
(2014) 02 P&H CK 0144

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 4929-C of 2000 (O and M)

K.K. Jerath

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 12-02-2014

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2014) 2 SCT 247

Hon'ble Judges : Sanjay Kishan Kaul, C.J.;Arun Palli, J

Bench : Division Bench

Advocate : Dipak Sibal, Senior Advocate and Ms. Balpreet Sidhu, Advocate for the Appellant; Anju Arora, Standing Counsel for the UOI and Mr. Sanjay Kaushal, Senior Standing Counsel, U.T. Chandigarh, Advocate for the Respondent

Final Decision : Allowed

Judgement

Sanjay Kishan Kaul, C.J.—The petitioner before us, who would have since superannuated on 31.3.2002 had he been in service, seeks to assail the order passed by the Central Administrative Tribunal, Chandigarh Bench dated 18.2.2000 upholding the action of the respondents pertaining to the disciplinary proceedings initiated against the petitioner. The sole charge against the petitioner arising from the statement of article of charge was of wilful absention from the headquarters without prior permission of the competent authority when he was under suspension. The petitioner was occupying post of the Chief Engineer, Union Territory, Chandigarh, when he was suspended on 24.11.1997 arising from certain raids by the Income Tax Department at his residence. The article of charge reads as under:--

That the said Shri K.K. Jerath, Chief Engineer, Union Territory, Chandigarh (under suspension) committed gross mis-conduct by wilfully absention himself from headquarters (Chandigarh) from 6.2.1998 to 9.2.1998, 23.2.1998 to 4.3.1998 and 27.3.1998 onwards without getting prior permission from the Competent Authority. By doing so, the said Shri K.K. Jerath, Chief Engineer, Union Territory,

Chandigarh (under suspension) has acted in a manner unbecoming of a Government servant violating the provisions of Rule 3 of Punjab Government Employees (Conduct) Rules, 1966 as now applicable to the Union Territory Administration of Chandigarh employees.

2. The statement of imputation of misconduct or misbehaviour in support of the article of charge is as under:--

The said Shri K.K. Jerath, Chief Engineer, Union Territory, Chandigarh was placed under suspension by the Competent Authority vide Chandigarh Administration, Department of Personnel's order bearing No. 22/1/10/95/IH(4)/26649, dated 24.11.1997. In the orders, the headquarters of the said Shri K.K. Jerath was fixed at Chandigarh during the period of his suspension and he was not to leave the headquarters without obtaining prior permission of the Competent Authority. However, to evade his arrest in a case registered against him by the Vigilance Police Station, Union Territory, Chandigarh, the said Shri K.K. Jerath left the headquarters (Chandigarh), at his own without obtaining prior permission of the Competent Authority. He has been wilfully absenting himself from headquarters (Chandigarh) from 6.2.98 to 9.2.98, 23.2.98 to 4.3.98 and 27.3.98 onwards. The above charge is supported by the fact that the Court of S. Jasbir Singh, Judicial Magistrate 1st Class, Chandigarh has also declared him proclaimed offender on 20.5.1998 in the case FIR No. 1, dated 3.2.1998, Police Station Vigilance, Union territory, Chandigarh. Thus, by doing so, the said Shri K.K. Jerath has acted in a manner unbecoming of a government servant violating the provisions of Rule 3 of the Punjab Government Employees (Conduct) Rules, 1966, as applicable to the employees of the Union Territory. Chandigarh, rendering himself liable for disciplinary action in accordance with the provisions of Punjab Civil Services (Punishment and Appeal) Rules, 1970 as applicable to the employees of the Union Territory, Administration of Chandigarh.

