
(2011) 09 DEL CK 0259
In the Delhi High Court
Case No : Writ Petition (C) 925 of 1999

Dharambir Singh	Vs	APPELLANT
Union of India (UOI) and Another		RESPONDENT

Date of Decision : 28-09-2011

Acts Referred:

Central Civil Services (Leave) Rules, 1972 — Rule 14, 19, 19(1), 7

Citation : (2011) 09 DEL CK 0259

Hon'ble Judges : Sunil Gaur, J; Pradeep Nandrajog, J

Bench : Division Bench

Advocate : Ravindra S. Jaina, for the Appellant; Satya Sahrawat, Anuj Aggarwal, for Ankur Chhibber, for the Respondent

Final Decision : Dismissed

Judgement

Pradeep Nandrajog, J.—The Petitioner was enrolled as a Constable in CRPF and earned a promotion to the post of Head Constable. He was having some eye ailment and for which he was under medical treatment of an Ophthalmologist at Postgraduate Institute of Medical Education and Research Chandigarh in respect whereof medical record shows that Petitioner commenced treatment on 7.11.995 which continued till around July 1996. We shall be referring to the said record soon hereinafter at the relevant stage. The battalion to which the Petitioner was attached was transferred to Tripura and as would be noted hereinafter, there are medical documents to show that in the month of August 1996 the Petitioner was under treatment for the eye ailment when he was at Tripura.

2. The Petitioner sought 30 days" leave on account of the death of his mother. It was sanctioned from 26.8.1996 to 24.9.1996.

3. On 24.9.1996 the Petitioner sent a telegram which was received by the Commandant of the unit on 10.10.1996 under which Petitioner sought leave to be extended on the ground that he was under medical treatment at CRPF Hospital at Jarodha Kalan.

4. The Commandant informed the Petitioner vide letter dated 15.10.1996 that proper documents pertaining to medical infirmity should be furnished, failing which the Petitioner was directed to immediately join duties. The Petitioner did not join back and hence on 16.11.1996 the Commandant wrote another letter to the Petitioner to join back.

5. It appears that since the Petitioner had informed the Commandant that he was admitted at the Base Hospital, Jarodha Kalana, CRPF on 8.11.1996, in response to a communication, the Chief Medical Officer of the said hospital had sent a certificate dated 26.11.1996 certifying that the Petitioner was fit to join duties. Being in receipt thereof, vide letter dated 14.1.1997 the Commandant once again required Petitioner to report back. The Petitioner did not report back. On 14.3.1997 proceedings were initiated before a Magistrate to obtain an arrest warrant as the Petitioner was treated as a deserter. The Petitioner could not be located and vide order dated 15.7.1997 he was declared a deserter.

6. It was only on 24.11.1997 that the Petitioner reported for duty after unauthorized absence of 1 year and 2 months. A charge memo was issued to the Petitioner on 4.12.1997 for the misdemeanour of overstaying leave by 426 days.

7. Inquiry Officer was appointed and needless to state the witnesses of the prosecution proved that the Petitioner did not report back after 30 days' leave sanctioned to him was over. Various communications sent by the Commandant to the Petitioner were proved. It was proved that the Petitioner never sent the requisite documents along with a proper application for medical leave to be sanctioned to him. The Petitioner tendered in evidence a host of documents which showed Petitioner availing medical treatment.

8. Since the Petitioner never denied overstaying leave for 426 days and justified the same with reference to his medical condition, we eschew reference to such pleadings in the writ petition where pot shots are being taken at the prosecution evidence, for the reason the facts of the instant case would reveal that it was the defense which has to succeed and there was nothing for the prosecution to prove since absence for 426 days was not in dispute.

9. The Petitioner tendered various documents pertaining to the stated medical treatment availed by him and we note the same at seriatim as under:

A. Out Patient Department Card bearing stamp dated 07.11.1995 issued by the Postgraduate Institute of Medical Education and Research, Chandigarh, having endorsements pertaining to Petitioner visiting the institute and meeting the doctor on 15.05.1996, 24.05.1996, 21.06.1996 and 05.07.1996.

