
(2011) 03 SHI CK 0341
In the High Court Of Himachal Pradesh
Case No : CWP (T) No. 9773 of 2008

Rakesh Kumar

APPELLANT

Vs

State of Himachal Pradesh and Others

RESPONDENT

Date of Decision : 08-03-2011

Acts Referred:

Citation : (2011) 03 SHI CK 0341

Hon'ble Judges : V.K. Sharma, J

Bench : Single Bench

Judgement

V.K. Sharma, J.—The petition has been filed on the following prayers vide para 7(i) and (ii):

(i) That this Hon''ble Tribunal may kindly be pleased to order and direct the Respondent No. 3 to revise the impugned order as annexed hereto as Anenxue-A1 sanctioning 11 days extraordinary leave and accord fresh sanction by issuing revised orders in sanctioning 9 days earned leave, in its place, w.e.f 3.3.2000 to 11.3.2000, in favour of the applicant;

(ii) further orders and directions of this Hon''ble Tribunal are sought that the pay and allowances for the aforesaid period of leave be immediately disbursed to the applicant by treating him on earned leave and not on extraordinary leave, alongwith interest @ of 18% on the Pr. Amount.

2. The Respondents have taken the following stand vide paras 3, 6(i), (ii) and 6(vii) (b) of their reply:

3. In reply to this para it is stated that the applicant absented himself for 11 days w.e.f 3.3.2000 to 13.3.2000 without obtaining the prior permission of the leave sanctioning authority. Later on the above absence period of leave has been sanctioned as Extra Ordinary Leave under the rule to regularize the unauthorized absence of the applicant. While doing so the statutory CCS (Leave) Rules, 1972 was also kept in view. Thus the order passed by the Respondent No. 3 annexed

as Annexure A-1 to the O.A are legal and justified.

6(i) Admitted to the extent that the applicant was serving as AMO during the period in question. During the period in question the applicant remained willfully absent from duty without prior permission of the competent authority i.e Respondent No. 3. Thus the Extra Ordinary Leave was sanctioned in favour of the applicant by taking lenient view.

(ii) As stated above that the applicant himself remained willfully absent from duty w.e.f 3.3.2000 to 13.3.2000. The applicant was given an opportunity to explain his position regarding his willful absence but the reply of the applicant annexed as Annexure-A/2 and its English version enclosed with Annexure-A/2 to the O.A was not found satisfactory. Thus the Extra Ordinary Leave was sanctioned as minor penalty/minimum penalty. Therefore, the order passed by the Respondent No. 3 are legal and justified.

6(vii)(b) Since the applicant absented himself without obtaining the prior permission of the leave sanctioning authority, thus there was no other alternative with Respondent No. 3 except to sanction the Extra Ordinary Leave. The replying Respondents reserve its right to accord revise sanction by treating the above period i.e 3.3.2000 to 13.3.2000 as Dies Non Period so that the end of the justice can be met and the applicant be penalized for his conduct/false reporting.

3. On 17.12.2010, the Respondent-State was directed to produce the application submitted by the Petitioner for grant of leave on account of illness of his wife. The records have been produced. A perusal of the same goes to show that the Petitioner had in fact applied for earned leave w.e.f 3.3.2000 to 11.3.2000, with permission to suffix holiday (Sunday) falling on 12.3.2000, on the ground of illness of his wife.

4. The case of the Petitioner is that on 2.3.2000, he received information about the illness of his wife. In such emergent circumstances, he applied for two days leave for 3rd and 4th March, 2000 and sent the same to the office by post. On reaching home, he came to know that his wife was admitted in a hospital at Nagrota. She was discharged from the hospital after seven days. According to the Petitioner, he tried to contact the office telephonically, but could not succeed. He joined duty on 13.3.2000 and submitted application for grant of earned leave as above.

5. Vide office order Annexure A-1, dated 20.4.2000, text whereof is as under, 11 days extraordinary leave without pay from 3.3.2000 to 13.3.2000, was sanctioned in favour of the Petitioner:

Since Dr. Rakesh Kumar, Ayurvedic Medical Officer remained unauthorisedly absent from his duties w.e.f. 3.3.2000 to 13.3.2000 and the explanation tendered by him found unsatisfactory and in spite of that, taking a lenient view, 11 days extraordinary leave w.e.f 3.3.2000 to 13.3.2000 is sanctioned in favour of Dr. Rakesh Kumar and the abovesaid period of absence is treated without pay

and allowances and warning is given that he be careful about his duties in future.

6. Thus, it is manifest that the Petitioner had proceeded on leave, initially for two days to attend his ailing wife, which was later on extended for another six days. However, though according to the Petitioner he had joined duty in the morning on 13.3.2000, yet according to the Respondents, he had in fact joined duty only on 14.3.2000. The application for earned leave was also submitted by him on 5.4.2000, i.e after availing the leave. However, the fact remains that the Petitioner had proceeded on leave in somewhat emergent circumstances beyond his control.

7. In view of the above, the petition is allowed. Consequently, impugned office order dated 20.4.2000, Annexure A-1 is quashed with a direction to Respondent No. 3 to regularize the aforesaid leave from 3.3.2000 to 13.3.2000 (11 days) availed by the Petitioner, as earned leave with all the consequential benefits within three months from the date of production of copy of this judgment, failing which interest 9% per annum shall also be payable.

8. The petition as also pending CMP(s), if any, stand disposed of in the above terms.