
(2013) 09 DEL CK 0204

In the Delhi High Court

Case No : Writ Petition (C) 6738 of 2012 and CM No. 17689 of 2012

Dhiraj Bhatt

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 27-09-2013

Acts Referred:

Citation : (2014) 1 AD 58

Hon'ble Judges : Gita Mittal, J;Deepa Sharma, J

Bench : Division Bench

Advocate : Anuj Aggarwal and Mr. Gaurav Khanna, for the Appellant; B.V. Niren, CGSC, for the Respondent

Final Decision : Allowed

Judgement

Gita Mittal, J.—The writ petitioner is aggrieved by an order dated 11th September, 2012 whereby the respondents have rejected his candidature for appointment as Sub-Inspector/GD in the Limited Departmental Competitive Examination - 2010 ("LDCE - 2010" hereafter). The petitioner is also aggrieved by the order dated 3rd May, 2010 whereby his sanctioned casual leave of 10 days with effect from 1st April, 2010 to 15th April, 2010 was cancelled and the period was regularized as earned leave. By the same order, the respondents have treated the petitioner having reported on 16th April, 2010 as leave half pay without salary and allowances. The facts giving rise to the instant writ petition are in narrow compass.

2. The petitioner was recruited on the 2nd of February, 2006 as Constable/BUG with the Central Reserve Police Force ("CRPF" hereafter) and since July, 2007 he had been deployed with the CRPF Battalion at Doda, Jammu and Kashmir. On completion of four years diligent service with the CRPF, the petitioner had applied for taking the Limited Departmental Competition Examination - 2010 ('LDCE') for the post of Sub-Inspector/GD. The petitioner undertook the examination in February, 2012 but could not qualify the same.

3. The petitioner again appeared in the examination held on 2nd September, 2012 wherein he was declared as qualified. The petitioner also qualified the physical efficiency test and the medical examination and therefore, had completed all requirements for appointment pursuant thereto. However, on 12th September, 2012, the petitioner received a communication dated 11th September, 2012 informing him that his candidature for appointment to the post of Sub-Inspector/GD through the said LDCE has been rejected as his service book revealed that there was one day "Leave Half Pay (LHP)/Non Qualifying Service (NQS)" on the 16th April, 2010.

4. The petitioner sought audience from the DIGP (Recruitment) requesting his intervention and kind consideration. However, he was unsuccessful in getting redressal. Finally on 16th September, 2012, the petitioner addressed a detailed e-mail to the Director General of the CRPF requesting his personal hearing and also seeking his intervention explaining in detail the facts and circumstances which were responsible for his inability to report to duty on expiry of the casual leave on 15th April, 2010.

5. As the same did not receive any favourable consideration, the petitioner filed WP(C) No. 6144/2012 before this court seeking a direction against the respondents and quashing of the order dated 11th September, 2012. However, this writ petition had to be withdrawn on 1st October, 2012 with liberty to file fresh writ petition for the reason that the petitioner had not enclosed the rules which applied to the facts of the instant case.

6. We find that so far as casual leave which was sanctioned to the petitioner is concerned, it is undisputed. The respondents also do not dispute that the petitioner was required to report to the CRPF Battalion on the evening of 15th April, 2010. However, he could not do so.

7. So far as the circumstances which were responsible for the late reporting of the petitioner are concerned, the petitioner has explained the same in his e-mail dated 16th September, 2012. The relevant portion may usefully be extracted and reads as follows:-

Here, I would like to explain the reason for one day LHP(NQS). Actually, I went on 10 days casual leave in April, 2010 and was to report on 15-04-2010 by evening roll call at BN HQ, Jammu. I left my hometown in the early evening of 14-04-2010 and I reached Rishikesh (Uttarakhand) around 3 at night of 15-04-2010 but due to ongoing Kumbh mela 2010 there was severe shortage of inter-state public transport buses and other road transport were stuck in huge traffic jam due to Kumbh Fair (mela) in Haridwar. I tried my best to get possible means of transport so that I can reach Jammu by the evening of 15-04-2010, but there was complete traffic chaos in Rishikesh and Haridwar because there were more than 10 million (1 crore) people gathered to take holy dip in river Ganga that day. After trying for several hours in vain, I was left with only one option that to travel by a train in an unreserved general compartment on

