

(2003) 01 AP CK 0106
In the Andhra Pradesh High Court
Case No : Writ Petition No. 1080 of 1997

N. Balakrishna

APPELLANT

Vs

Security Officer, APSRTC

RESPONDENT

Date of Decision : 20-01-2003

Acts Referred:

Andhra Pradesh State Road Transport Corporation Leave Rules — Rule 11(3)

Citation : (2003) 3 ALD 593 : (2003) 2 ALD 895 : (2003) 3 ALT 96

Hon'ble Judges : E. Dharma Rao, J

Bench : Single Bench

Advocate : G. Vidya Sagar, for the Appellant; K. Harinath, SC, for the Respondent

Final Decision : Allowed

Judgement

E. Dharma Rao, J.—This writ petition is filed aggrieved of the order No. SB/686/3/95-SO(HZ) passed on 5.7.1995 by the Security Officer (HZ), IBS, Hyderabad in appeal preferred by the petitioner against the orders of the Vigilance and Security Officer, dated 26.6.1995.

2. Originally, the Security Officer, after conducting an enquiry imposed the punishment of removal from service with immediate effect by his order dated 15.2.1995 which was modified by the Vigilance and Security Officer by order dated 26.6.1995 as one into reinstatement into service as Security Officer, with minimum of scale in the Revised Pay Scales and without arrears. On appeal, the impugned order was passed.

3. The petitioner was on leave from 1.7.1994 to the date of order and submitted medical certificate issued by the private medical practitioner, though notice was sent to the petitioner, he refused to receive the notice and a charge sheet was served. Accordingly, after completing the regular enquiry, he was removed from service by order dated 15.2.1995 with immediate effect treating the entire period of absence as not on duty.

4. Aggrieved of the above said order, an appeal was preferred to the appellate authority, who by order dated 26.6.1995 interfered into the same and modified the removal order, in the following terms:

1. Sri N. Balakrishna, is reinstated into service as Security Guard.
2. On reinstatement, his salary will be fixed at the minimum of the scale in the Revised Pay Scales and without payment of arrears.
3. The entire period of absence from 1.7.1994 and also the intervening period between the date of removal till the date of joining for duty shall be treated as "NOT ON DUTY" for all purposes such as PF, Gratuity and other attendant benefits.
4. Before he is taken on duty, he shall be directed for Medical Examination at APSRTC Hospital, Tarnaka.
5. Reinstatement into service, he shall report to SO(HZ) for further posting orders.

5. Aggrieved of the same, the present writ petition is filed contending that while the petitioner was working at Narayanpet Depot, he could not attend duties from 1.7.1994, thereafter undergone treatment at Venkateswara Nursing Home, Narayanpet up to 14.7.1994 and subsequently shifted to Govt. Hospital, Naryanpet and has undergone treatment up to 9.11.1994 and after obtaining fitness certificates on 10.11.1994. While so, charge sheet dated 14.9.1994 was served to the petitioner on 16.9.1994, though he submitted the medical certificate on 6.7.1994. Consequently, an Enquiry Officer was appointed and he submitted his explanation to the charge on 9.12.1994. After recording the statements, a report was submitted on 13.12.1994 holding that the guilt is proved. Following the report, a show cause notice of removal from service dated 21.12.1994 was issued. On consideration of the explanation, in reply thereto, by order dated 15.2.1995 the petitioner was removed from service and he preformed an appeal. The punishment from removal of service was modified, to the extent indicated above.

6. The learned Counsel for the petitioner submits that the respondents should have considered the private sick certificate produced by the petitioner on 6.7.1994, followed by the certificate issued by the Government Hospital, Narayanpet, since the absence is genuine due to sickness of the petitioner and beyond his control. He further submitted that as per Rule 11(3) of the A.P.S.R.T.C. Leave Rules, the Competent Authority, may in its discretion, subject to the provisions of general or special orders of the Corporation, either accept the certificate issued by the Medical Attendant or refer the case for investigation or advice, as the circumstances may require. Therefore, when the respondents doubted the genuineness of the medical certificate dated 6.7.1994 issued by the private medical practitioner, they should have referred the petitioner to the Medical Officer for investigation and advice and to submit a report. Without

following the procedure contemplated under Sub-rule (3) of Rule 11, the respondents themselves on their own doubted the medical certificate produced by the petitioner, conducted an enquiry and passed the impugned order. Therefore, the entire exercise made by the respondents is in violation of Rule 11(3) of the A.P.S.R.T.C. Leave Rules and, therefore, liable to be set aside.