3. The petitioner, who at the relevant time was facing two charge-sheets one of which was relating to the aforesaid article of charge, vide a communication dated 21.9.1998, sought to place his stand on record qua both of them and sought certain documents. In terms of an order dated 13.10.1998, Shri Satish Chandra, IAS, was appointed as the Enquiry Officer to enquire into the charges framed against the petitioner. The proceedings recorded by the Enquiry Officer of 2.11.1998 show that the notices issued to the petitioner for appearance had come back undelivered with refusal report, though on that date a letter had been received from the petitioner that he was ill and was under treatment of a doctor at Varanasi and had been advised a month's rest. The Enquiry Officer fixed the case for evidence of the Presenting Officer and adjourned it to 11.00 A.M. of 13.11.1998. However, on 13.11.1998 also, the petitioner was absent and the Enquiry Officer was of the view that since in the last telegram as well as fax message dated 11.11.1998 the petitioner had given his address at New Delhi and was, thus, in a position to move from Varanasi to New Delhi, he was avoiding the proceedings. The Enquiry Officer also noted the fact that the petitioner had

remained absent without prior permission from Chandigarh and had even been declared a proclaimed offender by the Judicial Magistrate vide the order dated 28.5.1998. The Presenting Officer, however, also requested for time to produce witnesses and, thus, the proceedings were adjourned to 18.11.1998 at 11.00 A.M. The petitioner addressed a communication dated 18.11.1998 to the Enquiry Officer raising various objections to the mode and manner of conduct of the enquiry proceedings. However, no proceedings were held on 18.11.1998, but the proceedings were held on the next day, i.e., 19.11.1998 ostensibly on account of pre-occupation of the Enquiry Officer and one of the grievances of the petitioner is that he was never intimated of the date of 19.11.1998. On that date, the statements of two witnesses were recorded and the Presenting Officer completed the evidence and the proceedings were adjourned to 27.11.1998 for the evidence of defence (petitioner). On 20.11.1998, the Enquiry Officer dealt with a letter received from the petitioner of 18.11.1998 and rejected the objections while maintaining the date of 27.11.1998.

4. In view of the endeavour of the petitioner to obtain anticipatory bail being unsuccessful in the High Court and thereafter his endeavour before the Supreme Court in which he initially succeeded but thereafter the application was dismissed, the petitioner was declared a proclaimed offender, as noticed aforesaid. In fact, we may note that it is really not in doubt as per the dates disclosed in the petition that the petitioner in substance remained out of Chandigarh to prosecute his case before the Supreme Court in Delhi, if the days are matched with the proceedings filed before the Supreme Court. The petitioner, faced with this situation, surrendered before the Court on 27.11.1998, possibly, facing the prospect of in any case being so detained if he joined the enquiry proceedings, as the Enquiry Officer would have been duty bound to forthwith inform the Court. The son of the petitioner on 27.11.1998, thus, presented a letter to the Enquiry Officer requesting for postponing of the enquiry proceedings, as the petitioner was in custody and, thus, could not present himself for defence. A reminder was sent once again by the son on 27.11.1998. The copies of the relevant orders are also available and, thus, this issue is not in dispute.

5. Despite this position, the Enquiry Officer proceeded to conclude the enquiry proceedings and submitted the enquiry report on 28.11.1998 holding the petitioner guilty as charged. In fact, while observing that the petitioner had wilfully absented himself from the headquarters, the factum of his being declared as proclaimed offender was also taken into consideration as being unbecoming of a Government servant. Copy of this report was forwarded to the petitioner under the cover of the letter dated 8.12.1998 soliciting his response to the enquiry report with a ten days" time to make representation, if any, from the date the petitioner was discharged from the police custody. The petitioner while in judicial custody, through a representation, sought documents, but to no avail. The endeavour of the petitioner before the CAT by filing Original Application No. 1096-CH-1998 on an apprehension of the passing of the final order, however, did not

succeed as the petitioner was asked to approach the concerned authorities vide an order dated 22.12.1998 which he did vide the detailed representation dated 23.12.1998. The final order was passed on 8.3.1999 imposing the penalty of dismissal from service on the petitioner with the stipulation that it shall ordinarily be a disqualification for future employment under the Government. This order was thereafter assailed before the CAT by filing a fresh O.A. after having withdrawn the earlier O.A. in which the interim relief had been prayed for. The O.A. No. 284-CH-1998 was, however, dismissed vide an order dated 18.2.2000 which is sought to be assailed before us in the present writ petition under Article 226 of the Constitution of India.

