

(2022) 03 MP CK 0121
In the Madhya Pradesh High Court
Case No : Writ Petition No. 5845 Of 2006

S.C.Rampal

APPELLANT

Vs

Union Of India And Others

RESPONDENT

Date of Decision : 16-03-2022

Acts Referred:

Constitution Of India, 1950 — Article 227
National Cadet Corps Rules, 1948 — Rule 38(1)(b), 38(2), 40(1)
National Cadet Corps Act, 1948 — Section 11

Citation : (2022) 03 MP CK 0121

Hon'ble Judges : Ravi Malimath, CJ;Purushaindra Kumar Kaurav, J

Bench : Division Bench

Advocate : Sankalp Kochar, Siddharth Shrivastava

Final Decision : Dismissed

Judgement

Purushaindra Kumar Kaurav, J

1. The instant petition has been filed by the petitioner challenging the order dated 28.07.2005, passed by the Central Administrative Tribunal, Jabalpur Bench, Jabalpur in Original Application No.633 of 2004, whereby, the Original Application of the petitioner has been dismissed.

2. The brief facts of the case are that when the petitioner was posted at Bhopal as officiating Commanding Officer of 1 M.P.Navel Unit NCC, Bhopal, he was transferred vide order dated 05.04.1990 to Changnacherry (Kerala). The petitioner on 05.05.1990 made representation against his transfer to DG NCC, New Delhi. On his representation, DG NCC, vide order dated 11.06.1990 changed the place of posting from Changnacherry to Vishakhapatnam (Andhra Pradesh). The petitioner challenged the said order in Original Application No.489/1990 before the Central Administrative Tribunal (CAT), Jabalpur, Bench at Jabalpur and vide order dated 03.07.1990 it was directed that in case the petitioner has not been relieved from Bhopal as on that date, he was not to be relieved to join his new place of posting, until the petitioner's designated successor at Bhopal arrives

to take charge of his post. Since the petitioner did not hand over the charge to the designated officer Lieutenant Colonel Balwant Singh and subsequent officer Wing Commander A.K. Singh, therefore, he was issued GENFORM dated 30.06.1990 and his name was struck off from the strength of 1 M.P. Navel Unit NCC, Bhopal w.e.f. 01.07.1990. He was required to report to his unit by 12.07.1990, but he reported to his new Unit on 25.08.1992. As a result, he remained absent for more than 2 years i.e. from 13.07.1990 to 25.08.1992. A charge-sheet dated 29.03.1993 was issued to the petitioner under sub Rule (1) of Rule 40 of the National Cadet Corps Act, 1948 (hereinafter referred to as the "NCC Act of 1948"). Alongwith the charge-sheet, the memorandum of Article of charges were also served upon him. The petitioner submitted his reply on 20.04.1993 denying all the charges. On 25.08.1993, Col Abdul Kader, GP Cdr, NCC Group Headquarters, Kakinada under the command of Deputy DG NCC, NCC Directorate (A.P), Secunderabad was appointed as the Inquiry Officer. The petitioner was given opportunity of hearing during the enquiry. He attended the departmental enquiry only on 27.12.1993 and remained absent on all other dates. On 05.03.1994, the Inquiry Officer closed the enquiry ex-parte and submitted his report to the disciplinary authority holding the petitioner guilty of all three charges. A copy of the report was sent by the disciplinary authority to the petitioner on 27.06.1994. The petitioner submitted his comments on 21.07.1994. The disciplinary authority vide order dated 20.06.1995, concurred with the findings of Inquiry Officer and, petitioner's guilt was found to be proved under Section 11 of the NCC Act of 1948 and under Rule 38(1)(b) and 38(2) of the National Cadet Corps Rules, 1948. The petitioner thereafter preferred an appeal before the Government of India, Ministry of Defence which was also dismissed vide order dated 28.07.2003. The petitioner therefore, challenged both the orders before CAT, Jabalpur and, vide impugned order, the petition filed by the petitioner has been dismissed. Hence, the petitioner is in the instant writ petition.

