
(2009) 05 RAJ CK 0125
In the Rajasthan High Court

Jai Raj Singh Chauhan

APPELLANT

Vs

Rajasthan Tourism Development Corporation and Another

RESPONDENT

Date of Decision : 18-05-2009

Acts Referred:

Citation : (2010) 2 RLW 1477 : (2011) 1 SLR 325 : (2009) 2 WLN 446

Hon'ble Judges : R.S. Chauhan, J

Bench : Single Bench

Final Decision : Allowed

Judgement

R.S. Chauhan, J.—The petitioner has challenged the order dt. 14.05.2002, whereby he was dismissed from the post of Chief Inspector (Adventure Sports and Tourism), and the order dt. 15.06.2007 whereby his departmental appeal against the dismissal order was rejected.

2. In a nutshell the case of the petitioner is that while the petitioner was working on the said post, on 20.10.1999 he submitted an application for leave for sixty-six days from 27.10.1999 to 31.12.1999. He had to go on leave as his wife was working as a Doctor in Trinidad in West Indies. In the said application, he had clearly mentioned his wife's address in Trinidad. Since the application was forwarded by the Manager, Transport Division, R.T.D.C., Jaipur, therefore, he was under a bona fide impression that the leave prayed by him would be granted. But instead of granting the leave, vide order dt. 02.12.1999, the petitioner was placed under suspension. However, the said order was never served upon the petitioner. Upon his return from Trinidad, the petitioner tried to join back his duties. However, he was informed that he has been placed under suspension. Vide order dt. 26.02.2000, he was served with a charge-sheet wherein two charges were levelled against him: firstly, he was absent from duty without sanctioned leave for a period of sixty-six days; secondly, he had gone to a foreign country without permission of the competent authority. The petitioner immediately filed a detailed reply wherein he pointed out that he had to leave the country because of compelling family circumstances, namely that his wife

had to be settled in a new country far away from home. Therefore, his absence was not out of choice, but out of necessity. He had further claimed that his application for leave had been duly forwarded by the Manager. Since he was not informed about the rejection of his application for leave by the Corporation, he was under a bona fide impression that his leave had been sanctioned. Hence, his absence was not a willful one. But notwithstanding the said reply, on 27.08.2000, he was served with a show-cause notice along with the inquiry report. On 19.08.2000, the petitioner submitted a detailed reply to the show-cause notice. Meanwhile, again certain family circumstances arose for which the petitioner was forced to proceed to Trinidad. Therefore, he again applied for leave to go to the said destination. The leave was immediately sanctioned vide order dt. 28.07.2000. Therefore, the petitioner proceeded to Trinidad in August 2000. While in Trinidad he fell ill. Therefore, he sent an application for extension of his leave along with a medical certificate. While in Trinidad, the petitioner received a letter on 17.08.2001 wherein he was asked to appear for personal hearing. Immediately, vide letter dt. 28.08.2001, he informed the Corporation that he is not in a position to appear personally as he continues to be ill. Upon his return, the petitioner tried to join his posting. However, on 17.05.2002, he was surprised to receive an order dt. 14.05.2002 whereby he was dismissed from the service. The petitioner preferred a departmental appeal against the order dt. 14.05.2002. However, the appeal was not decided for three years. Therefore, the petitioner filed a representation dt. 21.09.2005 praying that his appeal be decided as soon as possible. Since the Department was sitting quietly over his appeal, therefore, the petitioner eventually filed a writ petition before this Court, registered as S.B.C.W.P. No. 858/2007. Thus, for four and a half years, the Corporation maintained a studied silence over the appeal. Finally, vide order dt. 15.03.2007, this Court directed the respondents to decide the petitioner's appeal within a period of three months. Vide order dt. 15.06.2007, the respondents have rejected the petitioner's appeal. Hence, this petition before this Court.

