

(2015) 03 DEL CK 0061

In the Delhi High Court

Case No : Writ Petition (C) No. 570/2015

Manju Lata Gupta

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 13-03-2015

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (2015) 03 DEL CK 0061

Hon'ble Judges : I.S. Mehta, J.;Kailash Gambhir, J.

Bench : Division Bench

Advocate : M.S. Saini, for the Appellant; Ruchir Mishra and Mukesh Kumar Tiwari, Advocates for the Respondent

Final Decision : Disposed off

Judgement

I.S. Mehta, J.—The petitioner after attending the marriage anniversary of her son in Muscat, Oman found herself in a waterloo and sought the intervention of the Central Administrative Tribunal, Principal Bench, New Delhi (hereinafter referred to as "learned Tribunal") by filing an O.A. No. 1761 of 2013 and when the same did not bring the desired relief, filed the present Writ-Petition under Articles 226 and 227 of the Constitution of India.

2. The brief facts of the case are that the petitioner was working as a Post Graduate Teacher (Hindi) in Sarvodaya Kanya Vidyalaya, D Block, Kamdhenu, Mangolpuri, Delhi. She moved an application dated 30.11.2006 to the Principal of the aforementioned School for grant of "No Objection Certificate" (N.O.C) for visiting Muscat, where her son was working, indicating therein her tentative date of departure to Muscat, viz., 24.12.2006.

3. The petitioner found that no "N.O.C" was forthcoming and therefore, as a precautionary measure postponed her date of visit to 12.01.2007 and accordingly, submitted another application dated 08.01.2007 to the Head of the School who forwarded the same to the Directorate of Education. Thereafter, on

10.01.2007, being called upon by the Head of the School, the petitioner went to the Directorate of Education and was asked to file a fresh application in the prescribed proforma, along with the leave application, indicating the specific period, duly recommended by the Head of the School along with statement of balance leave at credit. This requirement was complied with by the applicant, vide her application dated 08.01.2007.

4. As per the petitioner, she was given information by the concerned official of the District Office that the file on which her application for grant of N.O.C was initially processed stood cleared from all concerned by 11.01.2007. On her request made to the concerned Dealing Assistant and the Superintendent on 11.01.2007, to provide her the "N.O.C", she was informed that the "N.O.C" would be sent to her school and since it was a mere formality, she could go ahead with her scheduled departure on 12.01.2007.

5. Thereafter, the petitioner left for Muscat on 12.01.2007 and returned on 03.02.2007. Subsequently, she received an Order No. 16 dated 07.02.2007 issued by the Deputy Director of Education (F.8(05)/Vig/DNWB/07/245) stating that a departmental proceeding was contemplated against the petitioner. The aforesaid order further placed the petitioner on suspension w.e.f. 12.01.2007. She was charge sheeted under Rule 14 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965 vide memo dated 23.02.2007 (No. F.8(5)/Vig./DNWB/07/330). The charges against the petitioner were that she had left the Country for Muscat without prior permission of the competent authority which was mandatory thereby acting in a manner unbecoming of a Government Servant which is in violation of Rule 3 of CCS (Conduct) Rules, 1964. The petitioner made several representations dated 20.02.2007, 10.03.2007 and 21.03.2007 against the said suspension order. Thereafter, she denied the charges vide written statement of defence filed on 05.03.2007. The suspension order was subsequently revoked by the respondents vide order dated 24.10.2007.

6. The petitioner, vide the aforementioned written statement explained that she had, vide her application dated 30.11.2006, applied for 88 days earned leave and permission to go to Muscat w.e.f. 02.01.2007 prefixing winter vacations from 25.12.2006 to 01.01.2007 which was submitted to the Vice-Principal of the School. She also stated that she continued to follow instructions given by her seniors and had even postponed her visit to Muscat to 12.01.2007. The petitioner particularly highlighted that no mention of her initial applications for grant of earned leave and "N.O.C" dated 30.11.2006 was made but mention has been made of her fresh application dated 10.01.2007. The petitioner pleaded that she was not guilty of the charges and requested for reconsideration of the entire matter.

7. The Inquiry Officer (I.O) submitted the enquiry report dated 19.11.2007 and opined that the petitioner had tried her best to obtain the N.O.C and had left the country only after getting a verbal nod from the District Office. The I.O. further

concluded that she is not guilty of wilful absence from duty as she had applied for EOL in time and the Head of the School had marked her on EOL. However, the Disciplinary Authority did not agree with the finding of the I.O. and accordingly a disagreement note dated 24.04.2008 was issued to the petitioner. The Disciplinary Authority, on the basis of the evidence available on record, passed an order dated 14.08.2008 imposing the penalty of reduction to a lower stage in the time scale of pay for a period of one year and directed that the petitioner would not earn increment of pay during the period of such reduction and on the expiry of such period, the reduction would have the effect of postponing her future increments of her pay and the period of suspension shall be treated as not spent on duty. Subsequently, the petitioner's appeal and review petitions were rejected by the Appellate Authority and Reviewing Authority. The petitioner filed O.A. 1761/2013 before the learned Tribunal which declined to grant her any relief. Hence, the present petition.

8. The learned counsel for the petitioner, Adv. M.S. Saini submitted that the petitioner complied with the rules and was granted oral sanction to leave the country and the earned leave was also sanctioned in her favour. The learned counsel for the petitioner further argued that the Disciplinary Authority did not appreciate the facts on record and reached to the wrong conclusion thereby compelling the petitioner to file the present Writ-Petition.