3. Learned counsel for the petitioner submits that during the period of suspension of the petitioner, the subsistence allowance was not paid; examination of the witnesses was not in correct order; essential documents were not supplied; Inquiry Officer has acted as a prosecutor; there was a denial of assistance of the defence counsel. He further submits that the order of the disciplinary authority was based on an enquiry report which is perverse and even the order passed by the appellate authority is passed by the incompetent authority. He places reliance on the decision of the Supreme Court in the matters of Ghanshyam Das Srivastava Vs. State of M.P (1973) 1 SCC 656, State of Maharashtra Vs. Chandrabhan Tale(1983) 3 SCC 387, M.Paul Anthony Vs. Bharat Gold Mines Ltd. (1999) 3 SCC 679, State of Punjab Vs. K.K. Sharma (2002) 9 SCC 474, P L.Mehta Vs. State of Haryana 1999 SCC ONLINE P&H 1630 , State Bank of India Vs. R.K.Jain (1972) 4 SCC 304, Hardwari Lal vs. State of U.P (1999) 8 SCC 582, Chhel Singh Vs. MGB Gramin Bank (2014) 13 SCC 166 and Union of India Vs. Ram Lakhana Sharma(2018) 7 SCC 670

4. This matter was taken up for hearing on 10.02.2022, 11. 02.2022 and on 14.02.2022 and we have noted that none had appeared on behalf of Union of India to assist this Court. We do not appreciate the conduct of the Union of India in not rendering assistance to the court.

5. The statement of Article of charges framed against the petitioner supplied to him vide memorandum dated 29.03.1993 reads as under:

"Article I

That the said Lt. Cdr. SC Rampal while serving as Administrative officer of the 1 M.P. Naval Unit, NCC, Bhopal during 1987-90 was ordered to move on permanent posting to 04(A) Naval Medical Unit NCC Vishakhapatnam vide DG NCC letter telegram No.NCCN/PC/12200/DGNCC/MS (A) dated 11 Jun 90 and having been duly relieved at 1 MP Naval Unit NCC Bhopal failed to report to his new unit on due date and thus disobeyed the lawful command given by the superior officers and thereby committed offence punishable as such and under Rule 38 (1)(b) read with Rule 40(1) of the National Cadet Corps Rules, 1948 and Section 11 of the National Cadet Corps Act, 1948.

Article II

That the said Lt Cdr SC Rampal was serving as Administrative Officer of 1 MP Naval Unit NCC Bhopal during 1987-90 was transferred on permanent basis to 04(A) Naval Medical Unit NCC, Vishakhapatnam vide letter telegram No.NCCN/PC/12200/DGNCC/MS (A) dated 11 Jun 90 and having been duly relieved at 1 MP Naval Unit NCC Bhopal failed to report to his new unit on due date and remain so absent till he joined at his own accord on 24 Aug 92 and thus absented himself without leave during the intervening period and thereby without sufficient cause failed to attend at 04(A) Naval Medical Unit NCC Vishakhapatnam in his capacity as a member/officer of the National Cadet Corps when duly required so to attend and thereby committed misconduct/offence punishable as such and under Rule 38(2) read with Rule 40(1) of National Cadet Corps Rules 1948 and Section 11 of National Cadet Corps Act, 1948.

Article III

That the said Lt Cdr SC Rampal while serving as Administrative Officer of 1 Naval Unit NCC Bhopal during 1987-1990 was order vide letter No.508/A/NCC/17 dated 04 Jun 90 from NCC Gp HQ Bhopal to handover the charge of the unit to IC-17814 Lt Col Balwant Singh by 13 Jun 90 which he did not do so thus he disobeyed the lawful command given by his superior officers and thereby committed misconduct/offence punishable as such and under Rule 38(1)

(b) read with Rule 40(1) of National Cadet Corps Rules, 1948 and Section 11 of the National Cadet Corps Act, 1948.

6. A perusal of the enquiry report reveals that the petitioner did not attend the enquiry on 01.12.1993, 15.12.1993, 10.01.1994, 2. 02.1994 and on 21.02.1994.

