

(1995) 02 AP CK 0015

In the Andhra Pradesh High Court

Case No : Writ Petition No. 18422 of 1988

M. Krishnam Raju, Asst. Technical Officer, Commercial
Electronics Group, ECIL

APPELLANT

Vs

The Electronics Corporation of India and Others

RESPONDENT

Date of Decision : 13-02-1995

Acts Referred:

Industrial Disputes Act, 1947 — Section 2

Citation : (1995) 1 ALT 744

Hon'ble Judges : T.N.C. Rangarajan, J

Bench : Single Bench

**Advocate : P. Balakrishna Murthy, for the Appellant; K. Srinivasa Murthy, S.C.,
for the Respondent**

Judgement

T.N.C. Rangarajan, J.—This Writ Petition is directed against the punishment awarded to the petitioner in disciplinary proceedings.

2. The petitioner joined the service of the Electronic Corporation of India Limited on 1-8-1972 and rose upto the rank of Assistant Technical Officer. In the year 1982, he took leave on medical grounds. On 21-12-1982, his services were terminated by giving notice-pay. He filed Writ Petition No. 9609/82, which was allowed on 27-3-1987 with a direction to the first respondent to reinstate him. It was also stated that this did not preclude the respondent from holding a disciplinary enquiry and that the petitioner should be paid half the salary for the intervening period and he will be entitled to the full salary if no enquiry is commenced within six months and the remaining salary shall be subject to the final orders after an enquiry is held. On 17-4-1987, he was reinstated and on 14-5-1987 a Charge Memo was issued framing the following four charges:

(i) wilful insubordination or disobedience to the reasonable order of superior;

(ii) absence without leave or over-staying the sanctioned leave for more than three consecutive days without proper or satisfactory explanation;

(iii) irregular attendance; and

(iv) neglect of work or negligence in the performance of duty.

The petitioner gave his reply on 18-5-1987 and thereafter, an enquiry officer was appointed to conduct the enquiry. After taking evidence, the enquiry officer gave his report on 18-11-1987 giving a finding that the first charge was not proved, and the charges of irregularity in attendance, absence without leave and negligence of work had been proved. Thereafter, on 8-12-1987 an order was passed awarding the punishment of reduction to lower stage in the time scale by four increments. The petitioner filed an appeal on 18-12-1987 pointing out that the enquiry did not take the correct facts and that his absence was covered by medical certificate. This was rejected on 10-3-1988 while stating that on a careful consideration of the appeal and the decision of the disciplinary authority, the Managing Director has directed that the punishment imposed by the disciplinary authority, shall be retained without any change. On 7-1-1988, the petitioner has also requested to release 50% of the back-wages, which had not been dealt with in the appointment order. On 12-11-1988, this request was also rejected stating that he was not entitled to the balance 50% of the wages.

3. On these facts, the petitioner has filed this writ petition challenging the orders in appeal as well as the rejection of the claim for balance of pay, as untenable. The learned Counsel for the petitioner submitted that a reading of the charge memo itself revealed that they had pre-judged the issue, that there was no application of mind by the appellate authority, that the finding was vitiated by incorrect facts, that the punishment was disproportionate to the misconduct, and that similar lapse has been condoned in the case of another employee. It was also submitted that forfeiture of 50% of the salary was not in accordance with the earlier decision of this Court. On the other hand, the respondent has filed a counter-affidavit to contend that the absence was not fully covered by medical certificate, and since the disciplinary proceedings, after following the procedure, had ended in a finding that the petitioner was absent without leave, the punishment was awarded taking a lenient view and it did not require any interference. The learned Counsel for the respondent also drew my attention to the rules of the Institution, and pointed out that no employee is entitled to extraordinary leave as of right and if any one avails such leave without proper sanction, it will be treated as break in service. He referred to the analogous provisions in the scheme under the Employees' State Insurance Act, as well as the definition of "retrenchment" u/s 2(oo) of the Industrial Disputes Act, and submitted that the service of a workman can be terminated on the ground of continued ill-health. It was argued that availability of the workman carrying on his duties, is a pre-requisite for service, and the management is entitled to terminate the services if his services were not available, even if it is due to his ill-health.

4. I have considered the submissions and I have perused the relevant rules. Under the regulations of the Corporation, disciplinary proceedings can be

initiated and punishment can be awarded in respect of the misconducts listed in the regulations. One of the misconducts is remaining absent without cause. The learned Counsel for the respondent argued that it would be misconduct if the employee remains absent without having leave to his credit, and no extraordinary leave is sanctioned. I am unable to accept this wide proposition. When the regulations state that absence without cause is a misconduct, it implies an enquiry into the question whether there was an acceptable cause for the absence. If the employee is able to establish an acceptable cause for the absence, then the fact whether there is leave to his credit or not, will be irrelevant. Even if he has no earned leave to his credit, the leave rules provide for sanctioning extraordinary leave without pay and such leave cannot be unreasonably refused. In such a situation i.e., where the employee is able establish an acceptable cause for his absence and applies for extraordinary leave without pay the management is bound to grant such extraordinary leave without pay in which event the absence will not be unauthorised and consequently, there will be no misconduct for which punishment could be imposed. As pointed out by the Supreme Court in *Pyare Lal Sharma Vs. Managing Director and Others*, , "remains in unauthorised/absence" means an employee who has no respect for discipline and absents himself repeatedly and without any justification, and is intended to maintain efficiency in the service of the company. The Supreme Court observed that the provision of show-cause notice is a sufficient safeguard against the arbitrary action indicating that where the absence is justified by an acceptable cause, the misconduct cannot be taken to be proved. Where it is shown by the delinquent employee that he was ill and his illness is supported by a medical certificate, it must be accepted that his absence was justified and therefore, he cannot be penalised. The reference made by the learned Counsel for the respondent to the provisions of termination of services on the ground of continued illness is quite a different matter. Such termination will depend upon the facts of the case and will also involve payment of compensation and some other benefits depending upon the rule providing for termination. In the present case, no such proceedings were envisaged against the petitioner and the enquiry was only with reference to Temporary absence without cause.

