
(2011) 01 DEL CK 0455
In the Delhi High Court
Case No : Writ Petition (C) 2364 of 2002

Prem Raj Bhola

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 31-01-2011

Acts Referred:

Citation : (2011) 178 DLT 758

Hon'ble Judges : Suresh Kait, J; Pradeep Nandrajog, J

Bench : Division Bench

Advocate : Pramod Saxena, for the Appellant; Jyati Singh and Amandeep Joshi, for the Respondent

Judgement

Pradeep Nandrajog, J.—Prem Raj Bhola i.e. the Petitioner joined service as an Assistant Sub-Inspector under CISF on 28.8.1986 and in April 1989 earned promotion to the post of Sub-Inspector. He was an outstanding sportsman and earned gold and silver medals in the All India Police Games held in the year 1988 till the year 1994 he won 4 gold medals and 3 silver medals spread over 6 years. Posted at the battalion stationed at Mazagaon Docks, Mumbai, Petitioner was sanctioned 15 days" leave from 31.8.1996 till 24.9.1996. He came to Delhi, where his family resides and since he did not report back on 25.9.1996 a letter dated 26.9.1996 was written to him requesting him to join forthwith. He responded by informing that he was unwell and sought leave to be extended and enclosed a certificate issued to him by a Consultant Physician at Safdarjung Hospital on 24.9.1996 recommending 30 days" leave on the fact that Petitioner was suffering from "Lumbago Sciatica". The Department responded by requiring the Petitioner to appear before a Medical Board on 11.11.1996 to which Petitioner responded on 6.11.1996 that he could not move and present himself before the Medical Board.

2. The stalemate continued when, on the charge of not joining for duty a charge sheet dated 15.1.1997 was served upon the Petitioner who responded on 24.1.1997 by asking leave to be extended, which was refused. On no reply being

filed to the charge sheet an Inquiry Officer was appointed who vide notice dated 24.2.1997 required Petitioner to appear before him on 17.3.1997 and Petitioner responded on 6.3.1997 informing the Inquiry Officer that being unwell and unable to move, he cannot appear. The Inquiry Officer changed the date to 22.3.1997. Petitioner did not appear and hence an ex parte inquiry was conducted and report submitted on 1.4.1997 holding Petitioner guilty. Obtaining a medical certificate dated 15.4.1997 certifying that he was fit, Petitioner did not join in view of the communication dated 5.4.1997 requiring him to respond to the inquiry report dated 1.4.1997. Receiving no response to the inquiry report, the Disciplinary Authority inflicted penalty of removal from service on 7.5.1997 as also treating the period 25.9.1996 till date as dies-non. Appeal dated 26.5.1997 was rejected vide order dated 26.12.1998 communicated to the Petitioner under cover of letter dated 6/7.1.1999. Petitioner challenged the penalty levied by filing a suit for declaration that the penalty was illegal. He reviewed the suit and filed the instant writ petition in the year 2002 questioning the penalty levied.

3. It is true that the Petitioner has obtained medical certificates certifying that he is unfit, and which certificates he had produced before the Appellate Authority, but we find that the Appellate Authority has given good reasons to justify the conclusion that the certificates are highly suspicious documents. The Appellate Authority has noted that the serial numbers of the certificates are not in ascending order and this establishes the same being contrived documents.

4. Learned Counsel for the Petitioner concedes that in the writ petition, the Petitioner has rendered no explanation as to how come the certificates were not in ascending order. To illustrate, certificate dated 24.9.1996 bears No. 161589, the certificate dated 23.10.1996 bears No. 177268, the certificate dated 22.11.1996 bears No. 100453, the one dated 23.12.1996 bears No. 225172. These are only illustrations. All certificates have been issued under the signatures of Dr. C.P. Gupta and till the certificate dated 5.4.1997 have been issued under the stamp of "Dr. C.P. Gupta CMO (Ayur Specialist) Consultant Physician CGHS Wing, S.J. Hospital" the further certificates have been issued under the stamp "Dr. C.P. Gupta CMO (Ayur Specialist) CGHS Ayurvedic Hospital, Aliganj Lodhi Road". Surely the Petitioner has to explain the random number of the certificates issued when Dr. C.P. Gupta was Safdarjung Hospital and thereafter when he was at the Ayurvedic Hospital at Aliganj Lodhi Road. That apart, we further note that the certificates record somewhere the Petitioner suffering from "Lumbago Sciatica" and somewhere "Lumbago Spondylitis". We have asked Petitioner, who is present in Court whether he was advised "Traction" which is always advised if "Lumbago Sciatica" persists for long and if so, whether he has any proof of being given "Traction". The answer is in the negative.

5. It would be difficult to believe that the Petitioner was so unwell that for 8 long months he was just not able to appear before the Medical Board. If the Petitioner could visit the consultant Physician at Safdarjung Hospital we see no reason why

he could not report to the CRPF Hospital at Delhi. At this stage we note that the certificates obtained by the Petitioner have been issued under the signatures of Dr. C.P. Gupta who has described himself as a Consultant Physician (Ayur Specialist). We note further that a certificate dated 13.6.1997 has been issued by the same doctor when posted at the CGHS Ayurvedic Hospital at Aliganj and this shows that by writing (Ayur Specialist), Dr. C.P. Gupta is conveying that he is an Ayurvedic Specialist. Surely, a prolonged spinal problem of a kind which would render Petitioner unfit to travel to Bombay would be got treated by the Petitioner from a Spinal Specialist and not an Ayurvedic Doctor.

6. The twin reason i.e. Petitioner not appearing before the Board of Doctors at the C.R.P.F. Hospital in Delhi and the nature of the certificates and the doctor who has issued the same as noted by us in para 5 above, render the certificates highly suspicious in addition to the random numbers of the certificates, which by itself is a suspicious circumstance. The evidence certainly probabilizes the certificates being contrived documents. Indeed, learned Counsel for the Petitioner could render no explanation during hearing today and concedes that not even a feeble attempt has been made in the writ petition to explain the non ascending number found to be a suspicious circumstance by the Appellate Authority qua the certificates relied upon by the Petitioner.

7. Interestingly, learned Counsel for the Respondents urges that if so severe was the condition of the Petitioner, it is obvious that he was required to be placed in a low medical category and if he insists upon the credibility of the certificates, he runs the risk of being declared in low medical category and even on said ground liable to be boarded out.

8. The argument is certainly interesting but we carry it no further for the reason we find that save and except the instant blemish Petitioner rendered good service since August 1986 till he committed the folly of procuring false certificates to show his medical infirmity to justify continuous absenteeism post 25.9.1996 till the penalty was levied. His service record otherwise is not only good but we find that he was an excellent sports person.

9. There is no material before us to show that the Disciplinary Authority weighed the positive features favourable to the Petitioner and neither did the Appellate Authority do so. This would certainly affect the quantum of the punishment to be levied.

10. Accordingly, we dispose of the writ petition directing the Appellate Authority to reconsider the punishment to be levied upon the Petitioner and while so doing would take into account the service record of the Petitioner which shows that instant misdemeanour was the solitary misdemeanour and otherwise the service records was satisfactory. If in spite thereof it is opined that the penalty was justified, reasons would be given for so holding as we note that the penalty is of the highest order i.e. dismissal from service. If the Appellate Authority were to reduce the penalty, effect whereof would be the Petitioner's reinstatement in

service, the Appellate Authority would pass the necessary order pertaining to the period post levy of penalty of dismissal till reinstatement for purposes of pay and allowances and service record.

11. Needful would be done within a period of 8 weeks from date of receipt of certified copy of this order by the Appellate Authority.

12. No costs.