
(2004) 11 DEL CK 0047
In the Delhi High Court
Case No : WPC 604 of 2001

Balram Sharma

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 29-11-2004

Acts Referred:

Constitution of India, 1950 — Article 14, 226

Citation : (2005) 116 DLT 169 : (2006) 1 SLJ 483

Hon'ble Judges : Manmohan Sarin, J

Bench : Single Bench

Advocate : Shyam Babu, for the Appellant; Shiv Kumar, for the Respondent

Final Decision : Dismissed

Judgement

Manmohan Sarin, J.—The petitioner, Balram Sharma a cricketer and sportsman was employed in the sports quota, in the year 1985 with the respondent- Oil and Natural Gas Corporation (ONGC). He claims to have won many laurels for ONGC in cricket matches and established his credentials as an outstanding sportsman.

2. Present petition has been filed for quashing of the impugned Memorandum dated 8.11.2000, Annexure-1, holding petitioner as deemed to have resigned his appointment in ONGC w.e.f. 29.2.2000 (Afternoon). The memorandum records that petitioner had been relieved from ONGC's New Delhi Office on 30.11.99, with directions to report to Head (Panda), ONGC, NRBC, Jammu, after availing the usual joining time. It further records that he neither reported for duty nor applied for any leave and had been absenting from duties w.e.f. 1.12.1999. A show cause notice dated 29.7.2000, was issued to him to explain why he should not be considered as deemed to have resigned his appointment by invoking provisions of Rule 1 (5) of ONGC Leave Rules read with Rule 14(2) and 14(4) of the said Rules. No Explanation was received. But he requested for his retention at New Delhi which request was not acceded to.

3. Mr. Shyam Babu, learned counsel for the petitioner assails the impugned

memorandum dated 8.11.2000, whereby the respondents have invoked Rule 14(5) and held it to be a case of deemed resignation. He submits that it was belatedly on 29.7.2000 that the respondents served a show cause notice, calling upon the petitioner to show cause why Rule 14 be not invoked and petitioner be not treated as having resigned with retrospective effect from 29.2.2000. Respondents themselves had given the benefit of adjustment of three months leave from 1.12.99 to 29.2.2000. He submits that petitioner had 208 days of earned leave/half pay leave to his credit. The said leave was liable to be adjusted for the period of absence and respondents could not have invoked Rule 14(). He placed reliance on the Division Bench judgment of this Court in D.T.C. v. Daya Nand 2003 (2) SLJ 78 wherein, a similar provision had been struck down.

4. Mr. Shyam Babu vehemently urged that as the impugned order was solely based on invocation of Rule 14(5) which was not permissible, the impugned order deserves to be quashed. He submits that order be quashed and thereafter It would be for the respondents to proceed with such action as is warranted in accordance with law. He urged that Court should confine itself to the sustainability of the impugned order and pronounce thereon without being influenced by whether the petition deserves to be entertained under Article 226 of the Constitution of India or not? Even on this aspect he submits that the petitioner has been a victim of tragic circumstances. Petitioner's mother was mentally retarded and remained un-well, requiring his presence, culminating in her death on 15th July, 2000. In these circumstances, it is urged that petitioner deserved clemency. Respondents themselves had treated the period from December, 1999 to February, 2000 as extra-ordinary leave, without there being any prior notice of it. Respondents on the same basis could have treated the balance period as extraordinary leave. Petitioner was also not put on advance notice that the respondent proposed to treat the period from 1.2.1999 to 29.2.2000 as extra ordinary leave was for the purpose of invoking Rule 14(5) of the ONGC Leave Rules.

