
(2020) 01 CAT CK 0070

In the Central Administrative Tribunal

Case No : Original Application No. 3564 Of 2014

Manoj Kumar

APPELLANT

Vs

All Indian Institute Of Medical Sciences

RESPONDENT

Date of Decision : 28-01-2020

Acts Referred:

Central Civil Services (Classification, Control And Appeal) Rules, 1965 — Rule 14
Central Civil Services (Conduct) Rules 1964 — Rule 3(1)(ii), 3(1)(iii)

Citation : (2020) 01 CAT CK 0070

Hon'ble Judges : S.N. Terdal, J; Mohd. Jamshed, Member (A)

Bench : Division Bench

Advocate : Amit Chawla, V.S.R. Krishna

Final Decision : Dismissed

Judgement

Mohd. Jamshed, Member (A)

1. The applicant was appointed on the post of Hospital Attendant Grade-III in All India Institute of Medical Sciences (AIIMS) (respondent) in 1995. His appointment was on compassionate grounds on account of demise of his father. Vide charge memorandum dated 03.05.2013 under Rule 14 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965, the applicant was issued article of charges regarding his willful and unauthorized absence from duty and it was decided to hold a departmental enquiry against him. The Enquiry Officer (EO) submitted his report on 17.04.2014 holding the charge as proved. Vide order dated 13.06.2014, the Disciplinary Authority, agreeing to the findings of EO, imposed the penalty of compulsory retirement from service on the applicant with immediate effect. The applicant filed an appeal challenging the impugned order dated 13.06.2014 to the President, AIIMS (AA). The AA vide order dated 04.09.2014 rejected the appeal of the applicant. Aggrieved by these actions on the part of the respondents, the applicant has filed the present O.A. seeking quashing of the orders dated 13.06.2014 and 04.09.2014.

2. The applicant has submitted that during the alleged period of unauthorized absence, he was unwell and took medical treatment in his native place Bulandshahr, U.P. He also contends that the DA and AA have not considered the fact that the applicant is a patient and was under treatment all this while. The medical documents submitted by him have not been considered by the respondents and a very harsh punishment of compulsory retirement has been imposed upon him.

3. The respondents in their counter reply have opposed the O.A. and submitted that the applicant was issued a charge memorandum on 03.05.2013 for his willful absence from duty very frequently in different spells without the permission and sanction of leave by the competent authority. The charge sheet also mentions that the applicant during the period from 15.02.2012 to 31.08.2012 remained absent for 154 days in various spells. The EO concluded that the charge against the applicant stands proved. Subsequently, the DA passed the order of compulsory retirement from service on the applicant. His appeal was duly considered by the AA and rejected. It is also submitted that on earlier occasions also the applicant was charge sheeted as he is habitual in not performing the duty assigned to him and remaining unauthorizedly absent. He was also earlier issued charge sheet dated 27.10.2006 for unauthorized absence and imposed the penalty of 'censure'. In another case, he was suspended due to his involvement in a criminal offence which is under investigation. However, on subsequent acquittal, the departmental action taken against him was also cancelled. It is also submitted that the applicant was extended due opportunities during the enquiry in accordance with law. It is also stated in the counter reply that during his entire service since 1995 onwards, he has remained absent for approximately over 3000 days, which has very adversely impacted the working of the respondents.

4. In the rejoinder submitted by the applicant, it is stated that very harsh punishment has been imposed on him and in some other cases of similar nature of unauthorized absence; lenient view has been taken by the respondents.

5. Heard Sh. Amit Chawla, learned counsel for the applicant and Sh. V.S.R. Krishna, learned counsel for the respondents.

6. The applicant was appointed on compassionate grounds by the respondents in the year 1995. There have been many instances of his unauthorized absence for last many years. He was also issued charge sheets for the same including the one issued on 27.10.2006. He was also suspended for his alleged involvement in a criminal case. He again remained unauthorized absent in different spells and a charge sheet was issued to him on 03.05.2013 for his unauthorized absence of 154 days from 15.02.2012 to 31.08.2012. He was extended all opportunities and participated in the enquiry. The EO submitted his report on 17.04.2014 holding the charge of unauthorized absence as proved. The DA having considered his representation imposed the penalty of compulsory retirement vide order dated 13.06.2014 through a detailed speaking order. The applicant further preferred an

appeal to the President of AIIMS (AA). After consideration of the appeal, vide order dated 04.09.2014, the AA rejected his appeal. It is also a matter of fact that he was an employee of the respondents (AIIMS) with the best medical facilities available and therefore his unauthorized absence on medical ground and getting treatment elsewhere is not understandable. He has sought relief in terms of quashing of the orders of the DA and the AA stating that the punishment is very harsh and lenient view should have been taken. These aspects have been considered by the DA and AA. The respondents have held him responsible for unauthorized absence contravening Rule 3(1)(ii) & Rule 3 (1)(iii) of the CCS (Conduct) Rules, 1964 failing to maintain devotion to duty and acted in a manner unbecoming of an Institute employee and imposed the said punishment.

7. The judicial review by Tribunals/Courts in disciplinary matters is limited. This is a settled law that the Tribunals/Courts are not Appellate Authorities and this decision is entirely left to the DA. This has been specifically laid down by Apex Court in State of Andhra Pradesh and Ors. Vs. S. Sree Rama Rao, 1963 AIR 1723 as under:-

"In one of the earliest decisions in State of Andhra Pradesh and others v. S. Sree Rama Rao [1], many of the above principles have been discussed and it has been concluded thus:

The High Court is not constituted in a proceeding under Art. 226 of the Constitution a Court of appeal over the decision of the authorities holding a departmental enquiry against a public servant: it is concerned to determine whether the enquiry is held by an authority competent in that behalf, and according to the procedure prescribed in that behalf, and whether the rules of natural justice are not violated. Where there is some evidence, which the authority entrusted with the duty to hold the enquiry has accepted and which evidence may reasonably support the conclusion that the delinquent Officer is guilty of the charge, it is not the function of the High Court in a petition for a writ under Art. 226 to review the evidence and to arrive at an independent finding on the evidence. The High Court may undoubtedly interfere where the departmental authorities have held the proceedings against the delinquent in a manner inconsistent with the rules of natural justice or in violation of the statutory rules prescribing the mode of enquiry or where the authorities have disabled themselves from reaching a fair decision by some considerations extraneous to the evidence and the merits of the case or by allowing themselves to be influenced by irrelevant considerations or ;where the conclusion on the very face of it is so wholly arbitrary and capricious that no reasonable person could ever have arrived at that conclusion, or on similar grounds. But the departmental authorities are, if the enquiry is otherwise properly held, the sole judges of facts and if there be some legal evidence on which their findings can be based, the adequacy or reliability of that evidence is not a matter which can be permitted to be canvassed before the High Court in a proceeding for a writ under Art. 226 of the Constitution."

8. We have observed that the disciplinary proceedings do not suffer from any procedural lapses or violation of principles of natural justice. In view of the above mentioned, we do not find any merit in the present O.A. and the same is accordingly dismissed. No order as to costs.