He appeared only on 27.12.1993. The Inquiry Officer recorded that no medical documents were produced to justify his absence before the Inquiry Officer. With respect to subsistence allowance, it has been noted that for December, 1993-January, 1994 subsistence allowance was released on 05.01.1994 and the petitioner was intimated about the same. It is stated that as per Fundamental Rule 53, non-employment certificate was required to be submitted by the petitioner. Since there was delay on the part of the petitioner, therefore, the subsistence allowance could not be released within time and hence, the delay is not attributable to the employer. In order sheet dated 22.02.1994, the Inquiry Officer further noted that subsistence allowance of Rs.25,366/- were overpaid to the petitioner.

7. It has been found that the petitioner was relieved from Bhopal on 30.06.1990 and GENFORM 09/F dated 30.06.1990 was handed-over to him by Wing Commander A.K. Singh, but he refused to receive and sign, therefore, signatures of two witnesses' were obtained and in their presence, the GENFORM was given to the petitioner. He took away three Railway Warrant Books, dis-allowing the Unit to issue a Railway Warrant. In this regard, a statement has been recorded by the Inquiry Officer. According to the report, GENFORM is treated as the move order as a common practice in all the Navel Units. The allegation of the petitioner that the GENFORM was replaced was also examined and it was found that there was no substance in the said allegation. It has been found that he did not report to 4 Andhra Navel Medical Unit, NCC, Vishakhapatnam between 13.07.1990 to 24.08.1992 and the date of reporting is 25.08.1992. The findings recorded by the Inquiry Officer in his enquiry report dated 08.03.1994 are reproduced as under:

"20. During the inquiry, three prosecution and five defence witnesses gave oral evidence and Presenting officer presented authenticated and valid documentary evidence pertaining to three Articles of Charges. These prosecution witnesses are those listed by the Disciplinary Authority and Defence witnesses are out of the list presented by the Charged Officer. Lt Cdr SC Rampal was given six opportunities to provide natural justice but he attended only once, i.e. on 27 Dec 93. The charged officer was intimated through the summon issued for the re-assembly on 21.02.1994 that exparte proceedings will be held if he fails to appear on that day.

21. Subsistence allowance for Dec 93 and Jan 94 was not paid in time not because of the fault of the Naval Pay Office/CDA Navy but due to late submission of Non Employment Certificate (NEC) by the Officer. NEC, as per FR 53, is required to be submitted to Naval Pay Officer during the entitled period. In this case the Charged Officer had submitted NEC for Dec 93 on 05 Jan 94 (received on 19 Jan 94) and for Jan 94 on 15 Feb 94 (para 9(c) above refers). Notwithstanding this, subsistence allowance was released by Naval Pay Office on 05 Feb 94 and Lt Cdr SC Rampal was informed by express telegram about it both by NCC Directorate AP and Inquiry Officer and directed him to report immediately to

attend the proceedings to defend his case. In any case, the plea of the Lt Cdr SC Rampal that he cannot attend the Inquiry at Secunderabad on account of financial stringency caused by the non payment of subsistence allowance to him for Dec 93 and Jan 94 does not hold good since, the Officer has been overpaid Rs.25,366/- as subsistence allowance as per intimation received from Naval Pay Officer vide their letter dated 11 Jan 94. (letter is placed at Appx A of Daily order sheet dated 22 Feb 94.

22. Though the inquiry assembled on 21 Feb 94 the "exparte" was resorted to only on 23 Feb 94 at 1400 hours onwards. In any case the Charged Officer could have participated in the exparte inquiry at/stage to defend/any his case since he was already informed about the release of subsistence allowance and date of holding exparte proceedings, which he did not do.

23. The Charged Officer was given a railway warrant for his move from Bhopal to Vishakhapatnam on the orders of NCC Directorate MP by Group HQ NCC Bhopal (SW-2 deposed) on 27 Jul 92 and reported to 4 Andhra Naval Medical Unit NCC Visakhapatnam only on 25 Aug 92(PM) i.e. nearly after one month.

24. Lt Cdr SC Rampal had also intimated that no TA/DA advance has been paid to get over his financial trouble (his telegram in this regard is at Appx A of Daily Order Sheet dated 31 Jan 94) is not valid as the Officer is still at Bhopal without proper sanction when he is under suspension and not in his designated unit which can arrange payment of TA/DA.

