

(2010) 02 DEL CK 0237

In the Delhi High Court

Case No : Writ Petition (C) No. 12350 of 2009

J.K. Varshney

APPELLANT

Vs

UOI and Others

RESPONDENT

Date of Decision : 25-02-2010

Acts Referred:

Central Civil Services (Conduct) Rules, 1964 — Rule 14(18), 3(1)
Constitution of India, 1950 — Article 226

Citation : (2010) 02 DEL CK 0237

Hon'ble Judges : Mool Chand Garg, J;Anil Kumar, J

Bench : Division Bench

Advocate : Manish K. Bishnoi, for the Appellant; R.N. Singh and Mr. A.S. Singh, for the Respondent

Final Decision : Dismissed

Judgement

Anil Kumar, J.—The pay of the petitioner was reduced by two stages from Rs. 7075/- to Rs. 6,725/- in the time scale of pay of Rs. 5500-175-9000 for one year pursuant to the Disciplinary inquiry by the punishment order dated 6th September, 2006 passed by the Disciplinary Authority and sustained by the Appellate Authority by its order dated 1st May, 2007 which were challenged by the petitioner in OA No. 954/2008 filed before the Central Administrative Tribunal, Principal Bench titled Jalaj Kumar Varshney Vs. UOI & Ors., which has been dismissed by order dated 10th July, 2009. The petitioner has challenged the order of the Tribunal dated 10th July, 2009 in the present writ petition under Article 226 of the Constitution of India.

2. The petitioner was absent from duty without intimation from 30th October, 2000 up to 23rd February, 2003. Thereafter, he joined for few months during which a memo dated 26th June, 2003 was issued to him directing him to submit his leave application for the said period of absence, which was ignored by him. Another reminder given to the petitioner dated 6th October, 2003 to seek leave for the period when he was absent unauthorizedly, was also ignored by the

petitioner. During this period his user section, i.e., DIPR vide their note dated 16th April, 2003 had also directed him to report to their coordinating section, i.e., R&D (Pers.) which note was handed over to the petitioner on 17th April, 2003, however, the petitioner declined to accept the same and act according to the note, resulted into insubordination and disobedience.

3. Even after ignoring filing of the application for leave for the period 30th October, 2000 to 23rd February, 2003 and indulging in insubordination in declining to move to the appropriate section, the petitioner again went on unauthorized absence without any intimation from 13th November, 2003 till 13th September, 2004.

4. On account of the acts of unauthorized absence and acts of insubordination, the misconduct/misbehavior was imputed against him and Articles of charges were framed and enquiry was initiated.

5. The petitioner contested the charges framed against him contending, inter-alia, that his mother was suffering from Schizophrenia for 33 years and her condition had worsened in September, 2000 and continued deteriorating till her death up to 22nd January, 2003 resulting into petitioner's compulsive absence from duty during the period commencing from 30th October, 2000 to 23rd February, 2003.

6. The petitioner contended that his absence was regularized by grant of EOL (PA) vide letter dated 28th October, 2004 and the charge sheet was issued to him on 3rd June, 2005 after regularization of his unauthorized absence as EOL alleging contravention of provisions of Rule 3(1)(ii) & 3(1) (iii) of CCS (Conduct Rules) 1964. After considering the reply of the petitioner and the material on record, the inquiry officer gave the finding of misconduct against the petitioner. Against the enquiry report, the petitioner gave a representation to the Disciplinary Authority. The disciplinary Authority after considering all the facts and circumstances passed the order dated 6th September, 2006 imposing the penalty of reduction of his pay by two stages.

7. Before the Tribunal learned counsel for the petitioner had contended that once the period of absence has been regularized by grant of EOL, no disciplinary proceedings could be held for unauthorized absence and relied on Union of India and others Vs. Ram Pal, and another judgment of High Court of Punjab in State of Punjab Vs. Chanan Singh, (1988) 3 All India Service Law Journal 216. In the circumstances, it was contended before the Tribunal that once the period of absence is treated as leave of any kind, the alleged misconduct of absent without permission does not survive.

8. The petition was contested by the respondent contending, inter-alia that the punishment imposed on the petitioner is not only for absence from duty without leave but was something more which was the act of insubordination on the part of the petitioner and imputable to him. In the circumstances, it was contended that the essence of the charges against the petitioner are dereliction of duty,

disobedience and insubordination and also relied on the case of Rampal (supra).

