
(2014) 04 CAL CK 0026
In the Calcutta High Court
Case No : W.P.S.T. No. 143 of 2013

Prollad Das

APPELLANT

Vs

State of West Bengal

RESPONDENT

Date of Decision : 08-04-2014

Acts Referred:

Citation : (2014) 4 CHN 487

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

Bench : Division Bench

Advocate : Soumen Dutta, Pampa Dey (Dhabal) and Subhas Jana, Advocates for the Appellant; Joytosh Mazumder and Sirsanya Bandyopadhyay, Advocates for the Respondent

Judgement

1. The order challenged in the present petition has been passed by the West Bengal Administrative Tribunal in O.A. No. 661 of 2012. The Tribunal by its impugned order dated 17th December, 2012 has dismissed the original application filed by the petitioner. The petitioner was employed as a constable with the Kolkata Police. He was charge-sheeted on 7th November, 2005, for unauthorised absence. An ex-parte enquiry was held against him as he refused to be present although intimated the date of the enquiry. The Disciplinary Authority passed an order on 12th June, 2007, dismissing him from service. The petitioner then preferred a statutory appeal on 23rd July, 2007. The appeal was dismissed on 17th August, 2009.

2. Aggrieved by the order, the petitioner filed O.A. No. 1613 of 2009. That application was disposed of on 3rd August, 2011 as the petitioner wanted an opportunity to approach the Commissioner of Police, Kolkata to review the order of dismissal passed against him.

3. The Commissioner of Police, Kolkata dismissed the review application by an order dated 16th February, 2012.

4. Aggrieved by that order, the petitioner challenged the decision by filing O.A.

No. 661 of 2012 before the Administrative Tribunal.

5. The petitioner challenged the order passed by the Disciplinary Authority as well as the Appellate Authority and was granted permission to amend the application to challenge the order passed by the Commissioner of Police.

6. The Tribunal has dismissed the application on the ground that it concurred with the finding recorded by the Disciplinary Authority and the Appellate Authority.

7. We have perused the order of the Tribunal. A document which is purportedly a medical certificate issued by a private doctor, which was placed before the Tribunal, has been annexed to this petition. According to the certificate, the petitioner was suffering from "angina" and, therefore, was unable to attend his duty as a Traffic Constable. This certificate surprisingly has been issued by a doctor who is a Consulting Obstetrician & Gynaecologist. The petitioner was absent from 4th May, 2005. He was examined by the doctor of the Kolkata Police and was recommended three days' medical rest i.e. upto 6th May, 2005. However, instead of reporting for duty on 7th May, 2005, the petitioner continued to be absent unauthorisedly. No intimation was sent by him as to why he was unable to attend duty. He submitted several letters offering to resign, as he was unable to continue to work as a Traffic Constable. The petitioner, however, did not undergo any medical examination by the doctor appointed by the Kolkata Police. He was thus absent for more than 700 days i.e. till the dismissal order was issued.

8. Though the order of the Tribunal is not happily worded, we have examined the material on record. We have also considered the submission of the learned Advocate appearing for the petitioner that there is no finding that the petitioner's absence was either willful or deliberate and, therefore, he cannot be dismissed for his unauthorised absence. This submission could have been accepted, had the petitioner subjected himself to a medical examination by the doctor of the Kolkata Police. Instead, he choose to be examined by a private doctor. There is no material on record to accept that this doctor was qualified to certify that the petitioner was ailing with angina related problems since the doctor was in fact a Consulting Obstetrician & Gynaecologist.

9. Considering the entire material on record, in our opinion, the petitioner does not deserve any sympathy, especially since he has been punished on eight occasions earlier for the similar acts of misconduct.

10. The writ petition is dismissed. There will, however, be no order as to costs.