
(2013) 11 DEL CK 0047

In the Delhi High Court

Case No : Writ Petition (C) No. 7776 of 1999

Navneet Madaan

APPELLANT

Vs

UOI and Others

RESPONDENT

Date of Decision : 26-11-2013

Acts Referred:

Constitution of India, 1950 — Article 226
Industrial Disputes Act, 1947 — Section 17A

Citation : (2014) LabIC 1138 : (2014) 1 LLJ 356

Hon'ble Judges : Valmiki J. Mehta, J

Bench : Single Bench

Advocate : S.K. Chaudhary, for the Appellant; Jagat Arora, for the Respondent

Final Decision : Dismissed

Judgement

Valmiki J. Mehta, J.—By this writ petition filed under Article 226 of the Constitution of India, the petitioner impugns the orders passed by the departmental authorities; of the disciplinary authority dated 27.3.1998 and appellate authority dated 8.3.1999; whereby petitioner has been imposed the punishment of compulsory retirement. Before adverting to the arguments addressed on behalf of the petitioner it is necessary to state that a scope of hearing in a petition under Article 226 of the Constitution of India challenging the orders passed by the departmental authorities is limited. This Court does not sit as an Appellate Court to reappraise the findings and conclusions of the departmental authorities. This Court can only interfere if the findings/conclusions are perverse or are against the principles of natural justice or violative of the rules of the employer organization/law.

2. The aforesaid position of law becomes further accentuated where the charge-sheeted employee, like in the present case, does not file any statement of defence or lead his evidence. In such cases which are effectively a case of an ex-parte judgment, it is only in very grave and exceptional circumstances that the orders passed by the departmental authorities are set aside.

3. It is also necessary to note the following salient points before adverting to the arguments urged on behalf of the petitioner:

(i) Petitioner on the ground of sickness has almost completely abstained himself from performing his duty with the employer/bank over different periods for many years, and for which indifference the petitioner was before the subject departmental action, already visited with different punishments in terms of three earlier orders of the disciplinary authorities dated 27.2.1993, 28.3.1994 and 18.11.1995.

(ii) Even at the stage of the giving of the report by the enquiry officer in the subject charge-sheet petitioner had not joined his duties.

(iii) Petitioner had exhausted all his different types of leaves, and in spite of the same claims entitlement to automatically be granted sick leaves on the ground that the petitioner is sick.

(iv) As the petitioner has not filed his evidence or led his defence in the enquiry proceedings, really there is nothing to justify the arguments of any balance leave pending of the petitioner for being granted leave, and therefore, the only argument urged is that an employee is entitled to any number of sick leaves without any upper limit on the ground of sickness and that once an application for sick leave is filed, it is argued by the petitioner that there is no right to deny the sick leave although every type of leave including sick leave allowed as per rules stands exhausted.

(v) It may be noted that if an employee remains on leave, it cannot be disputed that the work of the employer/bank is indeed hampered, more so in cases where there is no prior intimation, no intimation on immediately taking leave and intimation being only given when after many days the employee wants to come back and join duty.

4. Before me, on behalf of the petitioner, the following arguments are urged to question the orders passed by the departmental authorities:-

(i) In view of the bipartite settlement entered into by the bank with its employees, and in view of clause IX(4) thereof, an employee who is sick has to be compulsorily granted sick leave, irrespective of any outer limit, once a medical certificate is produced which is acceptable to the bank.

(ii) Once the petitioner was with respect to his leave treated as absent without leave, no further punishment can be imposed as it would amount to double jeopardy. Double jeopardy is also alleged on the ground if there is leave with loss of pay, then, no further disciplinary proceedings can be taken against the employer.

(iii) Petitioner had applied for the leaves, and since they were not refused they were deemed to be granted, and which argument is really a sequitur of the first argument.

(iv) Petitioner always gave medical certificates on joining back duties with respect to his illness, and therefore, petitioner has justifiable reasons for taking leaves and accordingly, he cannot be held to be on leave without sanction. Once again this argument is a facet of the first argument.