5. Mr. Shiv Kumar opposing the writ petition submitted that this was a gross case of indiscipline. Petitioner was transferred on 16.3.1998. On his request his transfer was deferred and he was retained at New Delhi up to November, 1999. In end November, 1999, he was relieved from Delhi. He neither reported at Jammu nor he submitted any leave application. Despite the respondents having accommodated the petitioner by deferring his transfer, vide orders dated 16.6.1999 up to November, 1999, the petitioner is complete defiance remained in Delhi. He did not even submit a single application for leave. When finally the petitioner was served with a show cause notice on 29.7.2000, stating that why he be not deemed to have resigned w.e.f. 29.2.2000, he sent a reply dated 22.8.2000, stating that his mother had passed away on 15.7.2000. No Explanation was given for absence for the period prior to that. There was no Explanation tendered as to why he should not be treated as deemed to have resigned w.e.f. 29.2.2000. He did not protest against the adjustment of his leave for the period from December, 1999 to February, 2000, being treated as

extraordinary leave nor did he make a request that any half pay leave or other leave to his credit be adjusted. He did not even seek further leave. His request was for being retained at Delhi. The communication indicated that petitioner was still not willing to move to Jammu as he again requested for reconsideration and posting him at Delhi.

6. As regards the decision of the Division Bench of this Court in D.T.C. v. Daya Nand 2003 (2) All India Service Law Journal page 78, the Division Bench while dealing with Regulation 14(10(c) which provided for deemed resignation without containing safeguard of being given in a prior notice, held it to be violative of Article 14 of the Constitution of India. The above case would not advance petitioner's case in the present facts.

7. In the instant case before proceeding with the matter, show cause notice dated 29th July, 2000 had been duly issued to the petitioner requiring him to show cause as to why Rule 14(5) of ONGC Leave Rules, 1995 be not invoked and he be not treated as having resigned with retrospective effect from 29th February, 2000. As noted earlier, the petitioner received notice, sent a reply where he tendered no Explanation for his unauthorized absence. Where in response he only stated that he had to seek extension on account of his mother's illness. He recognized that the said request for extension was not considered favorably. Petitioner mentioned the factum of his mother passing away. He requested for being posted at Delhi and the request to be reconsidered on humane grounds. It would thus be seen that the petitioner even at this stage did not indicate his willingness to join at Jammu but wanted reconsideration to be permitted to stay at Delhi. He neither protested to the invocation of Rule 14(5) and his being treated as deemed to have resigned nor did he seek adjustment of any earned leave or extraordinary leave to his credit. Petitioner was conveyed the rejection of the request on 18th October, 2000. It was only belatedly on 13th November, 2000, that he indicated his willingness to report for duty and sought regularization of absence by grant of leave under the rules. This was subsequent to the impugned order dated 8th November, 2000 having been passed. It would thus be seen that the petitioner had been duly served with the show cause notice to which he responded as above, without taking any grounds as are now sought to be raised after the impugned order had been passed.

8. It may also be noted that Rule 4 of the ONGC Leave Rules provides as under:-

"" 4. Right to leave

(1) Leave can not be claimed as a matter of right.

(2) Full discretion shall rest with the Competent Authority to grant leave, to refuse, or revoke such leave at any time according to the exigencies of service of the Company.""

Even with regard to the extraordinary leave, the rules provides that same shall be available in special circumstances. It would thus be seen that grant or

adjustment of leave is not to be automatic but is at the discretion of the respondent-competent authority. The petitioner as noted did not even apply for leave.

9. In view of the facts as noted above, it would be seen that petitioner has conducted himself in a manner giving primacy to personal life over the requirement and exigencies of service. Petitioner resisted his transfer to Jammu since March, 1998, successfully up to November, 1999. The respondent accommodated by deferring the transfer for over one and half years. Petitioner like all other employees of the respondent has to abide by discipline and exigency of service, but this was not to be so. Petitioner did not report for duty for a period of nearly one year on the ground of demise of his mother and on the plea of other pressing personal circumstances. Such conduct and act of gross defiance would not be countenanced by any employer.

10. In the instant case, petitioner has been duly served with the show cause notice for invoking Rule 14(5) and had failed to set out in his reply, any objections to the invocation of Rule 14(5) and had not claimed adjustment of any leave and hence there was no violation of principles of natural justice. Even otherwise in my view the facts and conduct of the petitioner is such which disentitles the petitioner to invocation of relief in the exercise of extraordinary writ jurisdiction notwithstanding his outstanding attributes or performance in sports.. Extraordinary performance or sports activity does not entitle or absolve an employee from his obligation of abiding by the Rules and conformity to the discipline of the organization. It is not fit case to be entertained in the exercise of writ jurisdiction.

Petition is Therefore liable to be dismissed and is dismissed.