On the other hand, the learned counsel for the respondents vehemently opposed the contentions of the petitioner and argued that the petitioner left the country prior to obtaining the "N.O.C" and sanctioned leave. The act of the petitioner was deliberate and is not expected from a government employee. It was further submitted that the disciplinary authority has rightly imposed the appropriate penalty on the petitioner after giving her due opportunity of being heard.

We have perused the records and heard the learned counsel appearing for the parties.

9. As per the rules of the Directorate of Education, Government of NCT of Delhi, 27.01.2004 (No.1551-NWB.Admn. 2003/542-545), application of the employee must reach the Admn. Branch, at least two weeks prior to the proposed date of journey. Once the application is filed by the petitioner-employee seeking permission to go abroad and the said application is put into the process and goes out of his/her hand, the onus shifts on the respondents to either accept or reject it and such communication should be made available to the petitioner to show the process to be transparent and to have a healthy atmosphere at the workplace and avoid any dishonesty taking place in the due process. If there is a rule that the application must reach duly completed at least two weeks prior to the proposed date of journey to the competent authority, the competent authority too is expected to communicate either his/her rejection or acceptance to the concerned employee/petitioner as sought by him.

10. In the present case, admittedly, the petitioner moved two separate

applications dated 30.11.2006 for grant of Earned Leave and "No Objection Certificate". The petitioner's application for grant of "N.O.C" is reproduced hereinunder:

To

The Principal S.K.V.D Blk. Kamdhenu, Mangol Puri, N. Delhi - 110083

Sub:- Application for grant of No Objection Certificate for going abroad.

Madam,

I want to state that my son, Kapil Gupta, is working in Muscat, Sultanate of Oman. He is planning to celebrate his forthcoming marriage Anniversary there. He wants that all family members should be there on this occasion. The expenses of travelling, boarding, and lodging will be borne by him. I am planning to go there on 24th December, 06 and shall return by 30th March, 07. Before going abroad I will ensure that the syllabus of XI and XIIth classes for academic year 2006-07 is completed which I am presently teaching. Kindly issue me No objection certificate and do the needful for which I shall be highly grateful to you.

Thanking you,

Yours faithfully, Manju Gupta (Mrs. Manju Lata Gupta) PGT Hindi ID No. 19850860 Dated 30th November, 2006. No.233 dated 30.11.06

The petitioner also submitted another application dated 30.11.2006 requesting the Principal of the aforementioned School to grant her Earned Leave for 88 days with effect from 02.01.2007 to 3.03.2007, prefixed with the winter break of the year 2006 for travelling to Muscat to meet her son and attend his marriage. The head of the School sanctioned the leave in her favour.

11. The summoned records shows that the Education Officer (E.O) has recommended the "N.O.C." on 08.01.2007. The same is reproduced hereinunder:

"May kindly see the remarks on pre-page. In this regard, it is submitted that Smt. Santosh Bansal, PGT Hindi has assured that she will try her best to tackle the problems, if any, for the Hindi classes in place of Smt. Manju Lata Gupta, TGT Hindi, who has applied for NOC for going abroad.

It is therefore recommended that she may be granted N.O.C for going abroad, as per application of the official. We will try our best to manage the classes in absence of Smt. Manju Lata Gupta, TGT Hindi.

Submitted for NA please."

Further, EO (2-XII) has recommended permission on 11.01.2007.

12. The petitioner left India on 12.01.2007 on the basis of the oral permission from the office under the belief that her "N.O.C" has already been granted.

13. What is surprising in the present Writ Petition is that the respondent

department i.e. Directorate of Education was unable to communicate to the petitioner at least 7 days prior to her departure or even a minute before her leaving India that "N.O.C" would not be granted. The whole mess has been created by the respondents themselves by not communicating to the petitioner the decision to grant or reject her application. Certainly what the respondents are now doing is taking action against the petitioner for nothing is to be performed on her part.

14. Here, we say this with great anguish that the competent authorities have no business to sit over the file and to take action against an innocent employee who complies with the rules. It is at this juncture that the system gets rusted and the machinery i.e. the institution, fails to achieve its desired output because of lethargy and indifferent attitude of the persons concerned.

15. Taking into account the aforesaid facts and circumstances, and the summoned records, it is apparent that the order passed by the Disciplinary Authority is nothing but perverse and suffers from patent error on the face of the record. Reliance is placed on the case titled as South Bengal State Transport Corpn. Vs. Swapan Kumar Mitra and Others, , where the Hon"ble Supreme Court of India has made the following observations:

"It is, however, true that if perversity is shown and proved, it would be open to the Writ Court to hold as such." 16. Since, the mess created in the present facts and circumstances of the case is of respondent department, having failed to take the decision at the appropriate time, which resulted into the acquisition of the principle of equity in favour of the petitioner, consequently, the order passed by disciplinary authority dated 14.08.2008 and the order/judgment dated 26.08.2014 passed by the Central Administrative Tribunal, Principal Bench, New Delhi in O.A. No. 1761/2014 are set aside and the petitioner is entitled to all the consequential reliefs.

17. The petition is disposed of in the above terms. No Costs. Departmental Proceedings record be sent back.