
(2022) 03 TEL CK 0065
In the Telangana High Court
Case No : Writ Petition No. 5036 Of 2003

T.Srinivasam

APPELLANT

Vs

Union Of India

RESPONDENT

Date of Decision : 24-03-2022

Acts Referred:

Constitution Of India, 1950 — Article 226

Citation : (2022) 03 TEL CK 0065

Hon'ble Judges : P. Madhavi Devi, J

Bench : Single Bench

Advocate : V R Machavaram, Gadi Praveen Kumar

Final Decision : Partly Allowed

Judgement

1. This Writ Petition is filed by the petitioner under Article 226 of the Constitution of India seeking a Writ of Certiorari holding the impugned order of removal of the petitioner from service passed vide Order No.P.VIII-10/2000-12-EC-II dt.21.03.2001 by the 5th respondent as illegal, arbitrary and against the principles of natural justice and to direct the respondents to reinstate the petitioner into service with all back wages and consequential benefits.

2. Brief facts of the case are that the petitioner joined the respondent organization as a constable at Hyderabad office on 29.07.1991. Thereafter, he was sent on deputation to CBI and was relieved therefrom on 30.07.1999 and was supposed to join the respondent organization at Assam. Meanwhile 60 days leave was granted by the Superintendent, CBI and before joining the station at Assam. However, the petitioner fell sick on 20.09.1999, i.e., just before the expiry of the leave period. According to the petitioner, he took treatment in Osmania General Hospital up to 20.10.1999 and was kept on sick list up to 15.01.2000 and thereafter up to 05.05.2000 as per the advice of Osmania General Hospital. He submitted that during this period he met with an accident on 20.04.2001 because of which also he could not attend to the duties. He submitted that he never received any notice from the CRPF, but all of a sudden,

he was removed from service vide order dt.21.03.2001 after conducting an ex parte enquiry against the petitioner. He submitted that he had intimated his Commandant in CRPF by telegrams about his leave, but he was never intimated about rejection of his leave application and since the petitioner was not available at the address given at the time of his appointment, the respondents ought to have taken steps to serve notice through CBI or by alternative mode if they could not serve notices on the petitioner by the above mode. He submitted that all the medical certificates were submitted before the appellate authorities, but there was no verification of the said certificates by the authorities and without any basis they held that the certificates are bogus.

3. Learned counsel for the petitioner, Sri V.R. Machavaram, submitted that the petitioner had only overstayed his leave and it is not unauthorised absence and the punishment of removal from service is disproportionate to the offence of unauthorised absence. In support of his contentions that the said offence is not so grave as to call for removal of service, he placed reliance upon the following two judgments:

(i) S.R. Tewari Vs. Union of India and another (2013) 6 SCC 602

(ii) Krushnakant B. Parmar Vs. Union of India and another (2012) 3 SCC 178

4. The learned counsel for the 1st respondent, Sri G. Praveen Kumar, on the other hand, submitted that the petitioner never reported for duty and that the notices were sent to the address given by the petitioner at the time of entering the service and the petitioner never bothered to intimate the change of address. He submitted that after receipt of removal order, the petitioner has reported for duty and in the said joining report, he has given the changed address and therefore, the subsequent notices have been served at the changed address at Hyderabad. He submitted that in the organization of the respondents, discipline is of paramount importance and the petitioner has not taken his duties seriously and therefore, a lenient view of removal of service was taken instead of dismissal from service where he would not be entitled to any terminal benefits. He therefore prayed that the order of the respondents be confirmed.

5. Having regard to the rival contentions and the material on record, it is seen that one of the grounds raised by the petitioner in this Writ Petition is that the entire enquiry is ex parte the petitioner and the order of removal was also not served on the petitioner. The reason for the same seems to be that the respondents have issued notices to the petitioner at his address given at the time of his initial appointment, i.e., his home address in Nizamabad, whereas the petitioner was working in CBI on deputation and was residing at Hyderabad. Even the impugned order of removal was sent to the address at Nizamabad and it is admitted that only after the appeal has been filed by the petitioner giving his correct address at Hyderabad, the orders have been intimated to the petitioner at Hyderabad.

6. Therefore, without going into the merits of the case as to whether the

petitioner was justified in overstaying his leave or was it unauthorised leave, this Court is of the opinion that the enquiry ex parte the petitioner without serving notice on the petitioner is not sustainable. As seen from the impugned order of removal, a copy of the same was marked to the Superintendent, CBI, III Floor, Block No.3, Kendra Sadan, Sultan Bazar, Hyderabad for favour of information and necessary action. Thus, the respondents were aware that the petitioner was working with the CBI and since notices were not served on him, they have directed the service of copy of the order on the CBI. It is only thereafter that the petitioner has come to know about the order of removal and appeal and thereafter revision would be filed by the petitioner. Since it is confirmed and admitted by the respondents that enquiry was conducted ex parte the petitioner, this Court is of the opinion that the impugned order of removal on the basis of an ex parte enquiry is not sustainable. It is therefore liable to be set aside. However, it is seen that there was no suspension of the impugned order either in the appeal or in the revision or before this Court and nearly 21 years have lapsed after the order of removal has been passed.

7. In such circumstances, it would not be reasonable to direct the respondents to re-conduct the enquiry or reinstate the petitioner into service. Therefore, in the interests of justice, it is deemed fit and proper to direct the respondents to grant the petitioner notional service from the date of his removal till he attains the age of superannuation and pay him all benefits that he is entitled to on such superannuation. The petitioner shall also be entitled to 50% of the back wages.

8. The Writ Petition is accordingly partly allowed. No order as to costs.

9. Pending miscellaneous petitions, if any, in this Writ Petition shall stand closed.