

(2009) 04 J&K CK 0006

In the Jammu And Kashmir High Court

Case No : Service Writ Petition (SWP) No. 842 Of 2004

Smesh Bhagar

APPELLANT

Vs

State and Ors.

RESPONDENT

Date of Decision : 02-04-2009

Acts Referred:

Central Civil Services (Classification, Control and Appeal) Rules, 1965 — Rule 33, 34
Constitution of India, 1950 — Article 311(2)

Citation : (2009) JKJ 260 Supp : (2009) 4 SCT 731

Hon'ble Judges : Sunil Hali, J

Bench : Single Bench

Advocate : Shashita Hakim, F.A.Natnoo, Advocates appearing for the Parties

Judgement

The petitioner has been terminated from the service vide order dated 09.12.2003 for remaining on unauthorized absence from duty. This order has

been challenged by him in this writ petition. In order to resolve the controversy involved in this case, the brief facts of the case are given below:

The petitioner was working as Assistant Surgeon in the District Hospital, Poonch. He applied for 90 days earned leave, as his mother was

admitted in the Hospital. His earned leave application seems to have been rejected by the respondents on 24.8.2002 and he was directed to join

his duties at District Hospital, Poonch. He represented against the rejection of his leave by submitting a representation to the respondents, in which

he reiterated his request for grant of 90 days earned leave. The said communication was received by the respondents on 18.09.2002. Nothing

seems to have been happened on the representation made by the petitioner and ultimately a notice was published in the Daily Excelsior on

24.4.2003. The petitioner and some other Doctors were directed in the said

notice to present themselves before the Deputy Secretary to

Government, Health and Family Welfare Medical Education department from 28.4.2003 to 30.4.2003 between 10 A.M to 4 P.M for personal

statements. The petitioner filed his representation against the said notice of unauthorized absence published in the Daily Excelsior, in which he again

reiterated that on account of his family compulsions, leave may be sanctioned in his favour. The petitioner has also showed his desire to rejoin his

duties at Jammu, in case said leave is not sanctioned.

The respondents appointed an Enquiry Officer to examine the cases of the Doctors, who were on unauthorized absence from duties. Dr. S. C.

Raina, State Malariologist J&K, Jammu was appointed as Enquiry Officer. It transpires from the record that enquiry was conducted by Dr. Raina

and he submitted his report on 13.5.2003 that the petitioner remained on unauthorized absence from duty, as such, recommended termination of

his services with effect from the date the petitioner remained on unauthorized absence from duty. The recommendation of the Inquiry Officer was

accepted and order of terminating the service of the petitioner was issued on 9.12.2003.

I have heard counsel for the parties and perused the record.

It transpires from the record that counter affidavit has not been filed by the respondents despite various opportunities granted to them. However,

the respondents have produced the record of the case.

Unauthorized absence from the duty does not mean automatic dismissal from service. A detailed inquiry is required to be conducted by the

department in this regard. Rule 33 & 34 of the Classification, Control and Appeal Rules 1956 read with Article 311 (2) of the Constitution of India

is exception to the principles of doctrine of pleasure. The principle envisages that before any major penalty is imposed on a Government servant; a

proper inquiry is required to be conducted. The enquiry envisages the framing of charge sheet and its service on the delinquent official, which is to

be followed by recording of evidence to prove the charges as also any defence witnesses, which the delinquent official likes to examine. Thereafter,

Enquiry Officer makes its recommendation to the appointing authority. The official facing enquiry has to be provided with copy of the enquiry

report if it seeks to recommend punishment against the official.

In the present case, no procedure as discussed supra has been 'followed by the respondents. All that is available on the record is that a notice was

published in the Daily Excelsior, directing the petitioner to appear before the Deputy Secretary to Government Health and Medical Education

Department. Thereafter, recommendation has been made by the Inquiry Officer against the petitioner, which has resulted in termination of his

services. This fact is borne from the impugned order dated 9.12.2003. Even the report of the Inquiry Officer has also not been supplied to the

petitioner by the respondents. The mandate of serving second show cause notice indicating proposed punishment to be imposed on the petitioner

has also not been complied with. The record produced by the respondents does not reveal any such facts.

In view of the above, I find that there is no compliance of the procedures envisaged by Rule 33 & 34 of the Classification, Control and Appeal

Rules 1956 in the present case. Neither inquiry report has been given to the petitioner nor has any show cause notice regarding proposed

punishment been served upon the petitioner. There is no material which shows that any inquiry has been conducted against the petitioner.

For the reasons stated above, this petition is allowed and the order of termination of the petitioner dated 9.12.2003 is set aside. The respondents

are directed to reinstate the petitioner forthwith alongwith all consequential benefits. It is, however, made clear that he will not be entitled to any

pay for the period he has not worked.