
(2013) 04 GAU CK 0003
In the Gauhati High Court
Case No : Writ Petition (C) No. 4346 of 2008

Arun Kumar Mazumdar

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 09-04-2013

Acts Referred:

Citation : (2013) 4 GLT 740

Hon'ble Judges : P.K. Musahary, J; Iqbal Ahmed Ansari, J

Bench : Division Bench

Advocate : B. Chakraborty, Mr. T.R. Sarma, Mr. L. Gogoi and Ms. P. Hazarika, for the Appellant; K.A. Mazumdar, Central Government Standing Counsel, for the Respondent

Final Decision : Dismissed

Judgement

P.K. Musahary, J.—Heard Mr. B. Chakraborty, learned counsel for the petitioner and Mr. K.A. Mazumdar, learned Central Government Standing Counsel for the respondents. This is an application filed under Article 226 of the Constitution of India challenging the judgment and order dated 22.5.2008 passed by the learned Central Administrative Tribunal in Original Application No. 283/2006, whereby and whereunder the learned Tribunal upheld the order dated 20.10.2005 passed by the Respondent No. 3 (Disciplinary Authority) removing the petitioner from service and also the order dated 4.5.2006 passed by the Respondent No. 2 (Appellate Authority) rejecting the petitioner's statutory appeal.

2. The petitioner's case as pleaded in the O.A. before the Central Administrative Tribunal, Guwahati Bench, Guwahati (hereinafter CAT in short) is that he was initially appointed as a Lower Division Clerk (LDC in short) with effect from 1.7.1994 in the Canteen Stores Department under the Ministry of Defence and posted at Canteen Stores Department (CSD in short) Depot at Dimapur and he was confirmed in the said post w.e.f. 30.6.1996. While working as such he was suffering from illness and physical ailment of serious nature and underwent treatment at Guwahati. He was transferred to and posted at Guwahati on medical

ground. For further treatment he proceeded to All India Institute of Medical Sciences, New Delhi (AIIMS in short) on 17.2.1999 for which he submitted an application for leave before leaving for Delhi. In the course of his treatment he kept his controlling authorities informed from time to time over phone and messages. Eventually he was attacked by typhoid from 13.9.2000 and proceeded to Christian Medical College (CMC in short) at Vellore in Tamil Nadu for better treatment. He submitted an application on 3.11.2000 praying for extension of his leave. As he has been suffering from protracted illness and struggling for life, he was running from place to place for better medical treatment and recovery from illness. The respondent authorities sent several letters and telegrams at home address asking the petitioner to report for duties but as he was out of station for his treatment, he did not receive most of the letters and telegrams, except one or two, sent by the department. However, the petitioner from time to time, informed the respondents about his critical condition praying for leave. The respondent No. 4 vide his letter dated 17.6.2003 acknowledged receipt of one of the applications of the petitioner on 31.5.2003 and directed him to report for duty on 01.07.2003. He accordingly joined his duties and had been attending the duties regularly till he was removed from service. After his rejoining he was served with memorandum of charges on 18.8.2003 alleging that he remained unauthorisedly absent from 29.8.2000 to 30.6.2003 for 1037 days. The departmental proceeding commenced with the appointment of an Enquiry Officer and Presenting Officer. The petitioner appeared before the Enquiry Officer on 10.11.2004. He denied all the charges brought against him and submitted all the relevant papers in support of his medical treatment. Hearing took place on 16.2.2005. The Enquiry Officer submitted the enquiry report on 01.04.2005. Copy of the said enquiry report was furnished to the petitioner and on receipt of the same he submitted a reply through proper channel. The Disciplinary Authority, by an order dated 20.10.2005, imposed punishment of removal from service on the petitioner with immediate effect offering an opportunity to submit an appeal as provided under the Central Civil Services (Classification, Control And Appeal) Rules, 1965 (hereinafter referred to as CCS Rules in short). The petitioner preferred the appeal on 01.12.2005 before the Chairman, Board of Administration & General Manager, Canteen Stores Department through proper channel. The said appeal was dismissed by the Appellate Authority, Respondent No. 2 vide order dated 04.05.2006. The appellate order aforesaid was challenged by the petitioner before the CAT by filing the above-mentioned O.A. No. 283/2006.

3. The stand of the Respondent Authorities, as taken in their affidavit-in-opposition filed before the CAT, is that the petitioner did not inform the department about the reason for remaining absent despite issuance of periodical letters and reminders to him. The petitioner remained absent in an unauthorised manner from 29.8.2002 to 30.6.2003 (for 1037 days) in the name of prolonged medical treatment and he, except some prescriptions, submitted no medical certificate or documents in support of his medical treatment in various hospitals

within and outside the State of Assam. The petitioner refused to receive/accept the letters/correspondences sent to him. In the aforesaid facts and circumstances, the unauthorized long absence of the petitioner from duty can not be excused and the punishment of removal from service was rightly imposed on him after following the due procedure under the relevant rules. The appellate authority also, on due consideration and by a speaking order, rightly rejected his appeal which calls for no interference.

