

(2011) 03 RAJ CK 0122

In the Rajasthan High Court

Case No : Civil Writ Petition No. 6184 of 2003

Siya Ram Sharma

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 22-03-2011

Acts Referred:

Department of Posts Gramin Dak Sevaks (Conduct and Employment) Rules, 2001 — Rule 10, 7

Posts and Telegraphs Extra Departmental Agents (Conduct and Service) Rules, 1964 — Rule 8

Citation : (2011) 3 RLW 2555

Hon'ble Judges : Arun Mishra, C.J; Mohammad Rafiq, J

Bench : Division Bench

Judgement

Mohammad Rafiq, J.—This writ petition has been filed by Petitioner-Siya Ram Sharma assailing the order of the Central Administrative Tribunal dated 14/5/2002. The Tribunal dismissed the original application filed by the Petitioner wherein, writ Petitioner challenged the order of his removal dated 31/1/1995 and the order dismissing his appeal dated 5/6/1996.

2. Shri Karanpal Singh, learned Counsel for the Petitioner has argued that Petitioner had proceeded on sanctioned leave for the period from 10/9/1992 to 12/12/1992. He thereafter applied for extension of leave for another three months w.e.f. 13/12/1992 to 12/3/1993 on extraordinary reason of death of his two brothers in quick succession. Petitioner then fell sick and could not timely attend the duties. He finally reported duty on 25/5/1993. The competent authority did not convey to the Petitioner rejection of his leave applications, which he submitted applying for extension of leave. Learned Counsel submitted that the disciplinary authority has mechanically held the charge of willful absence proved against the Petitioner whereas absence for the cited reasons like death of two brothers of the Petitioner, one after another in quick succession, followed by reasons of his illness could not be said to be willful in nature. Rule 7 of the Department of Posts Gramin Dak Sevak (Conduct and Employment) Rules, 2001

(shall hereinafter be referred as "Rules of 2001") has not been correctly analyzed and interpreted by the disciplinary authority. In any matter of willful absence, removal of an employee like the Petitioner, who was working on the post of Extra Departmental Postal Agent for last more than a decade, could not be said to be automatic. Learned Counsel submitted that even according to Rule 7 of the Rules of 2001, for the purpose of computing the maximum permissible period of absence, initial period of three months i.e. 10/9/1992 to 12/12/1992 for which leave was granted to the Petitioner was liable to be excluded and if that is done, absence of subsequent period from 13/12/1992 till 25/5/1993 would come to only 164 days. Learned Counsel argued that even otherwise, removal should be made only if the government has applied its mind to the facts of a given case and taken a decision that in view of the exceptional circumstances, period of absence should not be condoned by grant of leave. In this connection, learned Counsel cited the letter dated 8/5/1996 issued by the Director General (Post) New Delhi whereby, power to condone breaks in service caused due to leave in excess of 180 days by the ED As was delegated to the Head of Circles. Learned Counsel cited the judgment of this Court in *Dr. Mal Chand Poonia v. The State of Rajasthan and Ors.* (SBCWP No. 1829/1989) decided on 31/10/1990 to argue that for absence of short period, penalty of removal should not be awarded and that such penalty should be held to be disproportionate to the gravity of the charge. In this connection, learned Counsel also relied on the judgment of Supreme Court in *State of Rajasthan and Ors. (Vs. Sujata Malhotra in Civil Appeal No. 1782 of 2002 arising out of SLP (C) No. 21395 of 2001 dated 11/3/2002.*

3. Shri Karanpal Singh, learned Counsel for the Petitioner also referred to the order of the appellate authority dated 5/6/1996 and argued that appellate authority has admitted the fact that rejection of the application of the Petitioner for extension of leave for the period from 12/12/1992 to 12/3/1993 was not conveyed to the Petitioner and thereafter again rejection of subsequent application for grant of leave for the period from 13/3/1993 to 25/5/1993 accompanied by two medical certificates was also not conveyed to the Petitioner. Learned Counsel submitted that the appellate authority inspite of having held so, was wholly unjustified in not quashing and setting aside the order of his removal. It is therefore prayed that writ petition be allowed and the impugned judgment of the learned Tribunal dated 14/5/2002 dismissing original application be set-aside, order of his removal dated 31/1/1995 and the order dated 5/6/1996 whereby his appeal has been dismissed be quashed and set-aside and the Respondents may be directed to reinstate the Petitioner in service with all consequential benefits.

4. Per contra, Shri Gaurav Jain, learned Standing Counsel for Union of India has argued that application of the Petitioner for extension of leave for the period from 13/12/1992 to 12/3/1993 was received on 14/12/1992 but the leave was not sanctioned and the Petitioner was directed to report on duty through SDI (P) Bari by Superintendent of Post Offices, Dholpur vide his letter dated 29/12/1992.

The Petitioner however did not report back on the duty and remained unauthorisedly absent from 13/12/1992 to 25/5/1993. Disciplinary proceedings were initiated against the Petitioner under Rule 8 of the ED As (Conduct and Service) Rules, 1964, which rule has been subsequently substituted by Rule 10 of the Rules of 2001. Disciplinary authority provided full opportunity of hearing to the Petitioner and during the course of departmental enquiry, the charge of absence for more than 180 days was proved against the Petitioner. He was therefore rightly removed from service in view of the provisions of Rule 7 of the Rules of 2001. Petitioner preferred appeal, which was also duly considered and rejected by the appellate authority. The original application filed by the Petitioner has also rightly been dismissed by the Tribunal because charge of absence of more than 180 days was fully proved against the Petitioner. Learned Counsel cited the judgment of Supreme Court in Gouranga Chakraborty Vs. State of Tripura and Another, and argued that even on the charge of overstaying leave without sufficient cause, an employee like the Petitioner could be removed from service. Learned Counsel supported the order of the appellate authority as also the order passed by the Tribunal and argued that those orders are perfectly valid and justified and do not call for any interference by this Court.