7. On the other hand, the learned Standing Counsel for the respondents submitted that the petitioner was absent from 1.7.1994 without intimation to the authorities and submitted the private medical certificate on 6.7.1994 for two weeks from 1.7.1994 and also failed to report to duty and even after completion of two weeks, he failed to submit intermediate sickness certificate. Therefore, a notice dated 22.8.1994 was sent to him to his latest address by registered post acknowledgment due, which was returned unserved with post endorsement that the addressee refused to take the notice. Therefore, the refusal amounts to service. Accordingly, after framing charges and conducting enquiry and further giving him opportunity to submit his explanation to the enquiry report, the impugned action was taken by the original authority, which was subsequently modified by the Appellate Authority, taking a lenient view. Therefore, no interference of this Court is required.

8. Admittedly, the petitioner remained absent from 1.7.1994 to 15.7.1994, but on 6.7.1994 he submitted medical certificate issued by a Private Medical Practitioner. Therefore, it cannot be said that the petitioner was unauthorisedly absent, but he was pursuing the respondent authorities for the grant of sick leave. The genuineness of the ill health of the petitioner is fortified by his treatment in the Govt. Hospital, Narayanpet and production of medical certificate therefrom. The petitioner, reported duty after obtaining fitness certificate. Rule 11 deals with the procedure for obtaining leave on medical grounds. Sub-rule (1) thereof reads as under:

"...(1) An employee who being unable to attend to his duties by reason of illness, applies for leave or an extension of leave shall produce or cause to be produced without delay a sick certificate issued by the competent Medical Officer or in special circumstances by the applicant's own Medical Officer.

Sub-rule (3) of Rule 11 reads as under:

".. (3) The authority competent to grant leave may in its discretion, but subject to the provisions of any general or special orders of the Corporation, either accept the certificate from the medical attendant or refer the case to the competent Medical Officer for advice or investigation and on receipt of his advice or report, deal with it as circumstances may require..."

9. Prima facie, a reading of Sub- rule (1) makes it clear that the employee who, being unable to attend his duties by reason of illness, submits an application for grant of leave or extension of leave, shall produce sick certificate issued by a competent Medical Officer or in special circumstances by the applicant's own Medical Attendant, without delay. Two types of medical certificates are

contemplated under this Rule i.e., medical certificate issued by the competent Medical Officer and that of applicant's own medical attendant. Accordingly, the petitioner who was unable to attend to duties by reason of his ill-health and was undergoing treatment under a private Doctor and thereafter shifted to Government Hospital, Narayanpet. Thus under special circumstances, the applicant submitted sickness certificate issued by his Medical Attendant. Therefore, the respondents should have accepted the certificate submitted by the petitioner under Rule 11(1) of the Regulations, to which he is entitled to. Under Sub-rule (3) of Rule 11, the authority competent to grant leave is given discretionary power, subject to any general or special orders of the Corporations, either to accept the certificate issued by the Medical Attendant or if he entertains a doubt, refer the case for investigation by the competent Medical Officer for his advice and report and on receipt of such report, deal with the case as the circumstances may require. Therefore, this contingency arises when the authority competent to grant the leave doubts the genuineness of the medical certificate submitted by the applicant. In normal course, the authority competent to grant leave is given a discretionary power to admit sick certificate issued by the Medical Attendant. In the event he doubts its genuineness, a duty is cast on the authority competent to grant leave, to refer the employee to the competent Medical Officer of its own hospital or to the Government Hospital, for investigation, advice and report, as to whether the employee is suffering with any illness.

10. As seen from the facts and circumstances of the case, the petitioner throughout was pursuing the authorities to grant sick leave on the ground that he is unable to attend his duties due to illness. Therefore, the competent authority should have granted the leave on the basis of the medical certificate issued by the Medical Attendant of the petitioner. If for any reason, the certificate issued by the Medical Attendant was doubted by the competent authority, he should have referred the case to the competent Medical Officer for investigation, advice and report. But the case of the petitioner was not referred and simply rejected the medical leave. When the competent authority, has doubted the medical certificate submitted by the petitioner, a duty is cast on him under Sub-rule (3) of Rule 11 to refer the case for advice and report. Therefore, for non-compliance of the provisions of Rule 11(3), the impugned action of the respondent is in violation of Sub-rule (3) of Rule 11 of the Leave Regulations. Therefore, I am of the considered view that the learned Counsel for the petitioner is right in submitting that if the respondents have entertained a doubt with regard to the genuineness of the medical certificate, they should have as well referred the petitioner for investigation, advice and report, in compliance of Rule 11(3) of the Corporation Leave Rules. Therefore, for non-compliance of the same, the entire action taken by the respondents is in violation of the said Rule. Accordingly, the impugned order is set aside.

11. However, since the petitioner was not on duty by virtue of the removal order and did not discharge any functions, he is not entitled to any back wages, but

since his absence was genuine, as observed earlier, he is entitled to the notional increments. Therefore, the respondents are directed to calculate the arrears of pay to which the petitioner is entitled to from the date of joining duty, as per the order of the appellate authority dated 26.6.1995, till today and pay the same, within a period of three months from the date of receipt of a copy of this order.

12. The Writ Petition is accordingly disposed of. No order as to costs.