(v) The orders passed by the disciplinary authority and the appellate authority are violative of the principles of natural justice including the objections which were filed by the petitioner on 14.3.1998 before the disciplinary authority have not been dealt with, and particularly objections with respect to the bipartite settlement of petitioner having got himself validly medically examined, and the fact that there is no requirement in the leave rules that so far as sick leave is concerned there has to be a prior application i.e. since a person does not know when he falls sick, there is hence no requirement of giving leave application in advance, and which application need not be given right till the sick employee joins back the duty.

5. The first, third and fourth arguments urged on behalf of the petitioner are related and, therefore, can be dealt with together. The arguments urged on behalf of the petitioner simply are that once a person is sick, and he is found to be sick as examined by the Doctor of the bank, there is an automatic entitlement to sick leave without any upper limit and that petitioner commits no wrong if he does not join the bank during his sickness and also that the employee is entitled to give the application for sick leave only after he joins his duties.

6. In order to deal with the arguments urged on behalf of the petitioner the necessary leave rules of the respondent-bank need to be referred to, and the same read as under:

1. "Leave" means periods during which an employee may with permission of the sanctioning authority absent himself from today.

Bank holidays falling during the period of leave of any category shall be deemed to be spent on leave of that category.

Xxx xxx xxx

4. Subject to the provision of this Chapter, every employee shall be entitled to:

(a) "Casual Leave"

(b) "Privilege Leave"

(c) "Sick Leave" or "Half-Pay Leave " as hereinafter provided.

(d) Any other category of leave.

Xxx xxx xxx

7A. (1) As and from the first day of April 1953, Regulation 8 shall cease to have effect and this Regulation will have effect in its place.

(2) Every employee shall be entitled to leave on the ground of sickness or illness calculated at the rate of 30 days for every year of his service. Such leave shall be on half average pay with liberty to continue it into half and number of days on average pay.

(3) The overall total of such leave availed of during the entire period of service shall not exceed 360 days on half average pay. Every day availed of on average pay being taken as equivalent to two days on half average pay.

(4) When the maximum noted in clause (3) is exhausted, leave on ground of sickness shall be debited to privilege leave unless for reasons to be recorded in writing, the General Manager deems it desirable in the interest of the Bank to grant such leave on one fourth of average pay.

7B. (1) As from 31st day of July, 1962 excepting in the case of employee who as regards matters set out in group (2) at paragraph 19.18 of the Award of the National Tribunal, opt for the totality of the provision in connection with the said matters existing immediately prior to the date when the said Award becomes enforceable u/s 17A of the Industrial Disputes Act as provided in paragraphs 19.15 to 19.22 of the said Award. Regulation 8A clause (2) shall cease to have effect and this Regulation shall have effect in its place.

(2) Every employee shall be entitled to leave on the ground of sickness or illness at the rate of 30 days for every year of his service. Such leave shall be on half average pay provided that where an employee has served the Bank for at least a period of 5 years, he shall, if he so requests, be permitted to commute it into half the number of days on full pay.

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12. (1) Leave of every category shall be subject to the exigencies of Bank's business.. The Sanctioning Authority shall at all times have the discretion to refuse or revoke leave and also to recall to duty an employee to whom leave has been granted.

(2) The Sanctioning Authority may notify in advance to any employee or employees, personally or by circular, the periods when or within which privilege leave will be granted.

13. (1) When leave is applied for on the ground of illness or sickness, a certificate from a Registered Practitioner or a Government Medical Officer or registered Vaid or Hakim should always be produced in support of the application for leave unless the Sanctioning Authority expressly waives it.

(2) The Sanctioning Authority shall have the right of requiring the employee who is applying for leave on the ground of sickness or illness to be examined by a medical man or his choice, notwithstanding that the certificate required by clause (1) of this Regulation has been produced by the employee. But the expenses of such examination shall be borne by the Bank.

(3) No employee who has been granted leave on medical certificate may return to duty without first producing a medical certificate of fitness.

