

(1993) 09 GAU CK 0007
In the Gauhati High Court
Case No : Civil Rule No. 1636 of 1989

Md. Isphakul Mazid

APPELLANT

Vs

State of Arunachal Pradesh and Others

RESPONDENT

Date of Decision : 21-09-1993

Acts Referred:

Central Civil Services (Leave) Rules, 1972 — Rule 32, 32(1), 32(2)
Constitution of India, 1950 — Article 226

Citation : (1994) 1 GLR 137

Hon'ble Judges : J.N. Sharma, J

Bench : Single Bench

Advocate : S. Ali and A. Hai, for the Appellant; U. Das, for the Respondent

Final Decision : Allowed

Judgement

J.N. Sarma, J.—This application under Article 226 of the Constitution of India has been filed praying for the following reliefs:

(i) to quash the termination order of the Petitioner (ii) to pass necessary order to re-instate the Petitioner in his post with arrear pay and allowance from the date of termination with all benefits and seniority in services.

2. The termination order is at Annexure-9 to the writ application dated 13th April, 1988 which reads as follows:

The service of Md. Isphakul Mazid, Welder, Rural Works Mechanical Sub-Division, Along is terminated w.e.f. 19th Oct. '87 (F/N) under Rule 32(2)(a) of C.C.S. (Revised Leave) Rules, 1972.

3. The brief facts are as follows:

The Petitioner was appointed as Welder on ad hoc basis for a period of one year vide order dated 14-1-1983 and he joined the post on 5-3-1983 at Along. Annexure-1 is the letter of appointment issued by the Chief Engineer, Government of Arunachal Pradesh dated 14.1.83. The service of the Petitioner

was regularised vide order dated 9-5-85 by the authority and since then the Petitioner was working as a regular employee under the Government of Arunachal Pradesh. Annexure-2 is the regular appointment letter issued by the Chief Engineer, Government of Arunachal Pradesh, Rural Works Department, Itanagar. The Petitioner was working under the Assistant Engineer (Mech.), Rural Works Sub-Division, Along, On 17-10-87 the Petitioner applied for seven days casual leave with station leave permission will effect from 19-10-87 to 27-10-87 and necessary application was submitted and the same was received by one P.S. Adhikari, Technical Assistant, Incharge Assistant Engineer. Annexure-3 is the typed copy of the leave application. That after coming to home he was severely attacked by jaundice with effect from 27-10-87 and he was under treatment till 11-1-1988 at Jorhat as well as at Sibsagar. That after recovery, the Petitioner joined in his post on 3-2-1988 and submitted medical certificate in original and Earned leave form duly filled in with a departure report. Annexure-4 is the joining report dated 3-2-1988 along with medical certificate, leave application and departure report. During his illness he sent two telegrams on 2-11-87 and 22-1-88 to the authority for extension of leave on medical ground. After joining in his post on 3-2-88 the department paid his salary and other allowances for the month of October, 1987. That thereafter on 6-2-88 the authority asked for explanation on the alleged absence of 107 days without prior approval from the competent authority, The letter dated 6-2-88 is at Annexure-5 which reads as follows:

You have left the station on 19th Oct. '87 and reported on 3rd Feb. '88. After a gap of 107 days, absenting such a long time without prior approval from competent authority. May be explained within 3 days for onward action.

The Petitioner submitted his reply vide Annexure-7 on 14-3-88 which inter alia reads as follows:

That Sir, I could not resume after completion of my Casual leave due to my ill health and sen one Telegram for extension of my leave. As I have not received any information from your end I again sent a Telegram from my hometown.

That Sir, I have resumed my duty on 3rd Feb. '88 after availing 107 days leave due to my illness for which I have already submitted my Medical Certificate along with my Joining report.

Therefore, I request your honour kindly to consider my case on special ground. If desired receipt of my telegram sent to your good office will be produced for your ready reference,

Thereafter the termination order was issued as staled earlier. An appeal was filed on 4th July, 1988 which is at Annexure-10 to the writ application. That appeal was rejected by the authority on 21-10-1988. The order of the appellate authority reads as follows:

I am directed to inform you that your appeal in question was examined by this

Secretariat and found that the action taken by the Chief Engineer Rural Works Department, Arunachal Pradesh, Itanagar terminating your service due to your prolonged absence from head quarter without prior approval from the competent authority is in order. Hence, this application.

4. I have heard Mr. S. Ali, learned Counsel for the Petitioner. None appeared for the Respondents. No affidavit-in-opposition has been filed on behalf of the Respondents. No record has been produced by the Respondents.

5. Mr. Ali, learned Counsel for the Petitioner has drawn my attention to Rule 32 of the C.C.S. Rules, 1972. Rule 32(2) reads as follows:

Unless the President in view of the exceptional circumstances of the case otherwise determines no Government Servants, who is not in a permanent employee or quasi-permanent employee shall be granted Extraordinary leave on any one occasion in excess of the following limits.

a) Three months.

b) Six months, where the Government servant has completed one year's continuous service on the date of expiry of leave of the kind due and admissible under these rules, including three months, extraordinary leave under clause (a) and his request for such leave is supported by a medical certificate as required by these rules.

Mr. Ali submits that a bare reading of these Rules will show that an employee is entitled to grant extra-ordinary leave for 3 months under Rule 32(1)(a) whereas an employee who has completed continuous service of one year is entitled to six months leave under Rule 32(2)(b). The Petitioner was regularised in service on 5-3-1983. The Petitioner being a permanent employee having completed 4 years of service without any interruption. So, the Petitioner is entitled to six months extra-ordinary leave and as such the leave ought to have been exhausted against 107 days absence from the date as the Petitioner applied for extension of leave by telegram No. 2580 dated 2-11-87 and then at the time of joining on 3-2-88, he submitted all necessary medical certificates. Mr. Ali further submits that the termination order was issued on 13-4-88, but it terminated the service of the Petitioner with effect from 19-10-87 which is on the face of it is illegal. He also submits that the Petitioner was paid the salary for the month of October, 1987, so the authority considered him to be in service till the end of October, 1987 and his service cannot be terminated from October, 1987. Mr. Ali further submits that the termination of the Petitioner is absolutely illegal, without jurisdiction, arbitrary, whimsical and capricious. No opportunity whatsoever was given to defend his case. The order of termination is violative of principle of natural justice.

6. On scrutiny of the materials on record, I find that the order of termination dated 13-4-88 Annexure-9, W.T. Message dated 15-4-88 Annexure-8 both are bad in law and liable to be set aside and quashed. The order is violative of

principle of natural justice and on this short ground alone these two annexures are liable to be quashed which I hereby do.

7. For the aforesaid reason, this writ application is allowed. The Annexure-8 and 9 to the writ application are set aside and quashed. The period of absence of the Petitioner shall be treated as on leave due to him and the Petitioner will be deemed to be in service from 3.2.88 on the date of his joining. The Petitioner also will be entitled to his all arrear salary and other benefits including seniority. The Petitioner will be immediately reinstated in his post preferably within a period of one month from today and he will be paid his arrears salary and other dues within a period of 45 days from today. I leave the parties to bear their own costs.