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**(2010) 03 DEL CK 0249**

**In the Delhi High Court**

**Case No :** Writ Petition (C) No. 8633 of 2009

Ashwani Kumar Sharma

APPELLANT

Vs

Union of India (UOI) and Another

RESPONDENT

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**Date of Decision :** 22-03-2010

**Acts Referred:**

Central Civil Services (Leave) Rules, 1972 — Rule 30, 30(2)  
Constitution of India, 1950 — Article 226  
General Financial Rules, 2005 — Rule 78

**Citation :** (2010) 03 DEL CK 0249

**Hon'ble Judges :** Vipin Sanghi, J;Gita Mittal, J

**Bench :** Division Bench

**Advocate :** Ravi Prakash, for the Appellant; Rajinder Nischal, for the Respondent

**Final Decision :** Allowed

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## **Judgement**

Vipin Sanghi, J.—Rule D.B. We have heard learned Counsel for the parties and with their consent, we proceed to dispose of the writ petition at the admission stage itself.

2. The petitioner has filed the present writ petition under Article 226 of the Constitution of India to seek the quashing of the order dated 31st July, 2008 and the order dated 23rd March, 2009 passed by the respondents whereby the petitioner's leave period from 16th July, 2007 to 15th November, 2007 (123 days) has been regularised as half pay leave. The grievance of the petitioner is that the respondents had earlier, vide an order dated 25th May, 2008, treated the aforesaid period as commuted leave on medical grounds debit against 246 half pay leaves. The consequence of the passing of the impugned orders was that the petitioner was made liable to reimburse to the respondents the half pay for the said period of 123 days. We may notice some of the relevant facts at this stage.

3. The petitioner joined Central Reserve Police Force (hereinafter referred to as "CRPF" for brevity) as a Deputy Superintendent of Police in the year 1972. The

petitioner states that he has rendered blemishless service of about 35 years. The petitioner was posted as Deputy Inspector General (DIG) in the state of Jammu & Kashmir at Baramulla in the year 2007. The petitioner states that during the entire course of his service, he had never been posted at Delhi which is his own town. He submits that his parents who at the relevant time were 97 years and 94 years of age, were ill and he therefore sought a posting at Delhi. However, the said request was not favourably considered by the respondents.

4. The petitioner submits that he was taken ill and he remained absent w.e.f. 16th July, 2007 under medical advice after examination by the Medical Officer, GC, CRPF, Srinagar. He was found to be suffering from Typhoid Fever with HTNTO. According to the medical opinion, he was advised absence from duty for 30 days w.e.f. 16th July, 2007 for restoration of his health. He was again examined by the Senior Medical Officer, 122 Battalion, CRPF and on 14th August, 2007 the medical certificate for extension of leave was issued whereby it was opined that he was still suffering from Enteric fever and it was certified that his absence from duty for another 15 days w.e.f. 15th August, 2007 to 30th August, 2007 is absolutely necessary for restoration of his health. The petitioner, it appears, was also suffering from backache and for the same ailment he was advised medical rest from 29th August, 2007 to 15th November, 2007 by the Sr. Orthopedic Surgeon and Incharge.

5. In the meantime, on account of his parents illness, his own illness and considering the length of his service, the petitioner sought voluntary retirement on 23rd October, 2007. The application to seek voluntary retirement was considered by the respondents and vide an order dated 12th November, 2007, the petitioner was conveyed the approval of the competent authority accepting his notice for voluntary retirement from service w.e.f. 16th November, 2007. The said order also notices the fact that the petitioner was on medical leave at the relevant time.

6. The petitioner was again examined on 15th November, 2007 by a medical board at the Safdarjung Hospital, New Delhi and it was certified that the petitioner had recovered from his illness and is fit to resume duties.

7. The petitioner immediately proceeded to Baramulla, Jammu and Kashmir and admittedly, he reported to the respondents on 16th November, 2007 at Baramulla, inasmuch as, he handed over charge on the said date.