6. The writ petition was admitted and has only now reached for hearing. On 15.1.2014 a suggestion was put to learned counsel for the respondents whether it could be acceptable to modify the order of punishment to one of parity with the case of the co-accused, namely, K.V. Sharma, the petitioner being treated under suspension up to the date of superannuation (i.e. 31.3.2002). We are informed that co-accused K.V. Sharma's suspension was revoked, he joined service and superannuated, but his gratuity was withheld on account of pendency of criminal proceedings. Mr. K.V. Sharma stands acquitted in the sole proceeding against him, as stated by learned counsel for the petitioner on instructions. But, despite this, the issue of his gratuity is pending consideration in the other proceedings before this Court.

7. As far as petitioner is concerned, who is present in Court, it is stated that there were nine FIRs registered against him out of which in seven cases, challans were filed, one case was clubbed with another FIR and in the last FIR, cancellation report was filed. The petitioner is stated to have been acquitted in six of the cases while in one case he was convicted and an appeal is pending consideration before this Court. The suggestion was made in the context of the fact that the petitioner would, in any case, have been able to avail of the benefit till the date of his conviction and, thus, would have superannuated much prior to that.

8. Learned counsel for the respondents/U.T. Administration, however, states that he will obtain instructions and the respondents would invite a judgment on the matter and that is why we have proceeded with the case on merits.

9. On having heard learned counsel for the parties, we are of the view that the crucial aspect is the manner in which the enquiry was concluded against the petitioner. We are not commenting at this stage on the fact that the petitioner was charged of misconduct for wilfully absenting himself from the headquarters without prior permission from the competent authority qua certain days when he was prosecuting his case in Delhi before the Hon''ble Supreme Court or taking steps for the same and prima facie a cogent explanation for his presence in Delhi was available and, thus, for his absence from Chandigarh. The occasion to examine all this material would have arisen if the petitioner would have been there before the Enquiry Officer and placed the relevant material for

consideration. That occasion never arose for the reason that on the date when the petitioner was supposed to lead evidence on 19.11.1998, the petitioner undisputedly surrendered himself before the Court. We may note that there is also nothing on record to show that the petitioner was informed of the postponement of the date from 18.11.1998 to 19.11.1998, albeit because of the preoccupation of the Enquiry Officer. The petitioner was already a proclaimed offender and, thus, very well knew the consequence of his appearance before the Enquiry Officer, as the Enquiry Officer would, undoubtedly, be called upon to inform the concerned authority of his presence knowing fully well that he was a proclaimed offender. The result would, thus, have been the same whether the petitioner would have appeared before the Enquiry Officer or surrendered before the concerned court. This material fact appears to have been completely lost sight of by the Enquiry Officer while proceeding to close the evidence of the petitioner and thereafter submitting the enquiry report on the very next day of 28.11.1998, giving no opportunity to the petitioner to lead the evidence in defence. Not only that, there was no intimation to the petitioner of the date of 19.11.1998 when evidence was led by the Presenting Officer on behalf of the department. The result is that the proceedings before the Enquiry Officer commencing from 19.11.1998 till its conclusion stand vitiated.

10. That being the position, naturally, the other aspects dealt with by the Enquiry Officer in the enquiry report, the decision to accept the enquiry report and imposition of the punishment of dismissal from service and the impugned decision of the CAT are not sustainable and are, thus, liable to be set aside.

11. The effect of the aforesaid is that it would be open to the respondents to proceed with the enquiry from the stage where it was prior to 19.11.1998 and the petitioner would, naturally, be intimated of the proceedings and would be free to join those proceedings.

12. Whether the respondents want to proceed with the enquiry in the aforesaid circumstances would be a matter for consideration by the respondents and it is made clear that we are not mandating that the enquiry must be held. It is an option which will be available to the respondents. The result of the aforesaid is that the writ petition has to succeed and all proceedings commencing from 19.11.1998 are quashed relegating the parties to that position. This would entail setting aside of the proceedings of the enquiry from 19.11.1998, subsequent enquiry report, the decision of the competent authority and the impugned decision of the CAT.

The writ petition is, accordingly, allowed with costs quantified at Rs. 5,000/-.