25. On the basis of documentary and oral evidence produced in this case before me and reasons given above in the Inquiry report, I hold that all the three charges against NCC-N-PC 12200 Lt Cdr SC Rampal of 4 Andhra Naval Medical Unit NCC, Vishakhapatnam have been proved."

8. The disciplinary authority has also considered the grounds raised by the petitioner in paragraph No.6 of the order dated 20. 06.1995. The same is reproduced as under:

"6. AND WHEREAS undersigned observes that the said grounds are devoid of merit for the following reasons:

(a) Lt Cdr. SC Rampal attended hearing of Inquiry only on one occasion and failed to turn up for the subsequent hearings despite prior intimation and reasonable opportunity.

(b) His allegation that the documents were post-dated is incorrect and is not supported by any documentary evidence.

(c) The recommendations of his Commanding Officer did not give him any right not to get relieved, or not to hand-over charge and absent himself from his place of duty/posting unauthorisedly for 2 years."

9. The appellate authority vide order dated 28.07.2003 has noted that on scrutiny of the representation submitted by the petitioner it was found that no

new ground was raised. The petitioner had been given personal hearing by the appellate authority. It is noted that the petitioner was not able to submit any evidence, either documentary or oral in order to substantiate his claim that the Article of charges leveled against him were false or enquiry was conducted in a biased manner. The C.A.T vide impugned order dated 28.07.2005 has also considered the case of the petitioner and has found that the petitioner remained absent for more than 2 years.

10. It is well settled legal position that the High Court cannot interfere with the findings of the Inquiry Officer or competent authority unless the same are arbitrarily or utterly perverse. The correctness of the charges cannot be re-appreciated under Article 227 of the Constitution. We are satisfied that the disciplinary enquiry has been conducted against the petitioner in accordance with the procedure prescribed by law. Due opportunity of hearing was afforded to the petitioner. Therefore, we do not find any justification to interfere with the findings given by the disciplinary authority which have been affirmed by the appellate authority and by the Tribunal.

11. In so far as the judgments relied upon by the petitioner with respect to the non-payment of subsistence allowance are concerned, the same would not be applicable in the present case for the reason that in the instant case, the subsistence allowance has been paid. However, there was some delay which, according to the Inquiry Officer, was attributable to the petitioner himself. Moreso, the petitioner has not been able to point out that little delay in payment of subsistence allowance has caused prejudice to him. So far as the decisions in the case of State Bank of India Vs. R.K.Jain(1972) 4 SCC 304, Hardwari Lal vs. State of U.P (1999) 8 SCC 582 and Chhel Singh Vs. MGB Gramin Bank (2014) 13 SCC 166 in order to substantiate his argument that the witnesses were not properly examined and, the essential witnesses were left out, are concerned, the above decisions are also of no help to the petitioner. In the case of State Bank of India Vs. R.K.Jain⁶, the first enquiry was abandoned by the Management itself and in the second enquiry, the witnesses, sought to be examined as a defence witness, were not allowed. In the instant case, the Inquiry Officer has clearly noted that on the date of appearance of the petitioner, he sought to examine the witnesses, which was allowed, despite the fact that those witnesses were not enlisted. So far as the decision in the case of Hardwari Lal vs. State of U.P ⁷ is concerned, the same would also not be of any help to the petitioner for the reason that the Hon'ble Supreme Court in that case noted that the complainant who made the allegations against the delinquent employee of abuses in the Police Station himself was not examined. Similarly, the case of Chhel Singh Vs. MGB Gramin Bank⁸ would also not be of any help to the petitioner, as in that case, it was found that there was genuine medical reason for the unauthorized absence of the petitioner.

12. We have perused the order passed by the appellate authority and we find that there is no substance in the argument of the petitioner that the same is

passed by an incompetent authority. The foundation of the said submission is that it is the Joint Secretary, Government of India who has issued the order. However, a perusal of the said order clearly shows that it is only a communication made by the Joint Secretary, Government of India, whereas the representation of the petitioner was decided by the competent authority.

13. In view of the aforesaid, we do not find any substance in the instant writ petition and the same is accordingly dismissed.