
(2010) 08 DEL CK 0213

In the Delhi High Court

Case No : Writ Petition (C) No. 17529 of 2004

T.C. Kaushik

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 05-08-2010

Acts Referred:

Central Civil Services (Conduct) Rules, 1964 — Rule 3(1)

Citation : (2010) 08 DEL CK 0213

Hon'ble Judges : Pradeep Nandrajog, J; Mool Chand Garg, J

Bench : Division Bench

Advocate : Baldev Atreya, for the Appellant; R.V. Sinha and R.N. Singh, for the Respondent

Final Decision : Dismissed

Judgement

Pradeep Nandrajog, J.—In the year 1973 the petitioner was appointed as Assistant Central Intelligence Officer Grade II in the Intelligence Bureau, Ministry of Home Affairs and posted at Delhi. In the year 1996 he was transferred from Delhi to Amritsar. The petitioner joined duty at Amritsar on 11.4.1996 and the very next day i.e. on 12.4.1996 he proceeded on casual leave till 20.4.1996. Needless to state the petitioner was to report for duty on 21.4.1996. He failed to do so.

2. On 6.5.1996 he sent a medical certificate to his reporting officer at Amritsar, to the effect that he was medically unfit and hence be granted leave. The certificate was obtained from a private Physician, Dr. Vijay Sharma having his clinic at A-70, Budh Nagar, Inderpuri, New Delhi-12. It was mentioned in the certificate that the petitioner was a chronic patient of Cephalic Seizure which has relapsed due to depression caused by the accident of his son. The reporting officer communicated to the petitioner the response to his application dated 6.5.1996 informing him that the medical certificate, being issued by a private practitioner could not be accepted. The petitioner was informed that he should obtain a proper medical certificate, as per rules, from a civil surgeon.

3. The petitioner did not do so. He did not even report for duty. The reporting officer of the petitioner sent reminders to the petitioner on 14.5.1996, 31.5.1996 and 3.7.1996 informing the petitioner that either he should report for duty or submit a proper application enclosing therewith a medical certificate issued by a civil surgeon certifying his medical disability.

4. A letter dated Nil was received by the departmental head at Amritsar. It was written by the petitioner and under cover of the letter he submitted another medical certificate issued by Dr. Vijay Sharma. This was responded to by the department informing the petitioner that the medical certificates being submitted by him were not acceptable and that if he desired leave on medical grounds he should furnish a medical certificate issued by a civil/staff surgeon or any other equivalent medical authority from a government hospital.

5. It appears that the petitioner went to Safdarjung Hospital and got himself medically examined at the Out Patient Department on 15.7.1996 and obtained a prescription on the OPD card as under:

XXXX- illegible

Report to Medical OPD generalized too weakness.

6. He sent a photocopy of the OPD card to the head of the department. He failed to report for duty. He did not obtain any certificate from a competent doctor from a government hospital certifying his medical disability. The stalemate continued till the month of October 1996. On 7.10.1996 a memorandum was issued and served upon the petitioner cautioning him that he would be liable for disciplinary action if he did not report for duty. The petitioner did not respond. He continued to remain absent and did not submit any medical certificate issued by a competent doctor from the government hospital till 2.4.1997 when a charge memo was issued to him alleging two misdemeanors as under:

Article-I

That the said Shri T.C. Kaushik while functioning as ACIO-I (G) during the period from 20.04.1996 till date, failed to maintain devotion to duty in violation of sub-rule 1(ii) of Rule 3 of CCS (Conduct) Rules, 1964 by remaining absent from duty unauthorisedly during the aforesaid period.

Article-II

That during the aforesaid period and while functioning in the aforesaid office, the said Shri T.C. Kaushik, indulged in an act unbecoming of a government servant in violation of sub Rule 1(iii) of Rule 3 of CCS (Conduct) Rules, 1964 by remaining absent from duty willfully and without any authorization in disregard of office instructions.

7. Since the petitioner was posted at Amritsar, his headquarters for purposes of inquiry were notified at Amritsar and this required the petitioner to go to Amritsar and appear before the Inquiry Officer. The petitioner filed OA No.

2051/2007 before the Central Administrative Tribunal praying that the charge sheet be quashed and in the alternative that the inquiry proceedings be directed to be held at Delhi. Vide order dated 6.4.1999 OA No. 2051/2007 was dismissed. The petitioner challenged the said order by filing a writ petition being W.P.(C) No. 2783/1999 in this Court in which an interim order was passed directing that a Medical Board at Ram Manohar Lohia Hospital New Delhi should examine the petitioner and report about his medical condition. The petitioner was examined by the Board which gave its report on 4.6.1999 as under:

It has been the opinion of the above medical board that he is a case of Somatisation Disorder. Mr. T.C. Kaushik has not been found to be having any other mental or physical ailment. During all these years he has never been given treatment for somatisation disorder except ayurvedic treatment in the recent past (one year), partially effective for this ailment. Somatisation Disorder is a mental illness in which person develops physical symptoms due to mental stress. A person suffering from Somatisation Disorder can continue to attend his duties provided, the disease is properly treated by a psychiatrist.

However, Mr. T.C. Kaushik's ailment does not warrant such a prolonged absence from duty.