15-04-2010. On that day even trains" schedule was badly affected by the Kumbh mela and all the trains originating from Haridwar and Rishikesh were running late by several hours. I boarded the train (Hemkunt Express) from Haridwar (on that day it started from Haridwar instead of Rishikesh - its actual originating station) and it was 3 hours late than its actually schedule when it left Haridwar and by the time it reached Jammu, it was late by 9 hours. Its actual arrival time to reach Jammu is 04:30 AM but it reached Jammu at 01:30 PM on 16-04-2010. I also got this late arrival time mentioned at the back of my leave pass. After this I immediately reported to 76 BN HQ, Channi-Himmat, Jammu (J & K) at 2:30 PM same day.

I'm a very sincere and responsible serviceman of this Mahan Bal and I have never defaulted in my six years tenure, I never reported late from my leave, never misbehaved with my colleagues and seniors, and always efficiently met and fulfilled my responsibilities and expectations from this Mahan Bal and I'm committed to follow this throughout my career.

8. The petitioner has placed before us also the endorsement recorded at the railway station by the concerned authority at the station when he boarded the train (Hemkunt Express). The circumstances explained by the petitioner were certainly beyond his control. The respondents are unable to point out anything to doubt the truth and bonafide of the explanation given by the petitioner.

9. So far as the manner in which the respondents have proceeded in the matter is concerned, we are compelled to note the fact that the respondents proceeded to pass the order dated 3rd May, 2010 so far as petitioner's half day absence was concerned. This order was passed behind the back of the petitioner. The respondents not only treated the half day absence of the petitioner as leave half pay without salary and allowances, but the respondents also cancelled the sanctioned casual leave of 10 days to the petitioner and treated the period from 1st April, 2010 to 15th April, 2010 as earned leave.

10. The petitioner has contended that the order dated 3rd May, 2010 was never served upon the petitioner. The petitioner had also not made any request for conversion of his casual leave into the earned leave.

11. The fact that the order was not communicated is supported by the endorsement made on the impugned order dated 11th September, 2012 which had required the concerned authority to convey the order dated 3rd May, 2010 to the petitioner. Furthermore the averment of the petitioner in this behalf is not disputed by the respondents in the counter affidavit. In any case, there has been no proof placed before us that this order was ever served upon the petitioner.

12. So far as the competency of the respondents to alter the leave of the petitioner from casual leave to earned leave is concerned, Rule 7 of Chapter II -

General Conditions of the CCS (Leave Rules) is relevant and reads as follows:-

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.

(Emphasis by us)

13. It is evident from the above that the respondents have no authority to cancel the leave which was sanctioned to the petitioner or to convert the same into earned leave.

14. So far as the petitioner's inability to report on 15th April, 2010 is concerned, we find that the same was bonafide and for the reasons completely beyond his control. The petitioner had left his home town and was enroute to his place of posting when the circumstances midway intervened and he was unable to find any transportation to reach his destination.

15. In the instant case, the respondents have regularized the petitioner's absence as half pay leave without salary and allowances. The respondents have not directed that the same would be treated as an interruption or break in service of the petitioner. There is also no decision as that such absence rendered the petitioner ineligible for appearing in LDCE for which the minimum period of continuous service is required. The respondents having passed an order regularizing the period of absence, in the given circumstances, such absence could not have come in the way of the petitioner's entitlement to appear in the LDCE and for appointment if found successful.

16. Our attention has also been drawn to the comments in Swami Handbook 2010 made in Chapter V captioned as "Unauthorized absence - Break in service". The relevant portion whereof reads as follows:-

1. Wilful absence from duty not covered by grant of leave will be treated as dies non for all purpose, viz., increment, leave and pension. Such absence without leave standing singly and not in continuation of any authorized leave of absence will constitute an interruption in service entailing forfeiture of past service for the purpose of pension and requires coordination by the Appointing Authority for counting past service for pension Condonation on such break for pension should be considered suo motu and cannot be refused as a matter of course, except in exceptional and grave circumstances.

2. Unauthorized absence after leave, will be debited against his half pay leave account excess, if any, being treated as extraordinary leave. However, he will not be entitled to any leave salary.

3. All cases of unauthorized absence from duty or in continuation of leave, will render a Government servant liable for disciplinary action, treating it as misconduct.