4. We have gone through the contents of the present writ petition and found that although the petitioner has challenged the judgment & order of the learned CAT upholding the punishment order of removal from service, he has made no averment where and how the CAT had gone wrong or what are the grounds of his challenge to the impugned order(s).

5. The findings of the learned CAT are found at paragraph 5 of the impugned judgment which are quoted hereunder:

In the instant case the regular hearing was concluded at "one go" on 16.2.2005 at CSD Depot, Narengi; wherein the charges (after going through all documents and all the evidence) were proved. The orders of appointment of IO/PO were sent to the applicant's residence as he was absent from duty, which was returned to them undelivered by the Postal Authorities with remarks "Refused, returned to sender" on 09.12.2003. Therefore, it can not be said that the intimation regarding action being taken against him was not sent to the Applicant. He did not attend the inquiry on 29.3.2004 and 19.10.2004, though he was served with due notice. The appellate authority also upheld the order of the disciplinary authority.

As a writ court we are not inclined to interfere with the findings of the learned CAT on the aforesaid facts inasmuch as the petitioner has made no grievance or contended that the aforesaid findings are not borne on record.

6. The grievance of the petitioner that the enquiry was conducted at "one go" on 16.2.2005 in a hasty manner with pre-set mind without providing reasonable opportunity of being heard and without furnishing the documents and also against the principle of natural justice; call for consideration of this Court. There is no doubt that as per the settled position of law, the delinquent is to be furnished with the necessary documents/materials on the basis of which the disciplinary authority proceeded against him and he should be given fair opportunity to defend his case by way of complying with the principle of natural justice and hearing in accordance with the procedures provided under the relevant rules. Any penal action or penalty imposed by the disciplinary authority could be declared bad and set aside if the aforesaid grievances are found correct. From the pleadings of the parties, we have found that the petitioner appeared before the Enquiry Officer only once and no other date was fixed for further hearing. The Enquiry Officer, within few days, submitted the enquiry report. As because the inquiry was conducted in "one day" only, the petitioner has,

naturally, felt that the respondent authorities deprived him of a fair opportunity of hearing in violation of the principle of natural justice. This submission of the petitioner appears to be sound and appealing and on that ground itself the impugned order of removal from service could be quashed. But it can not be done so.

7. Every infraction of rules and procedure can not be interfered with by the Court unless it is shown that real prejudice has been caused to the delinquent. In this case court has to find out as to whether any prejudice has been caused to the petitioner due to holding of inquiry on a single day or non-furnishing of some documents) to him during departmental proceeding.

8. The basic fact, rather the prime allegation, is that the petitioner remained absent without any leave from the employer. He has admitted that he remained absent for a period of 1037 days from 29.8.2000 to 30.6.2003 under, as described by him, "impelling and compelling circumstances" due to his serious illness and taking treatment in various hospitals viz. Apollo Hospital, Chennai; CMC, Vellore; AIIMS, New Delhi, Hyderabad, Kolkata, Guwahati and Barpeta Road, Assam. In paragraph 5 of his appeal petition filed before the Appellate Authority on 01.12.2005, he made averment to the fact that medical certificate from those hospitals are yet to be procured and he could not produce the doctors' prescriptions at the time of inquiry. He, therefore, contended that his absence from duty during the said period was neither deliberate nor willful. In paragraph 6 of the said appeal, he further averred that he tried his level best to keep the authorities in the office informed about his continuous Medical treatment as and when it was possible for him inspite of the fact that he was reeling under very great mental depression; leading to temporary loss of mental equipoise while struggling for life and death. The respondent authorities have denied receipt of any such information or communication from the petitioner while he was remaining absent for his treatment. Except the statement to that effect, the petitioner has submitted no document as a proof of informing the respondent authorities about his illness and taking treatment in various hospitals within and outside the State of Assam. Somehow he has produced some prescriptions which he mentioned/listed in Annexure-IX furnished before the Inquiry Officer on 18.01.2005. For the sake of taking a clear view the same is quoted hereunder:

To

K.V. Reguuthaman

Area Manager,

Missamari (Inquiry Officer)

Sir,

The following documents may be taken on behalf of my

The petitioner has never produced any document like admission in hospital, discharge from hospital or any certificate for treatment as indoor patient in any hospital, although he was given sufficient time and opportunity to furnish the same before the authorities and the Inquiry Officer during proceeding of the enquiry. Even at the time of preferring appeal before the appellate authority, he failed to produce necessary medical certificate(s).