Xxx xxx xxx

15. (1) An employee who desires to obtain leave other than casual leave shall apply in writing to the Sanctioning Authority. Except in urgent cases or unforeseen circumstances including sickness, such applications shall be made at least one month before the leave applied for is to commence.

(2) All leave applications should be submitted in duplicate to or through the Branch Manager, where the Branch Manager is himself the Sanctioning Authority he should forward to the General Manager the duplicate of the application together with his orders thereon. Where the Sanctioning Authority is the General Manager, the Branch Manager should retain the duplicate and forward the original leave application to the General Manager together with his recommendations and remarks as to the Staff position at the Branch, Office or Department under him and also as to the need or otherwise or substitute arrangements to be made if the leave is to be sanctioned.

(3) The Sanctioning Authority shall pass orders as soon as possible on the application for leave and in case of urgency immediately, and communicate the same to the applicant. If the leave is granted the period and category of the leave and date on which it is to commence shall be specified in the order. If the leave is refused or postponed the reason for the refusal or postponement as the case may be shall be stated in the order.

(4) An employee proceeding on leave should leave with the General Manager as well as with the Branch Manager under whom he is working, his full postal address and telegraphic address, if any, to which communications may be addressed to him during the period of leave, and shall from time to time keep both of them informed of any change in either or both of such addresses.

(5) If an employee after proceeding on leave desires an extension thereof he should apply in writing to the Sanctioning Authority sufficiently in advance to enable orders being passed and communicated to him before the expiry of leave. Such applications should be sent in duplicate, one copy to be sent to the General Manager and the other to the Branch Manager under whom he was working when he proceeded on leave. Orders either granting or refusing wholly or in part the extension asked for shall be passed and communicated to the employee as early as possible.

(6) No leave or extension of leave shall be deemed to have been granted unless an order to that effect has been passed.

(7) All orders under this Regulation shall be in writing signed by the Sanctioning Authority or whereas he is the General Manager by such officer in the Establishment as the General Manager may name of the purpose. Such orders shall issue in the form of proceedings of the General Manager or of the Branch

Manager as the case may be. Such orders may be in Form No. 22 of Appendix 1 of this Code, with such modifications as the circumstances of the case may require.

(7A) With effect from 1.10.1974, Provisions contained in Clause 7 of this Regulation shall not apply in respect to Clause Leave.

BY-BOARD'S RESOLUTION DATED 30.9.1974, CIRCULATED VIDE CIRCULAR No. 320/74 DATED DECEMBER 16,1974 OF THE INDUSTRIAL RELATIONS SELECTION

(8) The provisions of this Regulation shall apply mutatis mutandis to applications for leave by officers of rank. A, B or C of the Branch Manager except that they shall be sent direct to the Sanctioning Authority and need not to be duplicate.

(underlining added)

7. A reading of Rule 1 of the leave rules makes it clear that unless and until there is a sanction and permission for the leave, the leave will be treated as a person being absent from duty without permission. I do not think that the bipartite settlement clause IX (4) should be read to mean that the same supersedes Rule (1) for holding that there is an automatic entitlement of sick leave without upper limit merely on an application for sick leave being filed accompanied by the necessary medical certificate. Clause IX(4) of bipartite settlement as relied upon by the petitioner reads as under:

SICK LEAVE

In super session of Clauses 13.29, 13.30, 13.31, 13.32, 13.33 regarding provision of sick leave in the First Bipartite Settlement dated 19th October, 1996, and in supersession of the similar provisions, if any, regarding sick leave, the following provisions of sick-leave shall apply with effect from 1st July, 1983.

1. xxxxxx.

2. xxxxxx.

3. xxxxxxxx

4. All sick leave shall be granted on production of a medical certificate acceptable to the Bank.

In my opinion, there has to be a harmonious reading of the clauses of the bipartite settlement along with the leave rules inasmuch as otherwise it would mean that irrespective of sick leaves being taken without any upper limit, an employee will still always be entitled to sick leave and he need not perform his duties with the bank. If this interpretation as urged on behalf of the petitioner of sick leave without upper limit is accepted, then I fail to understand how an employer which has to get its organization running can do work and business. Rule 15(6) as reproduced above is a complete answer to the argument of the petitioner that once an order is not passed denying leave then the same is deemed to be granted. I, therefore, refuse to agree to the argument of

automatic entitlement of sick leaves without any upper limit on account of clause IX(4) as relied upon by the petitioner.