3. Mr. Imran Khan, the learned Counsel for the petitioner, has raised the following contentions before this Court : firstly, the inquiry officer has confused between "Port-of- Spain" and "Spain". The petitioner had sent his application for extension of leave from "Port-of- Spain", which happens to be the Capital of Trinidad. The Inquiry Officer has confused the city with the country "Spain" and has wrongly concluded that the petitioner was travelling here and there on foreign tours. Secondly, the disciplinary authority while passing its order has observed that the appellant is still residing in Trinidad without sanctioned leave. However, the petitioner was never charged for residing in Trinidad without leave at the time when the disciplinary authority passed its order. Therefore, the disciplinary authority has taken into account a fact for which the petitioner was never even charged. Hence, the punishment of dismissal from service is influenced by an extraneous fact. Thus, the order dt. 14.05.2002 deserve to be quashed and set aside. In order to buttress this contention, the learned Counsel has relied upon the case of Radhey Shyam Sharma v. State of Rajasthan RLW

2002 (1) Raj. 463. Thirdly and most importantly, the quantum of punishment is shocking disproportionate to the alleged misconduct, namely absence from the duty for sixty-six days, committed by the petitioner. The Rajasthan Tourism Development Corporation (Conduct, Discipline and Appeals) Rules, 1989 ("the CCA Rules, 1989", for short) provide various major penalties. However, without considering the other alternate punishments available, the disciplinary authority has imposed the harshest punishment on the petitioner. Therefore, the punishment order dt. 14.05.2002 deserves to be quashed and set aside. Lastly, while dealing with the appeal, the appellate authority has not considered the disproportionality of the punishment. Therefore, the order dt. 15.06.2007 suffers from non-application of mind. Hence, it deserves to be quashed and set aside.

4. On the other hand, Mr. Dinesh Yadav, the learned Counsel for RTDC, has strenuously argued that discipline has to be maintained in the service. As an employee of the Corporation, the petitioner should have waited till his leave was sanctioned by the appropriate authority. But without doing so, the petitioner proceeded to a foreign country. Secondly, even after his application for leave was rejected, the petitioner did not return immediately to the Corporation. Therefore, the Corporation was not only justified in initiating the inquiry, but was also justified in imposing the punishment. Lastly, the punishment is not disproportionate to the misconduct committed by the petitioner. Hence, he has supported the impugned orders.

5. In rejoinder Mr. Imran Khan has contended that even according to the inquiry officer, the Corporation was slack while dealing with the petitioner's application for grant of leave. Moreover, according to the inquiry officer, the rejection of the petitioner's application for grant of leave did not reach the petitioner because of a typographical error in the address. Therefore, on both these accounts, the inquiry officer was of the opinion that part of the difficulty was created by the Corporation itself.

6. Heard the learned Counsel for the parties and perused the impugned orders.

7. One of the dreams of the Indian Constitution is an egalitarian society where social and economic justice permeate the action of the State. In light of the said dream, the State is required to act as a model employer. Therefore, while dealing with its employees, the State is duty bound to act fairly, justly, and reasonably. Justness and fairness is a requirement not only of the principles of natural justice, but also are essential elements of the CCA Rules, 1989. The Rules also require that facts forming the basis of a charge should be stated clearly. Thus, neither the inquiry officer, nor the disciplinary authority can consider those facts for which the delinquent officer was not charged.

8. In the present case, the subsequent departure to Trinidad during the course of the inquiry was not a subject matter of any charge. Yet, the disciplinary authority, in its order dt. 14.05.2002 has clearly observed that "even presently the delinquent officer is staying in foreign country (Trinidad in West Indies)

without proper sanction of leave." Therefore, clearly, the disciplinary authority has travelled beyond the charges levelled against the petitioner. In the case of Radhey Shyam (*supra*), the disciplinary authority had also travelled beyond the allegations mentioned in the charge-sheet. In those circumstances, this Court had quashed the dismissal order.

9. Undoubtedly, discipline has to be maintained in every service. However, in the name of maintaining discipline, the model employer cannot turn into a prosecutor. A certain sense of reasonableness and fairness has to exist while imposing punishment upon an employee. Thus, the punishment has to commensurate with the nature of misconduct committed by the petitioner. In the case of Rajasthan State Road Transport Corporation and Others Vs. Shri Ram Yadav, a Division Bench of this Court had observed that where various major penalties are prescribed by the Rules, the disciplinary authority must give good and sufficient reasons for choosing harshest of the punishment. The disciplinary authority should consider the gravity of the charge, the nature of its consequences, the circumstances under which the misconduct was committed, the working condition of the workman, his past service record, the personal and family circumstances of the delinquent employee. While imposing the harshest punishment, the disciplinary authority must weigh the "pros" and the "cons", the "plus" and "minus" factors. It cannot be a matter of ipse dixit for the disciplinary authority to impose the harshest punishment as a knee jerk reaction. Thus, the disciplinary authority is bound to ask the question to himself as to whether the penalty of dismissal from service is the only penalty which could be imposed having regard to the nature of the charges levelled against the employee. He further has to consider whether a little more lenient penalty would not meet the ends of justice.