9. Relying on Rampal (supra), it was contended that regularization of the period of absence by way of granting EOL only covers the unauthorized absence, however, it does not cover the lapse of not availing the leave in violation of the rules. It was further contended that where period of unauthorized absence is treated as EOL, in exercise of independent and separate power, violation of rules in not availing leave and insubordination, if any, is not regularized. The Tribunal noted that reasons given by the Appellate Authority had approved the same, holding that the manner of absence was taken into consideration by the Inquiry Officer, Disciplinary Authority and the Appellate Authority and merely because later on, unauthorized absence was treated as EOL will not absolve the petitioner completely. The Tribunal also distinguished the case of Chanan Singh where the Court had directed to treat the absence as on leave.

10. Taking into consideration these facts and circumstances, the Tribunal noted that the applicant has not been solely proceeded for unauthorized absence as the charge of absence from duty had already been regularized even before the issue of charge sheet. In the circumstances, the petitioner essentially has been proceeded for lack of devotion to duty and conduct of becoming a Government Servant and insubordination and dereliction of duty in terms of the specific Rules 3(1)(ii) & 3(1) (iii) of CCS (Conduct Rules) 1964. In the circumstances, the Tribunal has inferred that regularization of unauthorized absence will not wipe out completely insubordination and the disobedience and in the circumstances, the order of the Disciplinary Authority and Appellate Authority imposing the punishment of reduction of pay of the petitioner by two stages was upheld.

11. Learned counsel for the petitioner has relied on State of Punjab Vs. Dr. P.L. Singla, holding that effect of granting leave is to regularize the unauthorized absence unless the misconduct is not condoned while granting leave reserving right to take the disciplinary action. Learned counsel for the petitioner has also relied on CCS Rules 14(18) to contend that the Inquiring Authorities were required to question him on the circumstances appearing against him in the evidence for the purpose of enabling the Government servant to explain any circumstances appearing in the evidence against him.

12. Perusal of the enquiry Report reveals that that the Article-II regarding insubordination and disobedience has not been refuted by the petitioner. The petitioner did not produce any evidence documentary or otherwise during the course of proceedings therefore, Article-II of the charge was established. The Article-II of the Charge which has been established against the petitioner is as under:-

Shri JK Varshney, Assistant rejoined his duties on 24 Feb 2003 after remaining absent from 30 Oct 2000. However, he did not submit any leave application for the said absence period, even after rejoining his duty. A memo dated 26 Jun 2003 directing him to submit leave application for the said period of absence was

served on him on 17 Jul 2003. It was followed by reminder dated 06 Oct 2003 but, to no avail. In view of his prolonged unauthorized absence from duty as well as willful insubordination Shri Varshney was surrendered by his user section i.e. DIPR vide their note dated 16 Apr 2003 and was directed to report to their Coord section i.e. R&D (Pers). This note was handed over to him on 17 Apr 03 but the individual declined to accept the same stating that he would move only on receipt of orders from the office of the CAO.

13. Though, the learned counsel for the petitioner has emphasized that the unauthorized absence was treated as EOL, however it has also been held by the Tribunal that will not negate the charge established against the petitioner for insubordination and disobedience. Even under Rule 14(18) of CCS (CCA) Rules, the Inquiry Authority may question the circumstances appearing against the charged officer, however, it does not impose any mandatory duty on the inquiry officer to seek explanation from the charged officer especially in a case where the charge is not refuted by the charged officer nor any evidence documentary or otherwise is produced by the delinquent Officer.

14. Since the charge under Article-II was not refuted, it stood proved and proof of the charge against the petitioner cannot be negated on account of the power of the Inquiry Officer to question the charged officer in its discretion in certain circumstances.

15. In the circumstances, the petitioner has failed to make out a case that on account of grant of leave for the period he was absent without authorization, the charge of insubordination and disobedience is also wiped out. In the totality of facts and circumstances, we do not find any ground to interfere with the order of the Tribunal dated 10th July, 2009 as it does not have any such illegality and irregularity, which would require interference by us in exercise of this Court's jurisdiction under Article 226 of the Constitution of India.

16. The Writ petition, in the facts and circumstances is without any merit and it is therefore dismissed.