8. Also, no doubt application for sick leave need not be filed before a person falls sick inasmuch as it is not known when a person falls sick, however, on the contrary, the exact opposite interpretation also which is sought to be given on behalf of the petitioner that no intimation of sickness need be sent to the bank till there is re-joining of the employee also cannot be accepted inasmuch as unless and until an employee is in a comatose or equivalent condition of his not being able to understand anything or there is no one on his behalf of being able to inform the employer of the sickness and tentative period of leave, it cannot be held that the employee can remain absent without intimation for any number of days and then can simply join the bank along with the medical certificate of sickness. Rule 15(4) & (6) as reproduced above make it clear that the employer has to be kept informed and there is no automatic grant of leave. No organization can run unless it has some intimation with respect to some period of not coming to work by the employee, and therefore, I reject the argument that there is no requirement of intimation during the period of absence by an employee who seeks sick leave and there is only need to give a fitness certificate and a medical certificate of illness at the time of joining.

9. I may also at this stage state that the leave rules reproduced above clearly show that there is an upper limit of different types of leaves and so far as sick leave is concerned the limit specified is of 30 days every year subject to maximum of 360 days. I cannot agree with the argument that medical leaves or sick leaves can be beyond any limit whatsoever purely on the discretion of the employee because such an interpretation will cause not only violence to the language of the leave rules but also cause grave hampering to the work of an employer. After all service means service by giving work to the employer, and to accept an interpretation that an employee can be in service without actually serving the employer is not an acceptable interpretation of the leave rules quoted above. No doubt remains in this regard because Rule 12(1) specifically states that leave of every category is subject to exigency of bank business and in fact bank even has a discretion to revoke the leave and recall the employee for duty. In the present case, the sickness of the petitioner is stated to be of Asthama, and therefore, it could not be that the petitioner/employee would be totally bed ridden at all points of time, and even assuming if that be so, someone on his behalf always could have intimated the bank, and in any case, it cannot be that there can be sick leaves without any upper limit. I again state that in view of Rule 15(6) I reject the argument on behalf of the petitioner that merely by filing an application for sick leave unless the same is refused the sick leave is deemed to be granted. There can be no such interpretation of the leave rules urged on behalf of the petitioner including Rule 1 of the leave rules. The first, third and fourth arguments urged on behalf of the petitioner are, therefore, rejected.

10. The argument then urged on behalf of the petitioner is that principles of

natural justice have been violated because the disciplinary authority has not passed a speaking order and has not considered in detail the submissions of the petitioner made in his objections/communication dated 14.3.1998. These arguments urged on behalf of the petitioner are also misconceived and rejected for the reasons that there is no law that a disciplinary authority must pass a detailed judgment once the enquiry officer's report is a detailed report. I may also note that the objections which were raised by the petitioner in his communication dated 14.3.1998 really need not be looked into because the disciplinary authority is not the enquiry officer and it is only before whom detailed defence in writing has to be laid down and evidence led in support of such defence. Since the petitioner filed no defence and led no evidence, the disciplinary authority cannot be treated as an enquiry officer before whom for the first time defences are laid down and evidence is sought to be led. Also even assuming such a course of action was permissible the grounds urged by the petitioner are without substance and have already been dealt with by me while rejecting the first, third and fourth arguments urged on behalf of the petitioner. In fact, I must note that appellate authority in the present case has reproduced the objections of the petitioner and thereafter has passed a speaking order which reads as under:

The enquiry was conducted according to the principles of natural justice and he was given full opportunity to defend himself during the enquiry. The charges leveled against him have been duly established on the basis of oral/documentary evidence on record.