5. We have given our anxious consideration to the rival submissions of the parties and perused the material available on record.

6. Facts that are not disputed are that Petitioner proceeded on sanctioned leave from 10/9/1992 to 12/12/1992. He applied for extension of leave for further three months from 13/12/1992 to 12/3/1993 for the reason of death of his two brothers in quick succession and then he again applied for leave from 13/3/1993 on the ground of his illness. Petitioner reported for duty on 25/5/1993. Application for extension of further leave on the ground of illness was supported by two medical certificates dated 13/12/1992 and 25/5/1993, which the Petitioner submitted to the Superintendent of Post Office, Dholpur Division, Dholpur. Contention of the Petitioner is that rejection of his application for extension of leave was never conveyed to him, is fortified from the order of the appellate authority dated 5/6/1996, which indicates that the Respondents did not dispute the fact regarding receipt of two applications for extension of leave for different reasons and did not convey rejection thereof. Besides, it is evident that absence of the Petitioner for his initial period of three months from 10/9/1992 to 12/12/1992 cannot be said to be a willful absence as leave was sanctioned to the Petitioner for this entire period and that subsequent period of leave also cannot be said to be willful absence because Petitioner applied for overstaying leave from 13/12/1992 to 12/3/1993 and 13/3/1993 till 25/5/1993 when he reported back on duty. Petitioner had given reasons for his absence. If the Superintendent of Post Office, Dholpur Division, Dholpur or for that matter, any other competent authority rejected application of the Petitioner for extension of leave, it was their bounden duty to convey such rejection to the Petitioner. Nothing has been brought on record either before the Tribunal or before this Court that Petitioner was intimated about rejection of his application for extension of leave. On the

contrary, the appellate authority in his order has given a categorical finding to the effect that no such intimation was given to the Petitioner. This coupled with the fact that period of 180 days has been counted by the Respondents by even including the initial period of three months for which Petitioner proceeded on sanctioned leave, is a factor that shocks the conscience of the Court in the present matter as to why Petitioner should have been removed from service because we find that Petitioner, who was engaged on the post of Extra Departmental Postal Agent, was working with the Respondents for a pretty long period of more than a decade.

7. In our view, disciplinary authority could not have mechanically removed the Petitioner from service without deciding all the aforementioned questions, notwithstanding the provisions contained in Rule 7 of the Rules of 2001, which itself provides that "the Sevaks shall be entitled to such leave, as may be determined by the Government, from time to time provided that (a) where a Sevak fails to resume duty on the expiry of the maximum period of leave admissible and granted to him, or (b) where such a Sevak who is granted leave for a period less than the maximum period admissible to him under these rules, remains absent from duty for any period which together with the leave granted exceeds the limit up to which he could have been granted such leave, he shall, unless the Government, in view of the exceptional circumstances of the case, otherwise decides, be removed from service after following the procedure laid down in Rule 10" (emphasis ours). The Petitioner applied for extension of leave for the cited reason namely, his two brothers died in quick succession and further that the Petitioner fell ill, which fact he supported by two medical certificates. These circumstances ought to have received consideration of the Government because in exceptional circumstances rigour of Rule 7 of the Rules of 2001 has been relaxed. Intention of the Government in this behalf is further evident from the letters dated 8/5/1996 and 25/11/1993 issued by the Director General (Post) New Delhi whereby, power to condone breaks in service caused due to leave in excess of 180 days by the ED As was delegated to the Head of Circles. These letters thus clearly indicate that in appropriate cases, the Head of Circles can condone the period of absence even beyond 180 days. In the present case, even if total period of absence including the period of sanctioned leave is counted comes to 258 days and if initial period of three months i.e. 10/9/1992 to 12/12/1992 (sanctioned leave) is excluded, total period of absence comes to only 164 days, which cannot be said to have so enormously exceeded the outer limit of 180 days. If period of absence is independently observed, his absence was not willful in nature and also not so excessive as to justify the order of removal from service.

8. In view of above discussion, we are inclined to uphold the argument of the Petitioner regarding validity of the order of removal dated 31/1/1995, order dated 5/6/1996 dismissing appeal of the Petitioner and impugned-order dated 14/5/2002 whereby, the original application submitted by the Petitioner was dismissed by the Tribunal. However, Petitioner may not be entitled to any

monetary benefits for the intervening period.

9. In the result, writ petition is partly allowed. The order of removal dated 31/1/1995 (Ann.1) and order dated 5/6/1996 (Ann.3) dismissing appeal of the Petitioner are quashed and set-aside and the impugned-order dated 14/5/2002 passed by the Central Administrative Tribunal dismissing original application of the Petitioner is set-aside. Petitioner is held entitled to reinstatement in service. Although, the Petitioner shall be entitled to continuity of service but he shall not be entitled to any monetary benefits for the intervening period on the principle of "no work no pay".

10. Compliance of the judgment shall be made within a period of two months from the date copy of this order is produced before the Respondents.