10. A bare perusal of the order dt. 14.05.2002, clearly reveals that the disciplinary authority has not discussed the "pros" and the "cons" of the case. It has not even noted the fact that the refusal to grant leave was sent to an incorrect address. Hence, the said refusal never reached the petitioner. Surprisingly, although this fact has been noted by the inquiry officer in his inquiry report, the same has been over-looked by the disciplinary authority. Moreover, the disciplinary authority has not considered the fact that the inquiry officer has confused between the city of "Port-of-Spain" and the country "Spain". Therefore, the inquiry officer has wrongly concluded that while the petitioner claims to have proceeded to Trinidad, he was travelling through Spain also. Most importantly, the disciplinary authority has not given any good and sufficient reason for imposing the harshest of the penalties in a ipse dixit manner. The disciplinary authority has imposed the harshest penalty. Shakespeare in his play "Merchant of Venice" had clearly advised that "justice should be tempered with mercy". However, in the instant case, justice is inflicted ruthlessness. Thus, a grave injustice has been done to the petitioner as he has been visited by a punishment which is shockingly disproportionate to the alleged misconduct.

11. The lethargy of the Corporation is writ large in the present case. Initially, it quietly sat over the application for leave presented by the petitioner. Subsequently, it maintained studied silence over the departmental appeal for four and a half long years. The Board Committee became aware of the pendency of the appeal only after this Court had directed the Committee to decide the appeal within a period of three months vide its order dt. 15.03.2007. Had it not been for this Court, the petitioner would have been kept in animated suspension by the Corporation. In spite of all these lapses, the Corporation has proceeded to inflict the harshest punishment possible. Therefore, clearly a shockingly disproportionate punishment has been inflicted upon the petitioner.

12. In the present case, since the petitioner's wife was working in Trinidad, he had no other option, but to ensure that she is safely settled in Trinidad. Therefore, he had a valid reason for leaving the country. It is not the case of the department that the petitioner had gone to Trinidad to seek employment, or the petitioner was employed in the Trinidad while he had a lien over his post in India. The Department should have appreciated the fact that there are compelling family conditions which force a person to temporarily leave his job and to go abroad. Moreover, according to the inquiry officer himself, the department was slack in dealing with the petitioner's application for grant of leave. Furthermore, even when the application for leave was rejected, the said rejection letter could not reach the petitioner as a wrong address had been typed on the letter. Since the application for leave had been forwarded by the Manager, since the petitioner did not hear from the Department, he was under a bona fide belief that his leave must have been sanctioned back home. In these circumstances, the absence of sixty-six days is not such a grave misconduct which should invite the infliction of the harshest punishment upon the petitioner. In catena of cases, the Hon'ble Supreme Court has observed that while imposing a punishment, the economic death-knell of the employee should not be caused unnecessarily. However, in the present case, for absence of sixty-six days, the economic death-knell of the petitioner has been caused by the impugned orders. Therefore, this Court is of the opinion that the punishment is shockingly disproportionate to the nature of the misconduct committed by the petitioner.

13. In the result, this writ petition is allowed and the orders dt. 14.05.2002 & 15.06.2007 are quashed and set aside. Normally, this Court would have remanded the case back to the Corporation for deciding the quantum of punishment. However, as the petitioner has suffered for seven long years, as the petitioner had to approach this Court on two occasions, this Court deems it just and proper to punish the petitioner with withholding of two grade increments with cumulative effect. The petitioner shall be reinstated forthwith in the service. Due to the apathy and lethargy of the Corporation, the petitioner has suffered economic deprivation for seven long years. Hence, in the interest of justice, the petitioner is entitled to payment of 75% of his back wages. He shall also be entitled to seniority and other consequential benefits. With these observations, this writ petition is allowed. There shall be no order as to costs.