8. The respondents initially sought to treat the period from 19th April, 2007 to 13th May, 2007 and 16th July, 2007 to 15th November, 2007 (153 days) as leave without pay vide an order dated 11th December, 2007. The petitioner represented against the said decision of the respondents. Upon consideration by the petitioner's representation, the respondents passed an office order dated 25th May, 2008 wherein the absence of the petitioner for 153 days was regularised in the following manner:

(a) 19.04.07 to 18.05.07 : 30 days Earned Leave (b) 16.07.07 to 15.11.07 :

123 days Commuted Leave on Medical Grounds debitale against 246 LHP.

9. The aforesaid order dated 25th May, 2008 was to the petitioner's satisfaction and he accepted the same. However, the respondents without any prior notice or hearing to the petitioner, on their own, reviewed the said order and passed the impugned order dated 31st July, 2008. The said order inter alia reads as follows:

2. Case of regularization of absence period from 16/7/2007 to 15/11/2007 in respect of Shri A.K. Sharma, ex-DIG (Ops) BLA (IRLA No. 1043) as 123 days Commuted Leave debitale against 246 days LHP vide this office order of even number dated 08/05/2008 has been re-examined. Since the case falls under Sub-rule (2) of Rule 30 of Continuous CC (Leave) Rules, 1972 competent authority has decided that the 123 days commuted leave shall be treated as half pay leave and the difference between the leave salary in respect of commuted leave and half pay leave shall be recovered.

10. The petitioner represented against the aforesaid order to the respondents. As a result of the said representation, the Director General, PAO, CRPF Mahavirnagar, New Delhi issued a communication to the Inspector General of Police (Ops), CRPF, Srinagar, certifying that the petitioner had rejoined office of (Ops) Range Baramulla on 16th November, 2007 (Forenoon) after availing 123 days commuted leave. In view of the aforesaid fact, he sought re-examination of the petitioner's case for issuance of appropriate regularisation order and revision of his pension case.

11. The respondents replied to the petitioner's representation finally on 23rd March, 2009 wherein they re-asserted the stand as contained in the impugned communication of 31st July, 2008. In these circumstances, the petitioner has preferred the present writ petition.

12. The first submission of learned Counsel for the petitioner is that the impugned communication dated 31st July, 2008 has been issued at the petitioner's back and the action taken by the respondents is in breach of the principles of natural justice. The said order, which adversely affect the petitioner's civil rights and interest, has been issued without a prior notice of hearing to him. The petitioner further submits that the period of his absence from 16th July, 2007 to 15th November, 2007 already stands regularised as medical leave and it has also been decided by the respondents that the same is commutable. The reason advanced by the respondents for treating the same as only half pay leave period is founded upon Rule 30(2) of the CCS (Leave) Rules, 1972. He submits that the said provision, in any event, is not applicable in the facts of the present case inasmuch, as, the petitioner did not voluntarily retire while on leave. The petitioner, as a matter of fact, did report back on 16th November, 2007 at Baramulla, Jammu & Kashmir and handed over charge to the respondents whereafter he voluntarily retired.

13. The respondents have filed their counter affidavit. The stand taken by the respondents in their counter affidavit, inter alia is that the petitioner was

unauthorisedly absent from 19th April, 2007 to 18th May, 2007 and from 16th July, 2007 to 15th November, 2007 i.e. a total of 153 days.

14. Admittedly, the said period had been regularised by treating the period 19th April, 2007 to 18th May, 2007 as 30 days earned leave period and the period of 123 days from 16th July, 2007 to 15th November, 2007 has also been regularised as commuted medical leave. It, therefore, does not lie to the mouth of the respondents to treat the said period as unauthorised absence on the part of the petitioner.

15. The submission of Mr. Nischal, learned Counsel for the respondents is that the respondents have treated the petitioner as having retired without rejoining duty. He was to retire on 16th November, 2007 as provided in the order dated 12th November, 2007. He submits that it was not necessary for the petitioner to have proceeded to Baramulla, Jammu & Kashmir for the purposes of handing over charge. He submits that the charge already stood handed over by the petitioner when he proceeded on leave on 16th July, 2007. In any event, the petitioner could have handed over charge at Delhi itself and need not have proceeded to his headquarters.

