

(2000) 03 DEL CK 0110

In the Delhi High Court

Case No : Letters Patent Appeal No. 90 of 1982

Union of India and Others

APPELLANT

Vs

N.N. Mishra

RESPONDENT

Date of Decision : 10-03-2000

Acts Referred:

Central Reserve Police Force Rules, 1955 — Rule 90

Citation : (2000) 3 AD 678 : (2000) 85 DLT 156

Hon'ble Judges : Usha Mehra, J; Madan B. Lokur, J

Bench : Division Bench

Advocate : Mr. Maninder Singh C.G.S.C, for the Appellant; Mr. Anil Kumar Gupta, for the Respondent

Judgement

Madan B. Lokur, J.—The respondent in this appeal under Clause X of the Letters Patent, joined the Central Reserve Police Force (for short the CRPF) as a Constable sometime in 1964. He was subsequently appointed as a Lower Division Clerk in 1967. He worked in several stations and in May, 1971 he was transferred to Avadi near Madras city.

2. On 5th July, 1971 he applied for earned leave for the period from 12th to 26th July, 1971. This leave was not sanctioned to him. The Respondent then applied for casual leave on 22nd July, 1971 for attending to some urgent work in Madras. Even though no decision was communicated to him on this application, the Respondent proceeded on leave on 22nd July, 1971 and returned back to Avadi the same evening. The next day, that is, 23rd July, 1971 he again applied for casual leave for a day since he was not well. He did not turn up for his duties on that date and rejoined on 24th July, 1971.

3. On 26th July, 1971 the Respondent was issued a memorandum wherein it was stated that he had availed two days earned leave (for 22nd and 23rd July, 1971) without prior sanction. The Respondent replied to this memorandum stating that he had taken casual leave and not earned leave.

4. On 27th July, 1971 the Respondent was again absent from duty allegedly due to some eye problem, which we were told was conjunctivitis, which was apparently rampant in Madras at that time. The Respondent continued to remain absent from duty and on 30th July, 1971 he sent an application for grant of earned leave on medical grounds unto 2nd August, 1971. This application was not accompanied by a medical certificate of an authorised medical attendant, although the Respondent had submitted a medical certificate issued by a registered medical practitioner.

5. Thereafter, on 3rd August, 1971 the Respondent applied for extension of his leave and he stated in his application that he would produce a medical certificate on resumption of duty.

6. The Respondent resumed duty on 6th August, 1971 when he produced a fitness-cum-medical certificate.

7. On these facts, the Respondent was issued a charge-sheet dated 7th September, 1971. Broadly, the allegation against the Respondent were that he had availed earned leave on 22nd and 23rd July, 1971 without prior sanction ; that he had remained absent from duty from 27th July, 1971 for which he sent an application only on 30th July, 1971 but this was not accompanied by a medical certificate of an authorised medical practitioner; that he had remained absent during this period without forwarding his leave address; and that he had again remained absent from duty from 3rd August, 1971 to 5th August, 1971 without a medical certificate and leave address. It was alleged that the Respondent had wilfully absented himself from duty and created grounds to avoid a second medical opinion.

8. On 23rd September, 1971 the Respondent sent his reply to the charge sheet denying the various allegations leveled against him and also stating that he was not aware that he was not entitled to any casual leave. In view, of the response given by the respondent a departmental enquiry was held and the Enquiry Officer submitted his report dated 11th December, 1971 finding the Respondent guilty of the allegations leveled against him.

9. On 8th/14th April, 1972 the Deputy Inspector General in the CRPF passed an order dismissing the Respondent from service. As per the dismissal order, what weighed with the Deputy Inspector General was that the Respondent had remained absent from duty on 22nd and 23rd July, 1971 without prior sanction and that he was absent without leave from 27th July, 1971 without a medical certificate from an authorised medical practitioner and that he sent his application quite late so that it was not possible to take a second medical opinion.

10. The Respondent filed an appeal against his dismissal but the Inspector General of Police in the CRPF rejected his appeal. A subsequent representation by the Respondent was also rejected by the Director General of the CRPF on 29th January, 1973. This led to the Respondent filing Civil Writ Petition No. 1023 which was ultimately allowed by a learned Single Judge of this Court by the

impugned order dated 7th January, 1982.

11. The learned Central Government Standing Counsel made rather elaborate submissions before us on behalf of the Appellants. His first contention was that there were no procedural irregularities in the conduct of the inquiry. This position was conceded before us by learned counsel for the Respondent. Indeed, he had very fairly conceded this even before the learned Single Judge.