The Disciplinary Authority has forwarded the findings of the Enquiring Officer to the appellant and gave time upto 3.3.98 to make his submission, if any. The appellant vide his letter dt. 28.2.98 requested for further time and the same was granted till 9.3.98. However, he has failed to make his submission within that time and against sought time till 25.3.98. The Disciplinary Authority has permitted time till 14.3.98 vide his letter dt. 7.3.98. This letter was returned undelivered on account of refusal to accept the same by the appellant. As the appellant's submission was not received in time, the Disciplinary Authority after taking into consideration the relevant records proposed the punishment of Dismissal vide his letter dt. 17.3.98 and fixed the personal hearing on 26.3.98. On 18.3.98, the Disciplinary Authority has received the submissions of the appellant. After perusing the submissions made by the appellant, the Disciplinary Authority vide his letter dt. 23.3.98 informed to the appellant that he did not find any reasons to alter the punishment proposed. Hence, there is no necessity to draw any separate orders for the same. The appellant was also given a personal hearing by the Disciplinary Authority on 26.3.98.

The appellant was in the habit of taking leave frequently and without adhering to the leave rules. There were many occasions during which the appellant had gone on sick leave without submitting the leave application at the time of remaining absent but submitted request for leave at the time of joining the duties which is

against the leave rules of the Bank. His frequent absence from duties hampered the normal/smooth functioning of the Branch. Most of his absence have been treated as one without leave and hence on loss of pay. Hence the contention of the appellant has no relevance.

The appellant's contention that his availment of leave were within the regulation is not correct. He was in the habit of availing leave frequently and has not submitted the leave applications in time.

It is observed that the Disciplinary Authority has originally proposed the punishment of "Dismissal" under Regulation 4(a). After considering the submission made by the appellant during the personal hearing, the gravity of the misconduct and the circumstances of the case, the Disciplinary Authority has imposed the punishment of "Compulsory Retirement" under Regulation 4(b). Hence, the contention of the appellant is not correct.

The appellant was charge sheeted for having absented from duties by violating leave rules of the Bank. On many occasions, his absence was treated as absence without leave and hence on loss of pay. It is not mandatory on the part of the Bank to grant leave on medical grounds, if leave rules were not adhered to.

The Enquiring Officer has given valid reasons for his conclusion based on oral and documentary evidence on record.

The punishment was imposed after considering the facts and circumstances of the case. No provisions of the Bipartite Settlement have been violated. The Enquiring Officer has taken into consideration the chapter X of Canara Bank Service Code i.e. leave and the same was marked MEX. 27. However, in the findings, he has written as Chapter XI instead of Chapter X and due to this, no prejudice has been caused to the appellant.

The frequent and long absence of the appellant has hampered the normal/smooth functioning of the branch which is corroborated by deposition of MW 2 and MW 3. It is established in the enquiry that the appellant remained absent from duties, which has been treated as absence without leave and hence on loss of pay. The charges of unauthorized absence and wilful insubordination has been duly established.

The appellant was found guilty after conducting the proceedings as per the provision of Canara Bank Service Code which is in conformity with the Bipartite Settlement.

The MW 1 was recalled for a specific clarification on the request of the Defence Representative and after the same was got clarified, the Enquiring Officer has disallowed further questioning the recalled witness, hence he is in order. All the charges leveled against the appellant have been clearly proved in the enquiry.

In view of the foregoing, I do not find any reason to interfere either with the findings of the Enquiring Officer or the orders of the Disciplinary Authority.

Therefore, I confirm the punishment and the appeal shall stand rejected accordingly.

A copy of this order shall be communicated to Sri Navneet Madan.

(underlining added)

11. In view of the above, I find that the objections of the petitioner need not be considered having been filed at the stage of the disciplinary proceedings, and in fact even if considered they are without merit and has also for valid reasons been rejected by a speaking order of the appellate authority. Hence the petitioner, in my opinion, cannot complain a violation of the principles of natural justice.

12. I may note that petitioner also cannot complain of violation of principles of natural justice because petitioner was originally imposed a punishment of dismissal of the service by the order of the disciplinary authority dated 17.3.1998, however, that punishment was reduced to compulsory retirement on considering the objections of the petitioner dated 14.3.1998 by the subsequent order of the disciplinary authority dated 27.3.1998. Petitioner, therefore, is in fact been treated leniently in spite of the contumacious and obdurate attitude in not joining the services of its employer.