16. Having heard learned Counsel for the parties, we are of the view that the impugned action of the respondents is wholly illegal and cannot be sustained. Firstly, the respondents' conduct in overturning their own earlier decision, which was in favour of the petitioner, by issuing the impugned communication dated 31st July, 2008 without any prior notice or hearing to him is in breach of the principles of natural justice and is wholly arbitrary and illegal. On this short ground, the impugned communication dated 31st July, 2008, and its reaffirmation contained in the order dated 23rd March, 2009 are liable to be quashed.

17. Even otherwise, on merits we find no force in the submission of Mr. Nishal, learned Counsel for the respondents that the present case is covered by Rule 30(2) of the CCS (Leave) Rules, 1972. The said Rule 30 reads as follows:

#### 30. Commuted leave

(1) Commuted leave not exceeding half the amount of half pay leave due may be granted on medical certificate to a Government servant (other than a military officer), subject to the following conditions:

(a) the authority competent to grant leave is satisfied that there is reasonable prospect of the Government servant returning to duty on its expiry:

(b) Deleted.

(c) Deleted.

(d) when commuted leave is granted, twice the amount of such leave shall be debited against the half pay leave due;

(e) Deleted.

(1-A) Half pay leave up to a maximum of 180 days may be allowed to be commuted during the entire service (without production of medical certificate) where such leave is utilized for an approved course of study certified to be in the public interest by the leave sanctioning authority.

(2) Where a Government servant who has been granted commuted leave resigns from service or at his request permitted to retire voluntarily without returning to duty, the commuted leave shall be treated as half pay leave and the difference between the leave salary in respect of commuted leave and half pay leave shall be recovered:

Provided that no such recovery shall be made if the retirement is by reason of ill-health incapacitating the Government servant for further service or in the event of his death.

18. The petitioner remained absent from 16th July, 2007 to 15th November, 2007 on account of his ailments. There is no dispute with regard to the fact that the petitioner was unwell at the relevant time and the said period has been treated as commuted medical leave. As per the order dated 12th November, 2007, the petitioner was to voluntarily retire w.e.f. 16th November, 2007. Consequently, the petitioner was obliged to hand over charge for which he proceeded to his headquarters and handed over charge on the forenoon of 16th November, 2007. The submission of Mr. Nischal that the petitioner could have handed over charge while remaining in Delhi and on leave, cannot be accepted. Our attention has been drawn to an internal communication of the respondents dated 29th June, 1990 which has deprecated the practice of charge being handed over at a place other than the place of posting.

19. Learned Counsel for the petitioner has submitted that in cases where an officer is required to hand over/take over charge at a place other than a place of posting, the respondents pass a specific order permitting the same. Our attention has also been drawn to a telegram dated 4th November, 2009 issued in the case of one Shri S.M.Z. Rizvi permitting him to take over charge at a place other than his place of posting. In the case of the petitioner, no such specific order was passed permitting him to hand over charge while remained in Delhi and on leave.

20. We cannot appreciate how the petitioner could have remained without handing over charge as he was holding a senior position in the respondents organization and was therefore obliged to hand over charge to a competent officer upon his voluntary retirement. The stand of the respondents that the petitioner has not rejoined duty on 16th November, 2007 cannot be accepted. Even to hand over charge, in our view, it was necessary for the petitioner to have rejoined his duty. A perusal of the "Certificate of Transfer of Charge", bearing No. GFR-33 in accordance with Rule 78 of the General Financial Rules as handed over by the petitioner, reads as follows:

Rule 78. Transfer of Officer. ? A report of transfer of a Gazetted Government servant duly made in Form TR 1 or GFR 33 and signed both by the relieved and relieving Government servants, shall be sent on the same day to the Audit Officer and/or the Accounts Officer, as the case may be. A copy of the report of transfer of charge shall be sent simultaneously to the Treasury Officer, and Head of Department or other Controlling Officer concerned.