12. The second submission made by learned counsel for the Appellants was that the Respondent had not taken prior sanction for his leave on 22nd and 23rd July, 1971. The third contention was that the Respondent had created a situation whereby the Appellants could not take a second medical opinion when he went on leave from 27th July, 1971. It was submitted that a medical certificate was furnished by the Respondent only on 30th July, 1971 along with a letter/application for leave till 2nd August, 1971. This did not give the Appellants sufficient time to seek a second medical opinion; moreover, it was submitted that even if the Appellants had sufficient time to take a second medical opinion, they could not have done so because the Respondent did not give his contact address while on leave. It was submitted that even thereafter the Respondent was on leave from 3rd August, 1971 till 5th August, 1971 without any medical certificate or leave address. This clearly that the disciplinary authorities had not come to any perverse conclusion; on the contrary, their conclusion was not only eminently reasonable but, in any case, it was a possible view that could have been taken.

13. So far as the second submission made by learned counsel for the Appellants is concerned, this proceeds on a slight misconception. It is true that the Respondent did not take prior sanction before availing leave on 22nd and 23rd July, 1971. But, the necessity of taking prior sanction arises only in a case where earned leave is applied for and not in a case where casual leave is applied for. In the present case, the Respondent had applied for casual leave but since he was not entitled to casual leave, his application was converted into an application for earned leave. Because of this conversion he was required to obtain prior sanction. Since this conversion was done by the Appellants without any reference to the respondent there could not have been any occasion for him to have obtained prior sanction. It was not the case of the Appellants that even for taking casual leave, prior sanction was necessary. If this was so, then the Appellants would have been justified in contending that the Respondent was obliged to take prior sanction and it was of no relevance whether the application was for casual leave or for earned leave. However, as this was not the case set up by the Appellants, they could not have penalised the Respondent for not taking prior sanction before proceeding on casual leave on 22nd July, 1971, which leave was later on converted into earned leave.

14. The second aspect of this submission is that the leave of the Respondent for these two days was unauthorized. We do not agree with learned counsel. By converting the "unauthorized absence" into earned leave, the Appellants washed

away the sin, as it were, committed by the Respondent. We see no reason to differ with the learned Single Judge on this aspect of the case and we affirm his finding in this regard.

15. So far as the third contention concerned, we are of the view that there is some substance in what learned counsel for the Appellants has submitted. Admittedly, the Respondent absented himself from 27th July, 1971 without any intimation. His whereabouts were not known even when he submitted a leave application on 30th July, 1971. In this application, he suggested that he would be rejoining duties on 3rd August, 1971. This gave the Appellants only a couple of days time to obtain a second medical opinion, which they say was insufficient. Even if it is assumed that the Appellants had sufficient time to seek a second medical opinion, they could not have done so without knowing the whereabouts of the Respondent who did not disclose his leave address.

16. The learned Single Judge took the view that the Appellants were not able to show that they wanted to take a second medical opinion, nor were they able to show what efforts they had made to take a second medical opinion. We are of the view that the question whether the Appellants wanted to take a second medical opinion or not would arise only if it was possible for them to take a second medical opinion. In the absence of the leave address of the respondent even if the Appellants wanted to take a second medical opinion, they could not have done so. In other words, the Appellants were "prevented" from exercising their option of taking a second medical opinion. Taking steps to exercise an option which is not there is really a meaningless exercise. Quite apart from this, the Appellants did not have sufficient time to take a second medical opinion, even if they wanted to do so. Effectively, the Appellants had hardly two or three days time in which to take a second medical opinion. Knowing the speed at which the government agencies work, this period was not sufficient. One cannot (and should not) be unmindful of hard realities.

17. The position with regard to the period from 3rd August to 5th August, 1971 is even worse. The Respondent did not even bother to send a medical certificate. He merely stated in his leave application that when he resumes duty, he will produce the medical certification, which he did. There is nothing to suggest why he could not furnish a medical certificate along with his leave application. Surely, the Appellants are entitled to expect a greater degree of responsibility from their officer. For this period, in any case, Therefore, the Appellants were completely prevented from taking a second medical opinion because the fitness-cum-medical certificate was furnished by the Respondent only after he resumed duty.

18. It must not be forgotten that in this appeal, we are concerned with a member of one of the armed forces of that Union. Such persons are, quite naturally, obliged to maintain a higher degree of discipline than most others. The conduct of the Respondent shows that he absented himself from 27th July, 1971 and did not even bother to inform anybody about anything till 30th July, 1971 when he suggested that he would be rejoining duties on 3rd August, 1971. Then

on 3rd August, 1971 he extended his absence but this time without any medical certificate which he produced only after he re-joined duties on 6th August, 1971. As we have held above, for the first period, he effectively precluded the Appellants from taking a second medical opinion but for the second period he made it completely impossible for the Appellants to take a second medical opinion. This sort of a conduct is totally unbecoming of a member of the armed forces of the Union.

19. There was much debate on the question whether the Respondent was obliged to give his contact address while on leave. The learned Single Judge come to the conclusion that there was no such obligation cast upon the Respondent. Learned counsel for the Appellants was not in a position to show any rules which required the Respondent to forward his leave address. After the conclusion of the hearing, learned counsel of the Appellants filed an affidavit relying on the CRPF Manual. The photocopy of the CRPF Manual annexed to the affidavit is of 1973, which is much after the events that we are dealing with. That will, Therefore, not lead us anywhere.