13. Finally, let me reproduce the relevant portion containing the conclusions of the enquiry officer, and the same reads as under:

After going through the written brief submitted by the Presenting Officer and pursuing the Management Exhibits and defence exhibits on record and also analyzing the versions of Management Witnesses during the course of enquiry and cross examination, as discussed above, following facts came to light:

a) In spite of clear instructions from the Bank, the CSE has not followed the leave rules of the Bank (Vide MEX.-9). It is clear from MEX.-1, 2, 3, 4, 5 and 6 that the CSE has been issued Charge sheets and subsequently punishment has also been imposed on him on earlier occasion for his leave taking since 1991. But inspite of this, the CSE has not improved and has been taking leave in violation of leave rules since 1991 which shows his adamant attitude, Management Witnesses have deposed during the course of enquiry that the leave record of the CSE is not satisfactory and is very bad. But the DR/CSE could not bring anything on record to counter the versions of Management witnesses during the course of enquiry. The versions of Management witnesses stand unrebutted and unopposed.

b) The CSE has been taking leave continuously on various grounds, heart trouble of his father, sickness of self etc. The CSE has been submitting leave applications on joining the duties whereas as informed by management witness, as per leave rules, the CSE was required to submit medical certificate at the of submitting the leave application. Hence CSE has been continuously violating the leave rules of the Bank. DR/CSE could not bring any oral/documentary evidence to rebut the version of management witnesses that the CSE has been violating leave rules and that leave record of the CSE was not satisfactory.

c) The CSE has not improved upon his leave taking inspite of clear instructions vide MEX.-9 and also did not appear before the Bank's panel Doctor as advised vide MEX.-25 thereby CSE has not obeyed the lawful and reasonable orders of the persons placed in authority over him which shows his willful disobedience. CSE/DR could not bring any oral/documentary evidence to disprove the above fact emerging out of management exhibits/depositions of management witnesses.

d) Management witnesses have deposed during the course of enquiry that continuous absence/leave taking of the CSE has hampered the smooth functioning of the branch/office which is prejudicial to the interests of the Bank. DR/CSE could not bring any documentary or oral evidence to rebut the above depositions/statement of the management witnesses during the course of enquiry.

At page 6 & 7 of written brief, PW has analysed the various issues involved in the present Chargesheet. The analysis of the PO is based on the management exhibits and depositions made by various management witnesses during the course of enquiry. The issues discussed by the PO in his written brief have not been rebutted/countered by DR. DR/CSE could not bring anything on record to rebut/counter the facts brought/come to light from management exhibits during the course of enquiry.

CONCLUSION

In view of the above, the undersigned finds the CSE guilty of all the charges leveled against him vide Chargesheet No. DC/DAC/E-37/W-5/97, dtd. 5.2.1997.

PLACE: NEW DELHI

DATE: 20.2.1998

(R.K. KATHURIA)

ENQUIRY OFFICER

14. In view of the above, it is quite clear that the petitioner is an incorrigible person. Petitioner wants to remain in service but he does not want to perform the duties as required of a person in service. Various disciplinary orders passed imposing punishments and various cautions issued to the petitioner cautioning him not to avail unnecessary leaves, were of no effect. Petitioner claims to have almost a sovereign right to take leave on the ground that he himself is entitled to decide that he is entitled to any number of sick leaves without any upper limit and did not think it necessary even to intimate the employer during the regular absences, and whose work was thus indubitably hampered. It is incorrect that the employer need only be informed when the petitioner joins back on duties after many days of "sick leave". Such a course of conduct on behalf of any employee is impermissible and abuse of the process of law. In view of the above, the writ petition therefore being quite clearly misconceived, and an abuse of the process of law by recalcitrant employee, is accordingly dismissed with costs of

Rs. 25,000/-. Costs can be recovered by the respondent-bank in accordance with law.