B. Cash Memos dated 13.11.1995, 27.11.1995 and 8.1.1996 issued by Rana Medical Hall, Chandigarh regarding purchase of medicine for eye ailment.

C. Instructions dated 05.12.1995, 9.12.1995, 13.5.1996 and 15.6.1996 on a lined copy sheet relating to OPD Card No. 804/1995.

- D. Treatment and Investigations sheet bearing stamp dated 08.01.1996 having prescriptions dated 22.11.1995, 04.12.1995 and instruction for review on 06.05.1996.
- E. General Receipt dated 15.04.1996 issued by Postgraduate Institute of Medical Education and Research, Chandigarh on account of treatment for refraction.
- F. General Receipt dated 17.05.1996 issued by Postgraduate Institute of Medical Education and Research, Chandigarh on account of: C.L.
- G. OPD slip dated 08.08.1996 prescribing eye drops and a review instructions dated 12.08.1996.
- H. Cash Memo dated 8.8.1996 issued by Urbashi Medical Hall, Tripura for purchase of eye drops.
- I. Diagnosis dated 19.08.1996 on a lined copy sheet relating to OPD No. 226, having instructions dated 21.08.1996 to report to eye specialist on 26.08.1996.
- J. Cash Memo dated 19.8.1996 issued by Medi-Point, Tripura for purchase of eye drops.
- K. OPD card dated 19.9.1996 issued by AIIMS New Delhi, having diagnosis dated 30.09.1996, 10.10.1996, 14.10.1996, 17.10.1996, 24.10.1996, 04.11.1996, 05.12.1996 and 12.12.1996.
- L. Discharge Certificate dated 08.11.1996 issued by CRPF Base Hospital, New Delhi, evidencing Petitioner admitted for treatment for viral fever and prerenal azotemia on 31.10.1996 and discharged on 8.11.1996 with advice to be on bed rest for 15 days.
- M. Medical Certificate of Fitness and Return Duty, dated 26.11.1996, issued by Chief Medical officer CRPF New Delhi.
- N. OPD Card issued by AIIMS New Delhi, recording visits made for check up on 12.12.1996, 30.12.1996, 20.01.1997, 30.01.1997, 03.02.1997 and 17.02.1997.
- O. Cash Memos dated 31.12.1996, 18.1.1997 and 17.2.1997 issued by Medicare Chemists, New Delhi.
- P. Cash Memos dated 07.01.1997 and 08.01.1997 issued by Lal Sons Chemists.
- Q. OPD Card issued by AIIMS New Delhi recording visits made for check up on 27.02.1997, 20.03.1997, 27.03.1997, 24.04.1997 and 28.08.1997.
- R. OPD Card issued by AIIMS New Delhi recording visits made for check up on 19.05.1997, 26.05.1997, 02.06.1997, 28.07.1997 and 11.08.1997.
- S. Report dated 02.06.1997 by Eye Surgeon of Dr. Rajendra Prasad Centre for Ophthalmic Sciences.
- T. Diagnosis on OPD card slip dated 28.08.1997, 08.09.1997, 18.09.1997,

06.10.1997, 27.10.1997, 12.11.1997 and 01.12.1997.

U. Certificate dated 19.09.1997 issued by Dr. Rasik Vajpayee, AIIMS, New Delhi certifying that Mr. Dharambir Singh is undergoing treatment for eyes.

