retirement without going into the question of legality and propriety of dismissal order passed by the respondents.
8. Mrs. Indira Jaising, learned Additional Solicitor General

appearing for the respondents informed us that the appellant had made a representation for seeking a relief by way of grant of compassionate allowance as provided under Rule 41 of CCS(Pension)Rules. The application was considered by the Inspector General and a decision was taken in favour of the appellant by giving him 2/3rd of the pension. Rule 41 of CCS rules lays down the provision for compassionate allowance to a government servant who is removed or dismissed from service. Rule 41 of the said Rule reads as under :-

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 three thousand five hundred from 1-1.2006) per mensem.

9. Mrs. Indira Jaising, learned Additional Solicitor General fairly submitted that a letter has already been submitted to the Accounts Officer requesting him to release the said compassionate allowance to the appellant.

10. Considering the entire facts of the case, particularly the conduct of the appellant in absenting himself and disobeying the order of transfer, he is not entitled to more than the compassionate allowance.

11. Hence, the impugned order passed by the Delhi High Court needs no interference. However, we direct the respondents to release the compassionate allowance from 02.01.2003 and pay the same to the appellant as expeditiously as possible, preferably within a period of two months from the date of receipt of copy of this order. The civil appeal stands disposed of accordingly.igh HH

.....J.  
(Dr. B.S. Chauhan)

.....J.  
(M.Y. Eqbal)

New Delhi,  
February 3, 2014.

ITEM NO.54

Court No.4

SECTION XIV

S U P R E M E C O U R T O F I N D I A  
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (Civil) No(s).24870/2013

(From the judgement and order dated 29/07/2011 in WPC No.581/2005 of The HIGH COURT OF DELHI AT N. DELHI)

LAXMAN CHANDRA SARKAR

Petitioner(s)

VERSUS

UNION OF INDIA & ORS.

Respondent(s)

(With appln(s) for c/delay in filing SLP and permission to appear and argue in person and with prayer for interim relief and office report)

Date: 03/02/2014 This Petition was called on for hearing today.

CORAM :

HON'BLE DR. JUSTICE B.S. CHAUHAN  
HON'BLE MR. JUSTICE M.Y. EQBAL

For Petitioner(s)

Petitioner-In-Person

For Respondent(s)

Ms. Indira Jaising, ASG  
Mr. R. Balasubramanium, Adv.  
Mr. Shalinder Saini, Adv.  
Ms. Sunita Rani Singh, Adv.  
Mr. B. Krishna Prasad, Adv.

UPON hearing counsel the Court made the following  
O R D E R

Delay condoned.

Leave granted.

The civil appeal stands disposed of accordingly in terms of the signed order.

| (DEEPAK MANSUKHANI)  
| Court Master

| (M.S. NEGI)  
| Assistant Registrar

(The signed order is placed on the file)