5. Applying these principles to the facts of the case, I find that in the present case, the petitioner had been absent earlier for 88 days from 12-10-1981 to 7-1-1982 and had been granted extraordinary leave on medical grounds. According to the charge-sheet, he was again absent for 121 days during the year 1982 on medical grounds on the following occasions:

For 8-3-1982 to 25-3-1982 .. 18 days earned leave plus sick leave. For 1-6-1982 to 11-6-1982 .. 11 days. For 16-8-1982 to 15-11-1982 .. 92 days. The show-cause notice itself stated that there was no leave to his credit and the period of absence could not be regularised and his request for extension of leave on medical grounds without any proper medical certificate in respect of his sickness cannot be accepted and the absence was treated as unauthorised absence. In the enquiry report, it was found that the petitioner appeared before the Chief

Medical Officer with the medical certificate issued by a doctor in the panel of the Corporation and the Chief Medical Officer endorsed a Certificate that the petitioner was ill and required rest. However, he noted that this applied only for the absence from 16-10-82, whereas for the earlier period of 18 days from 8-3-1982 to 25-3-1982, and 11 days from 1-6-1982 to 11-6-1982, there was no supporting evidence. I looked through the records of the corporation and I find that the petitioner had in fact given medical certificates for these periods also and there is a confidential note stating that the entire period of absence was supported by medical certificates. The conclusion in the enquiry report is that "Sri Krishnam Raju remained absent for a total period of 169 days - 92 days were on account of sickness, 29 days for no substantial reason and 41 days accounted for the leave due to his credit". This conclusion itself indicated that even the enquiry officer was aware of the principle that where the absence is due to sickness it is not a misconduct, for the absence of 92 days has been condoned by the report itself. Finding of absence without cause is only with reference to 29 days, in respect of which the record shows that there were medical certificates. Consequently, this period also should be treated as absence on account of sickness, with the result that there was no absence without cause requiring any finding of unauthorised absence. The learned Counsel for the respondent referred to the circular dated 6-12-1973 where the employees are : informed that no extraordinary leave shall be sanctioned more than once in a period of three years, and since this employee had already availed of extraordinary leave in the previous year, he was not entitled to any such leave. I find that a reference to the regulations shows that there is no such bar in the regulations, and this was only a circular giving the broad policy of the corporation. As I have noted above, if the absence is justified and the employee has no leave earned to his credit, the corporation is bound to sanction extraordinary leave as it cannot be unreasonably denied. I can see from the report that the corporation also has understood the matter in the same manner, as in spite of the petitioner not having any leave to his credit, the leave for which the medical certificate is accepted as produced, is treated as sick leave and condoned. Since the enquiry report is vitiated by ignoring the relevant fact viz., that there were medical certificates for the entire period of absence, the finding that the misconduct was proved, is unsustainable. The appellate order also suffers from the same infirmity, for there is no application of mind to the complaint of the petitioner that his absence was entirely supported by medical certificates, and had been ignored by the enquiry officer. Consequently, the appellate order also is unsustainable. I have, therefore, no hesitation in cancelling both the order of punishment as well as the appellate order.

6. The other aspect which remains for consideration is the claim for 50% of the wages for the period between the earlier termination and reinstatement. This Court directed payment of 50% salary; and if no enquiry is commenced, for payment of full salary. However, if the disciplinary enquiry was commenced, the balance of 50% was payable subject to the final orders that may be passed in

such enquiry. The learned Counsel for the petitioner submitted that since no orders were passed in the order pursuant to the enquiry, the petitioner is entitled to the balance 50%. I am unable to accept this contention. The direction of this Court only meant that the decision can be taken about the payment of 50% of the salary after the enquiry, and not that if the petitioner is absolved of the misconduct the entire amount should be paid. The impugned order, of course, states that inasmuch as the enquiry was conducted and punishment was imposed, it was decided not to pay the balance 50% of the wages. However, as I understand the order of this Court, the release of the balance 50% of the salary was left to the discretion of the management. That apart, even though I have found that there was no misconduct and the petitioner was not required to be punished, I cannot also ignore the fact that during the period between the termination and the reinstatement, the petitioner had not actually worked. In the circumstances, the decision of the management not to pay the balance 50% of the salary, does not require interference.

7. In the result, the petition is partly allowed. No costs.