The certificate of transfer of charge was sent by the DIGP (Ops) DLA to the Inspector General of Police (Ops) CRPF, Srinagar (J&K) and a copy of the same was also forwarded to the IGP (Pers) Directorate General, CRPF, New Delhi; the IGP (Adm) CRPF, Srinagar, J&K; and the DD (Accounts) PAO CRPF, New Delhi. It was also placed in the personal file of the petitioner and in file No. G.II.3/07-PA. It cannot be said that the formal handing over of the charge was, therefore, not an essential obligation that the petitioner was required to perform before being relieved. The stand of the respondents that he had handed over charge when he proceeded on medical leave on 16.07.2007 is without any basis. Had the petitioner handed over charge on 16.07.2007, the exercise of handing over of the formal charge on 16.11.2007 would not have been undertaken. The respondents have not produced any document to show that he had handed over charge on 16.07.2007 or on any other day apart from 16.11.2007.

21. Our attention has also been drawn by learned Counsel for the petitioner to another communication dated 3rd/7th September, 2009 issued by the respondents during the pendency of this petition. By this communication, the absence for the period from 16th July, 2007 to 15th November, 2007 (123 days) has been regularised as commuted leave. The petitioner during the pendency of the writ petition, had sent a representation dated 25th September, 2009 to the Director General CRPF, New Delhi informing him that the petitioner had contacted the PAO and they had informed the petitioner that they had not received information regarding the regularisation of his leave. It was also informed that the PAO would act on the letter after receiving the same from the DG, CRPF. On 5th November, 2009, an inter office note was issued by the Assistant Director (Accounts) to the Admn. Director, CRPF with a copy marked to the petitioner wherein the respondents recorded that the petitioner had communicated that the aforesaid period of half pay leave had again been converted as commuted leave. The Assistant Director (Accounts) also stated that on the basis of the information furnished, vide letter dated 3rd September, 2009, the petitioner had requested that he be paid the difference of leave salary. The Assistant Director (Accounts), therefore, requested the Admn. Director, CRPF to intimate "whether any further orders converting the above 123 days half pay leave as commuted leave has been issued by your branch or IGP (Ops) Kashmir or not". Learned Counsel for the petitioner submits that the respondents are, however, keeping quite even though the authenticity of the communication dated 3rd July, 2009 has not been challenged by the respondents in these proceedings.

22. Having themselves treated the aforesaid period of 123 days as commuted

leave on medical grounds, there is no justification for the respondents not to debit the 246 days of half pay leaves against the said period of 123 days of commuted leave on medical grounds. We have already observed that it cannot be said that the petitioner did not report back for duty after the expiry of the medical leave on 15th November, 2007. Consequently, Rule 30(2) of the CCS (Leave) Rule, 1972 had no application in the petitioner's case.

23. The petitioner has set out in the writ petition that he has been unduly harassed by the respondents from time to time. He submits that the impugned actions have been taken by the Respondents as a part of a concerted effort to continue the harassment of the petitioner. The petitioner has placed on record an order passed by the Nagpur Bench of the Bombay High Court in WP (C) No. 6315/2005 preferred by him. It appears that the petitioner's promotion to the post of ADIGP though approved by the DCP convened on 26th February, 2003 for the vacancy of the year 2003-2004 was not being given effect to on account of his medical report being awaited on the date of the DPC. The petitioner had already been found to be fit to attain SHAPE-1 medical category in the medical examination conducted on 8th December, 2002. However, he was not granted his promotion. This conduct of the respondents compelled the petitioner to file the aforesaid writ petition. The writ petition was disposed of by the Nagpur Bench of the Bombay High Court by the order dated 21st June, 2006 and the court made the following observations:

6. It is no doubt true that in view of the statement made by Mr. Mishra, the learned Counsel for Union of India the cause of action in the present writ petition no more survives. However, it is really unfortunate that the petitioner in spite of the fact that he was eligible to get the deemed date w.e.f. 26/2/2003 his claim was disallowed by the respondent for no apparent justification. We deprecate such attitude of the respondents particularly in respect of the Officer, who are surviving in forces. We cannot lose sight of the fact that fighting litigation in the court of law is not only difficult for such people but it causes mental torture. In the normal set of circumstances we would have saddled exemplary costs on the respondents. However, during the pendency of the petition since the respondents have realized their mistake and corrected the same by granting deemed date to the petitioner, we are restricting ourselves from imposing the cost on the respondents. However, we make it clear that in future the respondents must take due care and caution while considering the entitlement and claims of their employees.

With these observations writ petition is disposed of.

24. As noticed above, the request of the petitioner to post in Delhi or at a near about station was turned down by the respondents. Aggrieved by the refusal of the respondents to post him in Delhi, the petitioner approached the High Court of Jammu & Kashmir at Srinagar by filing SWP No. 1537/2006. That petition, it appears, was disposed of on 27th February, 2007 and the respondents were directed to decide the petitioner's representation within two weeks. The

respondents, by way of a letter dated 13th March, 2007 informed the petitioner that there was no vacancy in his rank i.e. in the rank of Deputy Inspector General, available in and around Delhi and his case would be considered in due course.

25. The petitioner disputed this position and informed that a post of DIG was vacant in Delhi against which he could be accommodated. Since the respondents did not respond to the aforesaid communication, the petitioner preferred Contempt Case No. 82/2007. The contempt petition is still pending consideration. The court passed a detailed order dated 31st July, 2007 wherein the court made the following observations:

7. In cumulative consideration of the matter as discussed hereinabove one is bound to get an impression that there is perhaps something more in the case than what meets the eye, suggesting that the attitude of respondents towards petitioner in the matter of his request for transfer is apparently neither balanced, nor transparent or pragmatic as it is required to be in terms of the policy decision contained in the introductory paragraph of standing order No. 29 quoted above even if the delayed compliance report prepared by respondent-organization as late as on 28th of May, 2007, i.e. exactly six months after the court order, while it was required to be accorded within three weeks only is ignored.

8. Accordingly, the statement of fact furnished/filed on behalf of respondent organization as supplemented by their compliance report purporting to have been furnished in terms of order dated 10.07.2007 passed herein, even while not having been sworn on an affidavit, does not appear to be satisfactory enough to explain their failure to effectively implement observe and comply with the court order dated 28.11.2006 passed in SWP No. 1537/06, in letter and spirit. Accordingly, the respondents shall explain their conduct in light of what has been stated above before being formally proceeded against for contempt of Court.

26. The conduct of the respondents qua the petitioner therefore consistently appears to have been hostile and the petitioner has been made to run from one court to another for seeking his legitimate dues and reliefs. The petitioner has again been compelled to file the present petition after his retirement on account of the passing of the impugned orders dated 31st July, 2008 and 23rd March, 2009. Not only the issuance of these orders was patently illegal on account of the breach of principles of natural justice, but also the same have been passed on the basis of, admittedly, wrong appreciation of facts. The order dated 1st December, 2008 passed by the respondents admitted the position that the petitioner had rejoined his duty on 16th November, 2007 in the office of (Ops) Range Baramulla. In spite of that, the petitioner has been made to suffer even after his retirement from 35 years of blemishless service. Such conduct of the respondents deserves to be deprecated and the petitioner deserves to be compensated adequately.

We, therefore, allow this writ petition; quash the orders dated 31st July, 2008



and 23rd March, 2009 passed by the respondents and restore the order dated 25th May, 2008. In respect to the period dated 16th July, 2007 to 15th November, 2007, we direct the respondents to release to the petitioner the amounts due to him, including the pension etc. on the basis of the order dated 25th May, 2008. We, further, award costs in favour of the petitioner and against the respondents quantified at Rs. 50,000/- on account of the unnecessary harassment to which he has been repeatedly subjected by the respondents. These directions should be complied with and the payments due to the petitioner should be released within six weeks from today.