9. The petitioner has stated in his O.A. that he left Guwahati for treatment in the AIIMS at New Delhi on 17.2.1999 and submitted his application for leave. The copy of the leave application has been annexed (Annexure-III) but there is no mention of the period from what date he intended to go on medical leave. Again vide Annexure-IV he applied for continuation of his leave as he was suffering from typhoid since 13.9.2000. In the said application also no period has been mentioned. Nothing has been mentioned in the petition that the petitioner's aforesaid prayer for leave was ever considered or granted. From the aforesaid letters it is found that the petitioner just dropped the leave petition without mentioning the period; not to speak of furnishing any certificate from doctor advising him to go for further/better treatment at AIIMS in New Delhi. He was not bothered to enquire whether the leave was granted to him. No other application for extension of his leave till he rejoined on 1.7.2003 has been furnished or annexed to the O.A. The aforesaid facts and circumstances clearly show that the petitioner remained unauthorizedly absent during the aforesaid period and this fact is found indisputable from the pleadings of the petitioner. Once it is found that the unauthorized absence of the petitioner from duty is an admitted position, it makes no difference whether the enquiry was conducted in one go or on several dates. By concluding the enquiry on a single day, in the aforesaid facts and circumstances, no prejudice has been caused to the petitioner. The factual position that the petitioner remained absent for such a long period without any authority or without leave, can not be improved by spreading the enquiry proceeding to several dates. There is no valid and acceptable reason why the petitioner failed to make appropriate application specifying the period he wanted to remain on medical leave or why he made no enquiry for such a long period whether his application for leave was granted and why he failed to produce the relevant and necessary medical certificate in support of his treatment in various hospitals.

10. The Hon'ble Supreme Court had an occasion to deal with a similar case in the State of Punjab Vs. Dr. P.L. Singla, The facts involved therein are that a disciplinary proceeding was initiated against the respondent delinquent on account of his unauthorized absence for more than 5 years i.e. from 01.06.1992 to 17.10.1997. His explanation was that he initially applied for leave for the period from 1.6.1992 to 30.12.1992 but he did not receive any intimation of refusal of leave and, therefore, he presumed that leave had been sanctioned to him. His other explanation was that he remained absent for a long period because terrorism was prevalent in the State of Punjab during 1992 to 1997. His explanation was accepted by the Enquiry Officer but it was not accepted by the

Disciplinary Authority and imposed punishment of withholding of five increments with cumulative effect. Subsequently, the Governor granted extra-ordinary leave to the delinquent covering the period of his absence which was in continuation of the earlier order imposing punishment. The courts below including the High Court took a view that once the period of absence had been regularized by grant of leave, the misconduct of the delinquent stood condoned. In the aforementioned cited case it has been held that grant of leave is not something that can be inferred or presumed. Para 12 and 13 of the aforesaid judgment are relevant for the purpose of disposal of the present petition which is reproduced below:

12. An employee who remains unauthorisedly absent for some period (or who overstay the period of leave), on reporting back to duty, may apply for condonation of the absence by offering an explanation for such unauthorized absence and seek grant of leave for that period. If the employer is satisfied that there was sufficient cause or justification for the unauthorized absence (or the overstay after expiry of leave), the employer may condone the act of indiscipline and sanction leave post facto. If leave is so sanctioned and the unauthorized absence is condoned, it will not be open to the employer to thereafter initiate disciplinary proceedings in regard to the said mis-conduct unless it had, while sanctioning leave, reserved the right to take disciplinary action in regard to the act of indiscipline.

13. We may note here that a request for condoning the absence may be favourably considered where the unauthorized absence is of a few days or a few months and the reason for absence is stated to be the sudden, serious illness or unexpected bereavement in the family. But long unauthorized absences are not usually condoned. In fact in security services where discipline is of utmost importance, even a few days of overstay is viewed very seriously. Be that as it may.

11. Having considered the case in its entirety and having found that the petitioner unauthorisedly remained absent for a long period without any acceptable, valid and bona fide reason and having found that the petitioner failed to explain his mis-conduct satisfactorily and there being no infirmity in the judgment and order of the learned CAT, we find no legal ground for interference with the impugned judgment and order. In our considered view, this petition is bereft of any merit and accordingly, we uphold the impugned order of the learned CAT and also the impugned order of the enquiry authority imposing punishment for removal of petitioner from service and the order of the appellate authority upholding the punishment order. This appeal fails and stands dismissed. The parties are directed to bear their own cost.