

(2019) 12 DEL CK 0038

In the Delhi High Court

Case No : Civil Writ Petition No. 12066 Of 2019

Satish Kumar

APPELLANT

Vs

District & Sessions Judge (HQS)

RESPONDENT

Date of Decision : 03-12-2019

Acts Referred:

Constitution Of India, 1950 — Article 226
Central Civil Service (Classification, Control And Appeal) Rules, 1965 — Rule 14, 14(18)
Delhi District Courts Establishment (Appointment And Conditions Of Service) Rules,
2012 — Rule 30(2), 35

Citation : (2019) 12 DEL CK 0038

Hon'ble Judges : Vipin Sanghi, J; Rekha Palli, J

Bench : Division Bench

Advocate : S.S.Sastry, Avnish Ahlawat, Nitesh Singh, Palak Rohmetra

Final Decision : Dismissed

Judgement

Rekha Palli, J

C.M.No.49398/2019

Exemption allowed, subject to all just exceptions.

The application stands disposed of.

W.P.(C) 12066/2019

1. The present petition under Article 226 of the Constitution of India has been filed by an ex-employee in the Office of the District and Sessions Judge, Delhi assailing the order dated 17.06.2017 passed by the Disciplinary Authority dismissing him from service, as also the order dated 01.11.2018 passed by the learned Single Judge, whereunder his appeal challenging this dismissal came to be rejected.

2. The petitioner, who was appointed to the post of a 'peon' in the Office of the District and Sessions Judge, Delhi on 02.08.2007, applied for and was granted

earned leave for the period between 01.04.2012 and 20.04.2012. When he failed to rejoin duty after expiry of this leave period, the petitioner was issued memorandums/show-cause notices dated 22.05.2012, 03.09.2012 and 22.09.2012, which were all returned unserved with the report that he was not residing at the given address. On 13.08.2013, as the petitioner had failed to resume duties or give any explanation for his continued, unauthorised absence, he was issued a memorandum of charges under Rule 14 of the Central Civil Service (Classification, Control and Appeal) Rules, 1965 ('CCS Rules' for short), to which he did not reply. Consequently, Shri.M.K.Nagpal, learned Additional Districts and Sessions Judge, Delhi was appointed as the Enquiry Officer.

3. It appears that the Enquiry Officer also made several attempts to serve the petitioner through ordinary modes, which remained unsuccessful and, as a result, the petitioner was served by publication on 07.03.2014. When the petitioner still failed to appear before the Enquiry Officer, he was proceeded against ex parte on 29.03.2014. During the enquiry, the respondent/Department examined five witnesses in support of the charges levelled against the petitioner and upon consideration of the same, the Enquiry Officer vide its report dated 07.05.2014, held the charges as proved. While the enquiry was underway a clarification was sought as to who, in the light of the amendments to Delhi District Courts Establishment (Appointment and Conditions of Service) Rules, 2012 (hereinafter referred to as 'Delhi District Court Rules') which were notified on 02.12.2013, would be the Disciplinary Authority in these proceedings. On a resolution of the aforesaid query, the petitioner was on 18.05.2016 issued a memorandum under Rule 30(2) of the Delhi District Courts Rules calling upon him to submit his representation, if any, to the enquiry report. Notwithstanding the fact that this memorandum, along with a copy of the enquiry report, was sent to all addresses of the petitioner which were available with the respondent, he remained untraceable, despite the efforts of the SHO of the concerned Police Station. Ultimately, the petitioner was served through publication on 08.12.2016.

4. Before further action could be taken on the enquiry report, the petitioner rejoined service on 21.03.2017 and submitted his reply to the Disciplinary Authority on 19.05.2017. In his reply, the only explanation given by the petitioner for his prolonged and unauthorized absence from service was his state of mental disturbance brought on by matrimonial issues, which prevented him from joining duty. After giving the petitioner an opportunity of personal hearing, the Disciplinary Authority found no merit in his explanation and, vide its order dated 17.06.2017, imposed a penalty of dismissal from service on him, which order is impugned in the present petition.

5. Aggrieved by the dismissal order passed by the Disciplinary Authority, the petitioner preferred an appeal under Rule 35 of the Delhi District Courts Rules, which came to be dismissed vide order dated 01.11.2018 passed by learned Single Judge of this Court, which order is also impugned in the present petition. While dismissing the appeal, the learned Single Judge rejected the petitioner's

contention that the enquiry stood vitiated because of non-compliance of Rule 14(18) of the CCS Rules, on the ground that despite repeated attempts made by the Authorities to serve him with notice of the enquiry, both before its commencement and during its pendency, the petitioner remained absent throughout the disciplinary proceedings and could not, therefore, raise the plea that he had not been duly served. While dismissing the appeal, the learned Single Judge also noticed the fact that the petitioner had admitted his unauthorised absence from duty between 21.04.2012 and 20.03.2017, and his explanation for such absence was found to be unjustifiable.

6. Today before us, learned counsel for the petitioner reiterates the submissions made before the learned Single Judge and contends that once the Enquiry Officer failed to serve the petitioner with day to day orders passed in the enquiry, the report given by him stood vitiated for non-compliance of Rule 14(18) of the Central Civil Service (Classification, Control and Appeal) Rules, 1965 and could not be relied upon. He further submits that the petitioner remained absent only because he was under great mental stress on account of his matrimonial problems and, therefore, his case may be considered compassionately. He, thus, prays that the penalty of dismissal be suitably modified so that the petitioner is not deprived of his only source of livelihood.

7. We have given our thoughtful consideration to the submissions made by learned counsel for the respondent and perused the record, but are unable to find any reason to differ with the impugned orders. The petitioner, who was working as a peon in the Office of the District and Sessions Judge, had admittedly remained on unauthorized leave for almost a period of five years, during which period he neither gave any information to his employer regarding his whereabouts, nor responded to the various calls made to him and the enquiry notices issued to him. The only explanation given by the petitioner was that he was under great mental stress owing to marital discord and, therefore, could not join duty, which explanation in our view does not, in any manner, justify his prolonged absence from duty. The petitioner's misconduct was not only proved in a validly held departmental enquiry but has, in fact, not even been seriously disputed before us.

8. Once repeated attempts to serve the petitioner with the call-up notices, memorandum of charges, and the notices issued by the Enquiry offices failed, the petitioner cannot complain that he was not served with daily orders of the enquiry proceedings, or that the enquiry, in any manner, stood vitiated on this count. The petitioner has exhibited complete lack of devotion to duty by remaining unauthorisedly absent for nearly 5 long years. He seems to be under the mistaken impression that he had no obligation to attend to his duties; he could come and go whenever he liked; he had no obligation to seek leave; he had no obligation to inform the respondents about his whereabouts, and; he could relax and sit back while it was for the respondent to find him; serve him with notices etc., and; invite him to participate in and join the enquiry. Obviously,

the petitioner has been completely unmindful of the fact that as an employee he had the obligations to serve with discipline, devotion and loyalty, which are all found to be lacking in his conduct. In any event, since the petitioner had been granted a personal hearing by the Disciplinary Authority who duly considered his explanation and found the same to be meritless, before passing the impugned order, we find that no prejudice was caused to the petitioner.

9. For the aforesaid reasons, the writ petition, being meritless, is dismissed.