V. Undated Cash Memo issued by Arora Medical Store.

W. Prescription dated 13.12.1997 on OPD slip having instructions dated 20.12.1997 to attend AIIMS.

X. Cash Memo dated 13.12.1997 issued by Usha Medical Hall.

Y. Diagnosis dated 02.01.1998 on prescription slip dated 13.12.1997 issued by Medical Superintendent, Tripura.

10. From a perusal of the medical documents filed it is apparent that the Petitioner was having an eye ailment which required prolonged treatment, but not as a patient admitted at the hospital. The document earliest in point of time is the OPD Card dated 7.11.1995 issued by Postgraduate Institute of Medical Education and Research Chandigarh and related documents pertaining to PGI or Chemists at Chandigarh showing that till 17.5.1996 the Petitioner remained under treatment at Chandigarh and had been visiting the doctor concerned at periodic intervals. The record then shows that the Petitioner was in Tripura in the month of August 1996 evidenced from the cash memos pertaining to chemists, listed at serial No. H and J of para 9 above showing Petitioner having purchased eye drops at Tripura. Record further shows that on 19.9.1996 Petitioner had visited AIIMS to consult a doctor when OPD Card dated 19.9.1996 was issued. Record shows that the Petitioner had been visiting the Ophthalmologist at AIIMS on various dates till 20.12.1997. Record certainly evidences that the Petitioner had also suffered from viral fever and prerenal azotemia for which he remained admitted at CRPF Base Hospital from 31.10.1996 to 8.11.1996 and on being discharged on 8.11.1996 was advised rest and it was only on 26.11.1996 that the Petitioner was certified fit to resume duties. Record shows that the Petitioner was admitted for short durations at PGI Chandigarh and AIIMS at Delhi for the eye treatment, but the exact duration during which Petitioner remained admitted cannot be ascertained; none has been pleaded with clarity in the writ petition.

11. The period of unauthorized absence commenced from 25.9.1996 inasmuch as the Petitioner was sanctioned leave from 26.8.1996 to 24.9.1996 and thus the medical record produced by the Petitioner can safely be put in two parts. Pre 26.8.1996 period and post 26.8.1996 period.

12. The medical record noted at serial No. A to J in para 9 above would reveal that the Petitioner had undertaken treatment for some eye ailment at Postgraduate Institute of Medical Education and Research at Chandigarh and the nature of treatment i.e. as an OPD patient shows that the ailment, though chronic was not of a kind that the Petitioner was unable to perform duties. We call the ailment chronic inasmuch as the treatment which commenced on 7.11.1995 continued till August 1996. During this period the battalion to which

the Petitioner was attached had been sent to Tripura and thus we have cash memos detailed at serial No. H and J of para 9 above which shows that on 8.8.1996 and 19.8.1996 the Petitioner purchased eye drops from a chemist at Tripura.

13. Medical documents listed at serial No. K to X of para 9 above would show that on 19.9.1996 the Petitioner went to AIIMS for treatment of some eye ailment and he made visits to AIIMS on various dates indicated in the OPD card listed at serial No. K of para 9 above till 12.12.1996 and in between, contacted viral fever and prerenal azotemia for which he remained hospitalized at CRPF Base Hospital from 31.10.1996 to 8.11.1996 and being discharged on 8.11.1996 was advised bed WP rest for 15 days. and this explains the certificate of medical fitness dated 26.11.1996 to which we have referred to hereinabove being issued by the Chief Medical Officer CRPF that Petitioner was fit. The medical documents listed at serial No. K to Y of para 9 above would show that as an OPD patient the Petitioner had been visiting an Ophthalmologist at AIIMS.

14. Now, there is evidence of Petitioner having a chronic eye ailment and probably he underwent eye surgery at Chandigarh for a refraction error for the reason the general receipts dated 15.4.1996 and 17.5.1996 details whereof have been noted at serial No. E and F of para 9 above show some kind of surgical intervention performed in the eye of the Petitioner. But, said period is prior to when the Petitioner was granted leave. There is No. evidence of Petitioner being hospitalized for any eye ailment during the period of unauthorized absence.

15. It was urged by learned Counsel for the Petitioner that though there is No. evidence of Petitioner being hospitalized, there is enough evidence that Petitioner was suffering from a chronic eye ailment and thus counsel urged that the Petitioner had a good reason not to join because medical facilities at Tripura were not available or were not up to the mark.