20. However, Chapter X of the CRPF Rules, 1955 does deal with leave and leave concessions. Rule 90 of the CRPF Rules reads as follows :

"90. Recall from leave, (a) Members of the Force on leave may be recalled at any time by authority empowered to sanction their leave.

(b) They may be directed to report for duty either at headquarters or to proceed direct to the place at which their services are required.

(c) In either case, they will be entitled to traveling allowance as on tour (by the shortest route) for the return journey. If a free railway pass is in the possession of a member of the Force and it can be used for the return journey, it should be so used. In that case, the member of the Force will be entitled to the balance if any of the traveling allowance admissible. If the pass cannot be utilised, it should be surrendered, whereupon it shall lapse. The member of the Force concerned in that case will be entitled to the full traveling allowance admissible."

21. This rule clearly states that a member of the CRPF can be recalled while on leave. This is possible only if it is known where that person is residing while on leave. The inarticulate premises, Therefore, is that such a person should indicate his contact address while going on leave so that the leave sanctioning authority can recall that person from his leave, if necessary. We are, Therefore, of the view that the respondent when he absented himself from 27th July, 1971 onwards, was under an obligation to give his contact address so that he could be recalled, if necessary. He failed to do this. In any case, conjunctivitis, from which the Respondent was allegedly suffering, is not such a debilitating disease which could make it impossible for the Respondent to disclose his whereabouts.

22. Learned counsel for the Respondent did submit that his client had instructed a friend on 27th July, 1971 to inform the Appellants about his absence but

unfortunately the intimation was given only on 30th July, 1971 for which the Respondent cannot be blamed. The Respondent did not produce any such evidence before the inquiry officer and this merely appears to be a self serving statement made by him.

23. Learned counsel for the Respondent submitted that his client was residing near the Group Centre, Avadi and the Appellants could have very easily verified the ailment of the Respondent. This assertion by learned counsel does not appear to be correct in view of what has been stated in the counter affidavit filed to the writ petition. (No rejoinder was filed to this). It is stated in reply to paragraphs 7 to 8 as follows :

".....It may be pointed out that Group Centre, Avadi maintains a well-equipped hospital which is attended by a number of doctors daily. The petitioner was entitled to treatment at this hospital. The petitioner, if he was actually ill, could have gone to the medical centre and obtained a certificate from the authorised medical attendant. On the contrary, he obtained a medical certificate from a private physician of Madras City which place is at a distance of nearly 20 miles from avadi where the petitioner admitted that he was residing during his alleged illness. It is surprising that the petitioner could not attend a hospital which was so close to him nor could he submit his leave application in time but could travel 20 miles for his treatment".

24. Learned counsel for the appellants submitted that the medical certificate was not of an authorised medical attendant. As such, the Respondent had violated the provisions of S.R. 229 (a) which reads as follows :

"S.R. 229 (a) Every application for leave on medical certificate made by a non-gazetted Government servant shall be accompanied by a medical certificate in the form prescribed below this rule given by a registered medical practitioner defining as clearly as possible the nature and probable duration of the illness, or by a request for the issue of a requisition for examination by a medical officer of Government.

(b) -(c) XXX XXX XXX XXX"

25. A bare perusal of this provision shows that a medical certificate is required to be given by a registered medical practitioner. The form prescribed below this rule also mentions "Government Medical Attendant or other registered practitioner". The learned Single Judge had seen the original records of the case and had come to the conclusion that the medical certificate submitted by the Respondent was that of a registered medical practitioner. We have no reason to doubt this and, Therefore, we find no fault with the medical certificate furnished by the Respondent since it was in accordance with S.R. 229 (a).

26. For the reasons given above, we are in respectful disagreement with the learned Single Judge. The Appellants were entitled to take the view that the absence of the Respondent (and the manner in which he acquitted himself) from

27th July, 1971 to 5th August, 1971 amounted to grave misconduct. We are of the view that the findings arrived at by the appellants in this regard were not perverse. For the reasons indicated by us above, we are satisfied that since the Appellants were entitled to view the absence of the Respondent as a grave misconduct, they were also entitled to conclude that this warranted his dismissal from service. In any event, we cannot sit in Judgment over the quantum of punishment imposed on the Respondent.

27. By an interim order dated 19th October, 1982, a Division Bench of this Court had directed that the arrears of pay and allowances will be paid to the Respondent and as regards the future, the Respondent will be entitled to payment of half the salary and other allowances month by month till the disposal of the appeal. While we are not interfering with the dismissal of the Respondent from service, we do not think it would be appropriate to direct the Respondent to refund the amounts already received by him. But, hereafter, the Respondent will not be entitled to the benefit of the interim order dated 19th October, 1982.

28. Accordingly, we set aside the order of the learned Single Judge dated 7th January, 1982 and restore the order of dismissal passed by the Appellants. The appeal is allowed but there will be no order as to costs.