17. Mr. B.V. Niren, learned counsel for the respondents placed reliance on the Rule 25 of CCS (Leave Rules). We find that reliance on Rule 25 is of no assistance to the respondents. Even this rule permits the authority to grant leave or extend the leave to a government servant who remains absent or to direct that after the end of leave, the period of his absence shall be debited against his leave account as though it were half pay leave to the extent such leave is due. Sub-Rule 2 of Rule 25 specifically states that wilful absence from duty after the expiry of leave renders a government servant liable to disciplinary action. From the above narration of facts it is apparent that the respondents also did not consider the petitioner's absence as wilful and have not subjected him to any disciplinary action.

18. It is an admitted position that the respondents have treated the absence of the petitioner as bonafide when they have adjusted it against the leave admissible to the petitioner. It is accepted that it was not wilful absence which would have invited the consequences set out in the rules. The same has not been treated as misconduct and therefore, no disciplinary action has been taken against the petitioner. No order has also been passed by the competent authority that this period is to be treated as break in service. The same cannot be so treated.

19. So far as participation and the result of the LDCE examination is concerned, we find that as per the scheme of the examination, the respondents have mandated checking of service records as stage one; written examination as stage two; physical measurement as stage three; physical efficiency test as stage four and the medical examination as stage five.

20. It is undisputed that the petitioner has successfully cleared all stages of the selection process for the LDCE - 2012. It was only thereafter that the respondents have rejected his candidature as they have wrongly treated his absence of half day absence of 16th April, 2010 as a break in service while considering him eligible to appear in the said examination.

21. The stand of the respondents is inappropriate for yet another reason as para 3 of the scheme for the said LDC Examination is concerned, the respondents have prescribed the following eligibility condition.

3. Eligibility conditions:

Xxx

a) Service eligibility: They should have completed four years of Service, including basic training.

22. The requirement as per the scheme of the examination is that the candidate should have completed four years of service including basic training. The stipulation is not that a candidate should have completed four years of continuous service immediately preceding the LDCE. This distinction has been completely overlooked in the matter inasmuch as the petitioner had joined the

force as back as on 2nd February, 2006 and therefore, at the relevant time had more than six years of service.

23. We find that the respondents have taken a completely new stand in the counter affidavit which is to the effect that the petitioner had suppressed the order dated 3rd May, 2010. We have found above that the respondents had failed to communicate the order dated 3rd May, 2010 to the petitioner. He could not be expected to disclose what he had no knowledge of. In any case as per the scheme of the examination, the respondents were required to scrutinize the service record as checking the service record of the candidate is stage one of the examination process. The burden would therefore, lie strictly on them. Even otherwise, as per the application form prescribed for the purposes of the examination by the respondents, we are informed that it requires the candidate to give "details of punishment/rewards if any". No column for disclosing his leave account exists in the form.

24. The order whereby the petitioner leave was converted from casual leave to earned leave and half day absence treated as leave half pay was not treated as a punishment by the respondents.

25. In view of the above discussion, the order dated 3rd May, 2010 to the extent that it cancels the petitioner's casual leave and directs that it be treated as earned leave is not sustainable and is completely set aside and quashed. The said period shall be treated as casual leave and appropriate corrections shall be effected in leave and service record of the petitioner within six weeks.

26. We also hold that the direction of the respondents to treat the 16th April, 2010 one day leave half pay without salary and allowances does not tantamount to punishment imposed upon the petitioner. The same was never so treated by the respondents and it cannot impede the petitioner appointment pursuant to the LDC Examination - 2012 in which the petitioner participated or may participate in future.

27. In view of the above, the respondents are directed to consider the case of the petitioner in the light of the above for appointment in accordance with his merit in the examination conducted for appointment to the post of Sub-Inspector/ GD LDCE held in September, 2012. Appropriate orders shall be passed by the respondents within in a period of six weeks from today.

28. We make it clear that the petitioner shall be entitled to notional seniority as per the order of his merit and consequential benefits. It is further directed that the petitioner shall be placed immediately above the persons below him in the order of merit in the said examination.

29. The petitioner shall not be entitled to any back wages and arrears of salary. This writ petition is allowed in the above terms.

CM No. 17689/2012

In view of the writ petition having being allowed, this application does not survive for adjudication and is disposed of.