16. That is not the way in which the issue has to be looked at legally.

17. It is not in dispute that the CCS (Leave) Rules, 1972 govern the service of the Petitioner and we highlight that Rule 7, 14 and 19 of the said Rules are relevant and thus we note the same. They read as under:

7. Right to leave

(1) Leave cannot be claimed as of right.

(2) When the exigencies of public service so require, leave of any kind may be refused or revoked by the authority competent to grant it, but it shall not be open to that authority to alter the kind of leave due and applied for except at the written request of the Government servant.

X X X

14. Application for leave

Any application for leave or for extension of leave shall be made in Form 1 to the authority competent to grant leave.

X X X

19. Grant of leave on medical certificate to Gazetted and non- Gazetted Government servants

1. An application for leave on medical certificate made by-

(i) a Gazetted Government servant, shall be accompanied by a medical certificate in Form 3 given by a Central Government Health Service (CGHS) Doctor if such a Government servant is a CGHS beneficiary or by a Government Hospital or by an Authorized Medical Attendant if he is not a CGHS beneficiary; and by an Authorized Doctor of the private hospital recognized under CGHS/Central Services (Medical Attendance) Rules, 1944, in case of hospitalization or indoor specialized treatment duly approved by Competent Authority in respect of any particular kind of disease like heart disease, cancer, etc., for the treatment of which the concerned hospital has been recognized by the Ministry of Health and Family Welfare:

Provided that the Gazetted Government servant who is a Central Government Health Service beneficiary, if at the time of illness, is away from CGHS area or proceeds on duty outside the Headquarters will produce Medical Certificate (MC) or Fitness Certificate (FC) in Form 3 and Form 5, as the case may be, given by an Authorized Medical Attendant;

(ii) a non-Gazetted Government servant, shall be accompanied by a medical certificate Form 4 given by a CGHS Doctor if such a Government servant is a CGHS beneficiary or by Government Hospital or by an Authorized Medical Attendant if he is not a CGHS beneficiary; and by an Authorized Doctor of the private hospital, recognized under CGHS/Central Services (Medical Attendance) Rules, 1944, in case of hospitalization or indoor specialized treatment duly approved by the Competent Authority in respect of particular kind of disease like heart disease, cancer, etc., for the treatment of which the concerned hospital has been recognized by the Ministry of Health and Family Welfare:

Provided that the non-Gazetted Government servant who is a CGHS beneficiary, if at the time of illness is away from CGHS area or proceeds on duty outside the Headquarters will produce M.C. or F.C. in Form 4 or 5, as the case may be, given by an Authorized Medical Attendant (AMA) or by Registered Medical Practitioner (RMP) if there is No. AMA available within a radius of 8 kilometers (kms) from his residence or place of temporary stay outside his Headquarters and also in the circumstances when he finds it difficult to obtain MC or FC from a CGHS Doctor or an Authorized Medical Attendant;

defining as clearly as possible the nature and probable duration of illness.

2. A Medical Officer shall not recommend the grant of leave in any case in which

there appears to be No. reasonable prospect that the Government servant concerned will ever be fit to resume his duties and in such case, the opinion that the Government servant is permanently unfit for Government service shall be recorded in the medical certificate.

3. The authority competent to grant leave may, at its discretion, secure a second medical opinion by requesting a Government Medical Officer not below the rank of a Civil Surgeon or Staff Surgeon, to have the applicant medically examined on the earliest possible date.

4. It shall be the duty of the Government Medical Officer referred to in Sub-rule (3) to express an opinion both as regards the facts of the illness and as regards the necessity for the amount of leave recommended and for that purpose may either require the applicant to appear before himself or before a Medical Officer nominated by himself.

5. The grant of medical certificate under this rule does not in itself confer upon the Government servant concerned any right to leave; the medical certificate shall be forwarded to the authority competent to grant leave and orders of that authority awaited.

6. The authority competent to grant leave may, in its discretion, waive the production of a medical certificate in case of an application for leave for a period not exceeding three days at a time. Such leave shall not, however, be treated as leave on medical certificate and shall be debited against leave other than leave on medical grounds.