8. The writ petition was disposed of vide order dated 27.10.1999 but directing that an escort would be provided to him to appear before the Inquiry Officer at Amritsar.

9. The inquiry proceeded. A report was submitted by the Inquiry Officer on 23.6.2000 holding that the articles of charge were fully proved. The report was supplied to the petitioner for his response and on 16.5.2001 the Disciplinary Authority imposed the penalty of reducing the pay of the petitioner by two stages for a period of 2 years and that the petitioner would not earn increments of pay during the period of reduction which will have the effect of postponing future increment of pay. The period of unauthorized absence was directed to be treated as dies non. Statutory appeal filed was rejected by the Appellate Authority on 7.5.2003 and this led the petitioner to challenge the penalty imposed vide OA No. 1686/2003.

10. In a nut shell, case of the petitioner before the Central Administrative Tribunal was there was no requirement of submitting medical certificates from a government doctor and that a medical certificate issued by a private practitioner was sufficient evidence to prove the medical infirmity. Placing reliance upon the decision of the Supreme Court reported as 1994 (2) ATJ 434 A. Prasad Rao v. The G.M. Railway it was pleaded that mere absence from duty cannot be treated as misconduct.

11. The Tribunal dismissed the petition filed by the petitioner vide impugned order dated 19.1.2004.

12. View taken by the Tribunal is that the petitioner had failed to justify his

absence on medical grounds. The Tribunal has very heavily relied upon the medical report submitted by the Medical Board constituted at Ram Manohar Lohia Hospital, contents whereof have been noted in para 7 above. It has been held that the decision in A. Prasad Rao's case (supra) did not hold as claimed by the petitioner. It was noted that in said case A. Prasad Rao had proved serious illness and that in the instant case the very illness of the petitioner was in dispute.

13. No doubt, in A. Prasad Rao's case it was held that the medical leave rules cannot be interpreted literally requiring a government servant to obtain a medical certificate from a government doctor, but the same was held in relation to a case of a serious medical infirmity.

14. The lifeline of law need not always be logic and it may well be experience in a given situation.

15. The issue has to be determined not as projected by the parties in the instant case i.e. that in every case the medical certificate should be issued by a government doctor but has to be determined as to what course has to be chartered when the department feels that the certificate obtained from a private medical practitioner does not inspire confidence. Should in such a situation the department be justified in requiring the government servant to get himself examined at a government hospital.

16. Commonsense tells us that with reference to the claim of medical infirmity the issue has to be resolved with a commonsense approach. The commonsense approach would be to see the nature of the medical infirmity projected and the competence of the person to treat the same and the contents of the medical certificate. For example a person claims medical infirmity on account of being a patient of cancer and yet seeks to prove the same by furnishing a medical certificate issued by a doctor holding a graduation degree in medicine i.e. MBBS. Further, the doctor concerned operates from an unauthorized colony and has no credentials. Commonsense would tell us that such a certificate should be rejected and more so when the government servant refuses to get himself examined from a government doctor and further it is not his case that he is totally immobile.

17. As noted by us the doctor certifying the medical infirmity of the petitioner is Dr. Vijay Sharma whose only degree is MBBS. He functions from A-70, Budh Nagar, Inderpuri, New Delhi -12, which is an unauthorized colony. The petitioner claims to be a patient of Cephalic Seizure which means that the petitioner was suffering from a form of mental disorder. We are surprised that the petitioner, who is a government servant, and could avail better medical treatment from a government hospital chose to go to a virtual quack. In any case, when examined at Ram Manohar Lohia Hospital on 4.6.1999 he was found to be in a condition to work; there were symptoms of somatisation disorder, which were opined to be mild and capable of being cured if properly treated by a Psychiatrist. It is apparent that the petitioner was having no mental or physical ailment except that he believed that he had one and this induced the somatisation disorder.

18. We would be failing not to highlight that the petitioner stopped reporting from duty from 20.4.1996 and did not join back not only till the charge sheet was issued to him on 2.4.1997 but even till the date when the report of inquiry was submitted in the month of September 2000.

19. It is settled law that not reporting for duty without obtaining leave is treated as a misdemeanour and even when, for purposes of leave record, the leave is adjusted as per leave rules for the reason this is treated as an accounting exercise for purposes of completing the service record.

20. It is only in India that such behaviour can be countenanced. The penalty imposed is perfectly justified and valid.

21. Before ending we express our anguish at the fact that nearly 10% of the service matters being dealt with by us pertain to the misdemeanour of unauthorized absence. With impunity government servants proceed on self-determined leave for months and years together. Nearly 5% of the service matters pertain to the grievance that less wages are being paid. About 15% of the service matters pertain to disciplinary action for lack of devotion to duty. The clamour for higher wages, more holidays and desire to do no work is reflected, very sadly to say, in these petitions. We are tainted to pen the morning prayer on the lips of these government servants, and with apology, pen the same as under:

Prabhu Chakri Aisi Dijiyee, Kaam Kachu Na Hoye; Muh Manga Vetan Mile, Har Din Chutti Hoye.

Meaning: Lord give me a job which requires no work to be done but wages as per my wish and with everyday being a holiday.

22. The writ petition is dismissed with costs assessed in sum of Rs. 5,000/- against the petitioner and in favour of the respondents.