

(2007) 07 DEL CK 0148

In the Delhi High Court

Case No : Writ Petition (C) No. 1713 of 1993

P.K. Chopra

APPELLANT

Vs

Adminstrator NDMC

RESPONDENT

Date of Decision : 30-07-2007

Acts Referred:

Central Civil Services (Classification, Control and Appeal) Act — Section 16
Central Civil Services (Conduct) Rules, 1964 — Rule 3

Citation : (2007) 07 DEL CK 0148

Hon'ble Judges : Rekha Sharma, J

Bench : Single Bench

Advocate : V.K. Shali, for the Appellant; Rajesh Mahajan and R.K. Kedia, for the Respondent

Final Decision : Allowed

Judgement

Rekha Sharma, J.—The petitioner - P.K. Chopra was working as Vaccinator in the Health Department of New Delhi Municipal Committee (for short "NDMC"). On August 2, 1991, he was placed under suspension on the ground that disciplinary proceedings were contemplated against him. About eight months thereafter, on April 3, 1992, he was informed that action u/s 16 of the CCS (CCA) Rules, 1965 was proposed against him. He was served with the statement of imputation of misconduct and was asked to submit his representation against the action proposed. The statement of imputation was as under:

During July, 1991, Shri P.K. Chopra was working as Vaccinator at Death & Birth Registration Centre in Palika Maternity Hospital, Lodhi Road, New Delhi and was handling the work for issue of Death & Birth Certificates.

In the last week of July, 1991, a representative of a family residing at 18, Jor Bagh, New Delhi approached Shri P.K. Chopra with the request for early issue of Death Certificate in respect of late Maj. Abinash Chandra who had expired on 20.6.91. Shri Chopra did not respond to the request made by the said representative properly and told that it would take 3 months time. He also told

that the said certificate could be issued within 2 days in consideration of certain amount. However, the Death Certificate was issued later on after the matter was brought to the notice of higher authorities.

Obviously, Sh. P.K. Chopra, Vaccinator failed to respond properly to the feelings and requirement of a member of public who was in abnormal state of mind due to death of a near-one in their family.

The above acts on the part of Sh. P.K. Chopra, Vaccinator constitute gross misconduct which is unbecoming of a Municipal servant and also constitute violation of Rule 3 of the CCS (Conduct) Rules, 1964.

2. In response to the afore-mentioned allegations, petitioner submitted representation which did not find favour with the NDMC. Accordingly, inquiry was conducted against him. By order dated June 10, 1992, he was found guilty of the allegations resulting in imposition of minor penalty of "withholding of one increment of pay without cumulative effect" and by the same order, his period of suspension was treated "as not spent on duty".

3. Aggrieved by the aforesaid order of June 10, 1992, the petitioner preferred the present writ petition in the year 1993.

4. Admittedly, the penalty of withholding of one increment of pay without cumulative effect imposed against the petitioner has run its course and the petitioner has since been restored the benefit of the increment. Having regard to the minor nature of the penalty, I am not inclined to interfere with the same.

5. As regards the further part of the order dated June 10, 1992, whereby, the period of suspension of the petitioner was treated "as not spent on duty", Learned Counsel for the petitioner has drawn my attention to Administrative Instruction issued by the Department of Personnel vide OM No. 43/56/64-AVD dated October 22, 1964 containing the guidelines for placing the government servants under suspension. It, inter alia, lays down that a government servant could be placed under suspension, if a prima facie case is made out justifying his prosecution or disciplinary proceedings which are likely to end in his dismissal, removal or compulsory retirement. In other words, it says that suspension should be resorted to in those cases where a major and not minor penalty is likely to be imposed on conclusion of the proceedings. In view of this Circular, the staff side of the Committee of the National Council set up to review the CCS(CCA) Rules, 1965 had suggested that in cases where a Government servant, against whom an inquiry has been held for imposition of a major penalty, is finally awarded only a minor penalty, the suspension should be considered unjustified and full pay and allowances be paid for suspension period. The said suggestion of the staff side was accepted by the Government.

6. It is submitted by Learned Counsel for the petitioner that in view of the above Circular, there was no justification on the part of the respondent - NDMC to have treated the suspension period of the petitioner "as not spent on duty" as the

penalty which ultimately came to be imposed against him was of a minor nature. On the other hand, it is submitted by Learned Counsel for the respondent that the OM on which reliance has been placed by Learned Counsel for the petitioner talks of those disciplinary proceedings which are initiated for imposition of a major penalty but results into a minor penalty and it is only in such cases that the suspension period has to be treated "as not spent on duty". According to the counsel, in the case of the petitioner, the disciplinary proceedings were initiated for imposition of a minor penalty and the same resulted in awarding of a minor penalty, therefore, the circular has no applicability to his case.

7. Does the Circular dated October 22, 1964 applies to the case of the petitioner?

8. The petitioner was suspended from service on August 2, 1991. The order simply stated that he was being placed under suspension in contemplation of disciplinary proceedings against him. It did not indicate whether the proceedings proposed to be held were likely to be for a major or minor penalty. Therefore, when the order of suspension was passed, it was not in contemplation of the respondent that the disciplinary proceedings for imposition of a minor penalty were proposed to be held against him. This decision was taken subsequently on April 3, 1992 when he was issued a memorandum intimating him that inquiry u/s 16 of the CCS(CCA) Rules, 1965 for imposition of minor penalty was proposed to be instituted against him. In this view of the matter, the submission of the Learned Counsel for the respondent that when the petitioner was placed under suspension, the proceedings for minor penalty were in contemplation has no basis. The decision thereto was taken eight months after the order of suspension was passed.

9. Even otherwise, under Rule 54-B of the Fundamental Rules after the disciplinary proceedings come to an end, the authorities are required to pass an order whether or not the period of suspension has to be treated "as spent on duty". Such an order is not to be passed mechanically. If it is decided that the period of suspension is to be treated "as not spent on duty", then the reasons thereto should be indicated. Here in the present case, nothing has been stated why the period of suspension is to be treated "as not spent on duty" especially when the penalty that came to be imposed upon the petitioner was merely withholding of one increment of pay and that too without cumulative effect.

10. For the foregoing reasons, I see no justification why the period of suspension of the petitioner should not be treated "as spent on duty" in terms of the circular issued by Department of Personnel vide OM No. 43/56/64-AVD dated October 22, 1964. Accordingly, I direct the respondent to treat the petitioner's suspension period "as spent on duty" and pay the balance emoluments to the petitioner after taking into the subsistence allowance that he has already received. This shall be done within eight weeks.

11. With the afore-mentioned directions, the writ petition stands disposed of.