18. A co-joint reading of the Rules would evidence that leave cannot be claimed as of right and is subject to exigencies of public service. Secondly, application for leave or extension thereof has to be made as per Form 1 prescribed and has to be submitted to the authority competent to sanction leave. Further, an application seeking medical leave has to be accompanied by a medical certificate issued by any one of the authorities specified in Clause (i) or Clause (ii) of Sub-Rule 1 of Rule 19 of the Leave Rules.

19. The Petitioner never obtained, much less furnished a certificate from the concerned doctor justifying grant of medical leave save and except pertaining to Petitioner being treated for viral fever and prerenal azotemia at the CRPF Base Hospital from 31.10.1996 till 8.11.1996 and it is only the discharge certificate dated 8.11.1996, detailed at serial No. L of para 9 above which is in proper format. The remainder i.e. whether they are certificates or endorsements on OPD cards, only evidence that the Petitioner was undertaking some treatment for an eye ailment and not that the Petitioner was unfit for duty.

20. It is apparent that the Petitioner did not comply with the letter of the law.

21. Learned Counsel for the Petitioner had urged that if the spirit of the law is satisfied, it does not matter whether the letter of the law is satisfied.

22. Leaving the debate open where the antagonist view would be that as long as there is material to show medical infirmity, it hardly matters whether the form of the material conforms to the letter of the law, and the protagonist would argue that in relation to public service where the tax payer's money feeds the mouth of the civil servant and his family a punctual observance of the letter of the law should be insisted for the reason an ailment could be of a kind which does not render a person unfit for duty and such an ailing person must earn his bread and butter. You cannot just sit back in your house on an ailment which may be chronic but not of a kind which renders you unfit for duty. It may be argued by the protagonist that a civil servant with a chronic but not a threatening ailment can be assigned light duties and thus he must report for work.

23. We prefer to decide on the facts of the instant case. The Petitioner is not armed with any medical certificate that he was unfit for duties except for a short period of 3 weeks, when he was hospitalized at CRPF Base Hospital. He was taking treatment as an OPD Patient. This shows that the Petitioner was in his house. It may be true that first class eye treatment is not available at Tripura where the battalion of the Petitioner was stationed, but we see No. reason why the Petitioner could not have joined duties and requested that he should be attached to a battalion of CRPF which was stationed for duties at Delhi or Chandigarh. He could have produced the medical papers pertaining to his treatment before the Commandant who could have obtained an opinion whether medical treatment required by the Petitioner required him to be stationed at either Delhi or Chandigarh. If the Petitioner required periodic visits to AIIMS, the alternative of sanctioning medical leave for short durations to enable Petitioner to present himself before the Ophthalmologist would also have been considered as an alternative.

24. The Petitioner could not become a judge in his own cause. He could not just stay back at Delhi.

25. We must highlight that all cases of unauthorized absence or desertion being brought before us pertained to when battalions of CRPF or BSF are transferred to hard areas and it surprises us that when stationed at peace places, No. officer of CRPF or BSF complains of sickness. Not a single case of desertion, or unauthorized absence, out of over 250 decided by us till today pertains to a CRPF or BSF jawan of a battalion posted in a peace station. Whenever we have called upon counsel for CRPF or BSF to advance arguments on the quantum of punishment, they have always highlighted that there is a tendency of the force personnel to feign sickness or exaggerate minor illnesses to avoid working in hard areas and if this deviancy is overlooked, it would breed insubordination in the force because jawans would not obey lawful commands of the superiors to report back. This would encourage deviant behaviour by others. Secondly, it has been pointed out to us that force personnel are sent on leave by rotation and where one jawan overstays leave, he does so at the cost to some other(s).

26. We note that the original penalty of removal from service inflicted by the

disciplinary authority has been whittled down by the appellate authority to one of compulsory retirement with benefits of pension and gratuity and other admissible benefits. In other words for the service rendered the Petitioner has been granted due recognition to receive pensionary benefits.

27. We find No. merit in the writ petition which is dismissed.

28. No costs.