
(2014) 04 CAL CK 0001
In the Calcutta High Court
Case No : Writ Petition S.T. No. 395 of 2009

Palash Kumar Sarkar

APPELLANT

Vs

State of West Bengal

RESPONDENT

Date of Decision : 16-04-2014

Acts Referred:

Citation : (2015) 1 CHN 235

Hon'ble Judges : Nishita Mhatre, J; Tapash Mookherjee, J.

Bench : Division Bench

Advocate : Phatick Chandra Das, for the Appellant; Joytosh Majumdar, for the Respondent

Final Decision : Dismissed

Judgement

1. We have heard the learned Counsel for the parties. By this petition the order of the West Bengal Administrative Tribunal, Calcutta Bench dated 19th March, 2009 has been challenged by the petitioner. The Original Application No. 1330 of 2002 has been dismissed by the Tribunal. The brief facts leading to the present case are as follows:-

2. The petitioner was employed as a "Syce" with the Calcutta Mounted Police since 1st January, 1996. He was charge-sheeted on 9th November, 2000 for unauthorised absence on several occasions between April, 2000 and September, 2000. A disciplinary enquiry was held against the petitioner in which he participated. He produced documents which were outpatient records of a hospital which according to him showed that his mother was ill. The petitioner claimed that it was because of his mother's illness that he had remained away from work and could not report for duty.

3. The Enquiry Officer held that the petitioner was guilty of the charges levelled against him. The Disciplinary Authority after considering the report of the Enquiry Officer and the past service record of the petitioner directed him to show cause as to why he should not be dismissed from service by an order dated 6th

December, 2001. After considering the petitioner's reply, the Disciplinary Authority issued the order of dismissal for gross misconduct unbecoming of a member of a disciplined force. A period of 56 days of unauthorised absence was directed to be treated as extraordinary leave.

4. The petitioner filed an appeal before the Appellate Authority as permissible under the Police Regulations. The Appellate Authority vide its order dated 9th November, 2002 upheld the decision of the Disciplinary Authority.

5. Being aggrieved by the orders passed against him, the petitioner preferred an application before the West Bengal Administration Tribunal for reinstatement with continuity of service and full back wages.

6. The Tribunal after considering the record before it, including the enquiry proceedings, held that the petitioner was not entitled to any relief. The Tribunal was of the view that since the scope of judicial review was mainly limited to the decision making process it was not necessary to interfere with the orders passed. The Tribunal found that there was no allegation that there was any illegality or infirmity with regard to the carriage of the disciplinary proceedings. Upon scrutiny of the material before it, the Tribunal found that the petitioner was a habitual absentee and had not improved his record even after being given several opportunities and undergoing minor punishments.

7. Mr. Das, learned Counsel appearing for the petitioner has submitted that it was because of the illness of the petitioner's mother that he could not remain present on all days. According to Mr. Das, the petitioner's mother was critically ill as she was suffering from cancer which is a serious illness and, therefore, the petitioner ought to have been given some leeway for not having reported for duty on all days. Mr. Das has relied on the judgments of different Division Benches of this Court in the case of Maitrayee Ghosh Vs. Kolkata Port Trust and Others, ; Haren Bauri vs. Coal India Ltd. & Ors. decided on 8th December, 2010 and Sukumar Dey vs. Union of India and others in W.P.C.T. 31 of 2012, to support his submission that it is not necessary that in each case of absence that the delinquent employee should be inflicted the major punishment of dismissal. He submitted that this punishment is not commensurate with the nature of misconduct committed by the petitioner.

8. There is no dispute nor is there any pleading that the enquiry was not conducted in a fair and proper manner. The delinquent employee appeared before the Enquiry Officer. He was permitted to submit documents showing the reason for his absence. The documents which he produced were only records indicating that Lakshmi Rani Sarkar was an outpatient at the Eastern Railway Hospital. Some tablets and other medicines were prescribed for her. There is no indication in the records produced by the Petitioner that his mother was either critically or seriously ill or suffering from cancer as submitted by Mr. Das.

9. We have perused the order of the Disciplinary Authority as well as the Appellate Authority. The charge against the petitioner was of being absent

unauthorisedly from duty on several dates either for the whole day or for a few hours on those days. The charge sheet is in respect of the period from 25th April, 2000 to 9th September, 2000. However, both the Disciplinary Authority and the Appellate Authority have considered the petitioner's past service record in order to ascertain whether there were any mitigating circumstances so that the petitioner need not have been dismissed. However, the Disciplinary Authority have found that from 9th January, 1996 i.e. merely 9 days after he was appointed, the petitioner was absent unauthorisedly. This conduct continued on several occasions. He was issued warnings on all these occasions. However, the petitioner did not avail of these opportunities to rectify his conduct and therefore the Disciplinary Authority dismissed him from service.

10. In the case of Maitrayee Ghosh vs. Kolkata Port Trust & Ors. (Supra) based on the facts of the circumstances in that case the Division Bench of this Court found that the prolonged absence from duty without sanctioned leave is an act of indiscipline and amounts to a misconduct. However, such a misconduct was not grave enough to justify the penalty of removal from service in the facts and circumstances before the Division Bench. There was material on record before the Division Bench to hold that the charge of desertion from service was not established on the facts before it as the petitioner in that case had constantly requested the Authorities to grant leave and or to extend leave. In the present case the petitioner took no step to inform the Authorities that he wished to avail of leave.

11. In the case of Haren Bauri vs. Coal India Ltd. & Ors. (Supra) the Division Bench, again based on the facts before it, found that the punishment of dismissal was not justified as the petitioner in that case was ill and therefore, was absent unauthorisedly.

12. In the case of Sukumar Dey vs. Union of India & Ors. (Supra) the Division Bench of which one of us (Mhatre, J.) was a member also considered a case where the petitioner had overstayed the sanctioned leave because he was unwell and had obtained a medical certificate from a private medical practitioner. The Division Bench found that there was material on record to indicate that the petitioner was hospitalised and, therefore, advised rest. However, he had not obtained the sanction for leave for the subsequent period remaining absent from the Authorities. In these circumstances, the Court was of the view that overstaying of leave in the facts and circumstances of that case would not amount to a misconduct for which the petitioner ought to have been removed.

13. These judgments, in our opinion, have no bearing in the facts and circumstances of the case before us. The petitioner was given several opportunities to rectify himself but he failed to do so. Instead, he submitted documents before the Enquiry Officer to show that his mother was an outpatient. There is no pleading either before the Tribunal or before this Court to indicate that the petitioner's mother was suffering from cancer as argued before us. There is also no pleading to indicate that she was critically ill or that it was only

the petitioner who could have looked after her.

14. In the present case the petitioner was working in the Police force. The cases cited before us were in respect of employees who were not in the Police force. The standards of discipline which must be exercised by a policeman are much higher than a person employed elsewhere. In our opinion, the petitioner does not deserve to be granted any relief.

15. The petition is dismissed with no order as to costs. Photostat certified copy of this order, if applied for, be given to the learned Advocates for the parties upon compliance of all necessary formalities.