
(2012) 04 DEL CK 0072
In the Delhi High Court
Case No : Writ Petition (C) 1893 of 2012

Girish Kumar

APPELLANT

Vs

UOI and Another

RESPONDENT

Date of Decision : 09-04-2012

Acts Referred:

Central Civil Services (Classification, Control and Appeal) Rules, 1965 — Rule 14

Citation : (2012) 04 DEL CK 0072

Hon'ble Judges : V.K. Jain, J; Badar Durrez Ahmed, J

Bench : Division Bench

Advocate : Jyoti Singh, Sr with Mr Padma Kumar S, for the Appellant; Sumeet Pushkarna, for the Respondent

Final Decision : Dismissed

Judgement

Badar Durrez Ahmed, J

CM 4136/2012 (exemption)

Allowed subject to all just exceptions.

W.P.(C) 1893/2012

1. This writ petition is directed against the order dated 04.04.2011 passed in OA 1263/2011 as also the order dated 26.05.2011 passed in the review application being RA 159/2011, both of which were dismissed by the Central Administrative Tribunal, Principal Bench, New Delhi. The petitioner was aggrieved by the order of removal which had been passed by the disciplinary authority on 02.04.2007 and had been confirmed by the appellate authority on 30.07.2007. His revision petition was also rejected by the revisional authority on 11.12.2008. The petitioner was working as Junior Intelligence Officer -I/ Mechanical Transport. He received a charge-sheet vide memorandum dated 25.01.2006 under Rule 14 of the CCS (CCA) Rules, 1965. The charge framed against the petitioner read as under:-

That said Sh. Girish Kumar, while working as JTO-MT in SIB-Jaipur left his headquarters, Jaipur on 19.12.2004 evening without seeking prior sanction of leave from the Competent Authority leaving behind an application for sanction of CL/RH/GH etc. from Dec 20 to 26, 2004. After expiry of the said leave, he did not join duty on 27.12.2004 and was, therefore, on unauthorized absence since 27.12.2004. He failed to respond to the directions of SIB-Jaipur to appear before the authorities of RML Hospital, New Delhi for medical examination and ignored the directions to resume duty.

2. Pursuant to the enquiry conducted by the enquiry officer, the disciplinary authority passed the order dated 02.04.2007 imposing the penalty of removal from service which was not to be treated as a disqualification for future employment under the government. While passing the said penalty order, the disciplinary authority also directed that the period of absence of the petitioner from 19.12.2004 to 23.04.2006, from 05.05.2006 to 16.05.2006 and from 27.05.2006 to 02.04.2007, that is, the date on which the disciplinary authority passed the order, be treated as "Extra Ordinary Leave" without pay and allowance.

3. We may point out at this stage that before the enquiry officer, the petitioner was directed to appear on 10.05.2006. Upon a request made by the petitioner that date was changed to 22.05.2006. The petitioner appeared on that date and the matter was adjourned to 23.05.2006. On that date, the petitioner had submitted that he had proceeded on leave without prior sanction as he was not in a position to seek prior permission from the concerned authority. He also stated that he had actually appeared before the Medical Board at Dr. Ram Manohar Lohia Hospital but that he was not in a position to tell the exact date. He also submitted that he would produce the opinion given by the Medical Board on the next date of hearing. On this basis, the enquiry officer permitted the petitioner to produce the relevant evidence on the next date of hearing, which was fixed on 26.07.2006. However, the petitioner did not appear on that date nor did he send any written intimation with regard to his non-attendance on that date. He also did not produce any copies of the medical certificates etc. from the Dr. Ram Manohar Lohia Hospital or of the Medical Board.

4. The enquiry officer fixed further dates of hearing on 17.08.2006, 09.10.2006 and 30.10.2006. But, the petitioner did not attend any of the said hearings. Left with no alternative, the enquiry officer proceeded with the case and returned the following findings:-

I have gone through the charge levelled against the charged employee, arguments held by the prosecution, documentary evidences, admitted documents produced by the prosecution and also heard the charged employee twice during the hearings held on 22.05.2006 and 23.05.2006. In my opinion the charge levelled against Shri Girish Kumar, JIO-I/MT (charged employee) of leaving hqrs. On 19.12.2004 (A.N.) without seeking prior sanction, continued unauthorized absence since 19.12.2004 (A.N.) and also not abiding the

departmental directions for a medical examination and not joining duty are proved in all respect.

Thereafter, as mentioned above, the disciplinary authority passed the penalty order of removal from service on 02.04.2007. The appellate authority rejected the petitioner's appeal on 30.07.2007 and the revision was also rejected on 11.12.2008.

5. There is no dispute that the petitioner remained absent for about 16 months without any prior approval of leave. The only explanation that was furnished by the petitioner was that he had sustained an injury while playing badminton and thereby he had ruptured his ligament and, therefore, he was unable to attend duty. On being questioned as to why he did not inform anybody on 19.12.2004, when he proceeded on "leave", he gave the explanation that he did not want to disturb others and as such, he left the headquarters. The Tribunal had remarked on this explanation as being totally incorrect and as having been rightly rejected by the enquiry officer. We do not see any reason as to why we should differ from this conclusion arrived at by the Tribunal. We also note that the petitioner, who was supposed to have joined on 27.12.2004 even as per the "leave application" which he had left behind on 19.12.2004, did not do so on that date. In fact, he only sent a leave application on 13.01.2005 on medical grounds. It was followed by certain other applications, the last of which was dated 07.03.2005. He, of course, sent medical certificates dated 25.02.2005, 11.03.2005 and 18.05.2005. In any event, there was no communication from him after 16.07.2005 nor did he return to duty. We note from the appellate order that the petitioner did not rejoin duty despite him having been informed through phonograms/ memos dated 08.04.2005, 20.04.2005 and 06.05.2005 advising him to rejoin duty immediately.

6. It is apparent from the foregoing facts that the petitioner had no explanation with regard to his long absence from duty. Despite repeated reminders by the concerned authorities requesting him to join his duties immediately, the only explanation that is forthcoming is that he was seriously injured while playing badminton and as a result of which he was incapacitated from joining duty. However, no such evidence has been produced by the petitioner either before the enquiry officer or even before the Tribunal.

7. Before us, the learned counsel for the petitioner sought to raise a point which has not been noticed by the Tribunal in the impugned order concerning the examination conducted by the SMS Medical College and Hospital, Jaipur on 19.06.2006. A photocopy of the said examination report has been placed at page 40 as Annexure P-3 to the writ petition. But, we find that even if that were to be taken into consideration, it does not, in any way, establish that the petitioner was incapacitated from joining duty. Furthermore, the report itself indicates that the petitioner "may be" experiencing some pain in the knee joint while walking, running, standing for long periods and driving for long periods and climbing stairs. But, this does not, in any way, indicate that the petitioner underwent a surgery, which is being urged by the learned counsel for the petitioner, nor does

it indicate that he was not in a position to attend duty.

8. It is, therefore, apparent that the petitioner has not been able to come up with any explanation for his long absence from duty. In fact, we find that the petitioner has not even submitted any application for leave after the last application dated 07.03.2005. The petitioner had requested for time before the enquiry officer to produce the evidence from Dr Ram Manohar Lohia Hosptial with regard to his ailment. But, he was not able to do so. He has not been able to produce any such evidence even before us.

9. In view of the foregoing, we do not see any reason whatsoever to interfere with the findings returned by the Tribunal. We also do not find any merit in the argument raised by the learned counsel for the petitioner with regard to proportionality in respect of the penalty that has been imposed upon the petitioner. Consequently, the writ petition is devoid of any merit. The same is dismissed. There shall be no order as to costs.