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(2011) 09 SHI CK 0005

In the High Court Of Himachal Pradesh

Case No : CWP (T) 12503 of 2008

Trilok Chand — APPELLANT

Vs

The H.P. State Civil Supplies Corpn. Ltd. and Another — RESPONDENT

Date of Decision : 09-09-2011

Acts Referred:
Central Civil Services (Classification, Control and Appeal) Rules, 1965 — Rule 11
Constitution of India, 1950 — Article 226, 227

Citation : (2011) 09 SHI CK 0005

Hon'ble Judges : Surjit Singh, J

Bench : Single Bench

Judgement

Surjit Singh, J.—Petitioner had been working as Public Distribution Clerk, with H.P. State Civil Supplies Corporation, impleaded as Respondent No. 1 and was posted at Bhabhanagar, in February, 2002, when he allegedly absented himself from duty. A charge sheet, copy Annexure A-1, was served upon him on 15.6.2002 and he was called upon to submit his reply within 10 days, that is to say, up to 25th June, 2002, for his alleged willful absence from duty, since 12.2.2002. Before the expiry of the time given in the Memorandum of Charge Sheet, Annexure A-1, Office Order, dated 17.6.2002, copy Annexure A-2, was issued to the effect that period of his absence, w.e.f. 12.2.2002 onwards, was to be treated as dies non, that is to say, non duty period. Thereafter, Petitioner submitted his reply to the charge sheet, copy Annexure A-3, in which he denied the allegation of his being willfully absent and claimed that he had been sick from 12.2.2002 to 30.6.2002 and taking treatment at government medical institutions at Baijnath and Mahankal, both in Kangra District. Bhabhanagar, where the Petitioner was posted, is in Kinnaur district.

2. Regular inquiry was ordered and one Shri R.C. Guleria, Area Manager, Mandi, was appointed as Inquiry Officer. Said Inquiry Officer submitted report dated 24.11.2004, copy Annexure A-9, exonerating the Petitioner of the charge. Disciplinary authority, however, held that the report of the Inquiry Officer, exonerating the Petitioner, was contrary to the material on record and proposed

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to reverse the finding that Petitioner was innocent. The said Authority recorded tentative reasons and served the same upon the Petitioner, vide Memo dated 27.1.2005, copy Annexure A-10 and called upon the Petitioner to show cause why the finding of the Inquiry Officer be not reversed and he be not held guilty for willful absence from duty, for the aforesaid period. Petitioner submitted reply, copy Annexure A-11, on 15.2.2005. Thereafter, impugned order, Annexure A-14, which is dated 14.6.2005, was passed and the penalty of stoppage of one increment, with cumulative effect, was imposed and the penalty was ordered to come into force with immediate effect. During the period when disciplinary proceedings were going on, which commenced with the service of charge sheet, Annexure A-1, annual increments, accruing to the Petitioner, were also not released.

3. Petitioner felt aggrieved by the aforesaid actions of the Respondents and filed Original Application before the then H.P. State Administrative Tribunal, in the year 2005. When the said Tribunal was abolished in the year, 2008, matter came to this Court and that is how, it is being dealt with by this Court.

4. In reply, it is stated on behalf of the Respondents, that Petitioner had the remedy of appeal, available to him under CCS (CCA) Rules and, therefore, without availing of that remedy, he could not have filed the petition before the H.P. State Administrative Tribunal, now defunct. On merits, it is alleged that the Petitioner had been willfully absent from 12.2.2002 to 30.6.2002 and he had rightly been held guilty of the charge by the Disciplinary Authority, after reversing the findings of the Inquiry Officer and visited with penalty of stoppage of one increment, with cumulative effect.

5. I have heard learned Counsel for the parties and gone through the record.

6. Plea raised by the Respondent that present petition could not have been filed, without first availing legal remedy of filing appeal, under the CCS CCA Rules, is not without merit, but this plea is applicable insofar as the order of penalty of stoppage of one increment, imposed vide Annexure A-14, is concerned and not with respect to the other two actions of the Respondents, namely, treatment of period of alleged willful absence as dies non, before the completion of departmental proceedings and non release of increments, for the period when disciplinary proceedings were going on, because these two actions of the Respondents, are contrary to the Rules and hence illegal and without jurisdiction.

7. It is true that under CCS CCA Rules, vide Rule 11 and Instruction (3), issued vide DG, P & T''s Letter No. 10-44/79-PE. II, dated 26.11.1979 and Department of Telecom., Letter No. 15-26/86-TE. II, dated 2.3.1989, the day, when an employee does not attend duty, can be marked as dies non, but only in respect of any of the three situations, referred to in the said Note, namely:

(i) when the official remains absent from duty without prior information;

(ii) when on duty in office, the official leaves the office without proper

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permission; and

(iii) the official remains in office, but refuses to perform duty assigned to him.

8. In the present case, accusation against the Petitioner is that he remained absent from duty, without getting his leave sanctioned. It is not the case of the Respondents that Petitioner remained absent, without prior information, as is the requirement of condition (i) aforesaid. On the contrary, inquiry report, copy Annexure A-9, shows that the Petitioner submitted an application for leave on 4.2.2002, seeking leave from 12.2.2002, on medical grounds and not only that, a substitute, had also been provided to take over the charge from him and the name of that substitute was Vidya Sagar Mehta, which fact also finds mention in the inquiry report itself. Therefore, action of the Respondents, in treating the period from 12.2.2002 onwards as dies non, even before the conclusion of departmental proceedings, vide order dated 17.6.2002, copy Annexure A-2, was illegal and without jurisdiction. The same is, therefore, quashed.

9. Petitioner has not been released increments from 12.2.2002 to 14.6.2005, during which period, disciplinary proceedings, were going on. This action of the Respondents is also contrary to Rule 11 of CCS CCA Rules and note (6), below that rule, which says that increment can be withheld only when there is an order for withholding of increment, or if an employee is not otherwise entitled to increment, due to his being on leave or for other administrative reasons. Now, when the order was stoppage of only one increment, Petitioner ought to have been paid/ released increments, at least for the period, he attended duty from 1.7.2002 onwards. So far as the period from 12.2.2002 to 30.6.2002, when the Petitioner allegedly remained willfully absent, is concerned, a conscious decision was required to be taken, whether it was to be treated as duty period by granting leave of the kind due, or as non duty period and that too, after affording an opportunity of being heard to the Petitioner, in case it was proposed to treat the said period as dies non.

10. As regards grievance against imposition of penalty of stoppage of one increment, with cumulative effect, is concerned, Petitioner should first file an appeal against the order of penalty to the appellate authority and in case he feels aggrieved by the order of the appellate authority, he can seek his legal remedies, including that of a petition, under Articles 226 and 227 of the Constitution of India. Petitioner may, if so advised, file an appeal to the appellate authority with respect to this grievance and in case he files such an appeal within 15 days from today, same will be decided on merits, ignoring the delay in filing such an appeal.

11. As a result of the above discussion, order Annexure A-2, treating the period of absence as dies non, is quashed. Respondents are also directed to release increments, which accrued to the Petitioner, for the period from 1.7.2002 to 14.6.2005 and to pass appropriate orders, after hearing the Petitioner with regard to the period of his alleged absence from duty, from 12.2.2002 to 30.6.2002. Order, with respect to this period of absence would be required only if

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in appeal, which the Petitioner may file within 15 days, the finding of the disciplinary authority, that he was willfully absent for the aforesaid period, is upheld.

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