
(2010) 03 AP CK 0087

In the Andhra Pradesh High Court

Case No : Writ Petition No. 5880 of 2008

Union of India (UOI) and Others

APPELLANT

Vs

Dr. MS Gopaiakrishna

RESPONDENT

Date of Decision : 23-03-2010

Acts Referred:

Central Civil Services (Classification, Control and Appeal) Rules, 1965 — Rule 1, 14, 15(2), 2
Central Civil Services (Conduct) Rules, 1964 — Rule 3(1)
Central Civil Services (Leave) Rules, 1972 — Rule 25(2)

Citation : (2010) 5 ALT 586

Hon'ble Judges : Ghulam Mohammed, J;G. Bhavani Prasad, J

Bench : Division Bench

Advocate : A. Rajashekar Reddy, for the Appellant; J. Sudheer, for the Respondent

Final Decision : Allowed

Judgement

Ghulam Mohammed, J.—This Writ Petition has been filed in the nature of Writ of Certiorari calling for the records pertaining to order dated 27.4.2007 passed in O.A. No. 1185 of 2003 by the Central Administrative Tribunal, Hyderabad and quash the same as illegal and arbitrary.

2. O.A. No. 1185 of 2003 was filed to set aside the order dated 26.11.2001 passed by the third respondent-The Joint Director (Personnel) Research and Development, Government of India, Ministry of Defence, removing the applicant from service with immediate effect and to grant all consequential benefits due to him including arrears of salary, seniority, promotion etc.

3. Brief facts of the case are that the applicant was appointed as Scientist -B in 1982 and was promoted as Scientist-D in 1993. By his letter dated 7.1.1998 the applicant made a representation to the 4th respondent and requested for permission to apply for a post-doctoral fellowship in USA/Germany. This was forwarded to the 2nd respondent, who in turn vide letter dated 6.4.1998 granted

permission for the same. The applicant by letter dated 10.4.1998 wrote to the Cleveland State University for Post Doctoral Fellowship, who by letter dated 22.4.1998 wrote back offering him the Post Doctoral Research Work. The applicant thereupon by letter dated 4.5.1998 requested EOL for 10 months with effect from 1.6.1998 and no objection certificate to pursue the above mentioned assignment in USA. It is stated that the 4th respondent recommended the case of the applicant and forwarded the same to the 2nd respondent on 22.5.1998. The applicant had requested for EOL with effect from 1.6.1998 as he was required to report at the above University latest by 1.6.1998. It is also stated that since the leave sanctioned was not forthcoming and since the enquiries made in that regard gave him a bona fide impression that he would be granted the said leave, the applicant left India on 28.5.1998 to report to the said University by 1.6.1998. By letter dated 10.8.1998, the 4th respondent asked the applicant to report back immediately from USA and this was reiterated in the further letter dated 10.9.1998 by adding that if he did not report, disciplinary action will be taken under CCS(CCA) Rules. For that the applicant sent a letter explaining the circumstances under which he had to leave India and requested for sanction of the EOL. However, a charge memo dated 28.4.1999 was issued by the second respondent, to which the applicant sent his resignation through Fax on 9.6.1999 which was rejected on 22.9.1999 and thereafter, the applicant submitted a detailed explanation by letter dated 4.11.1999. It is further stated that an Inquiry Officer and a Presiding (sic. Presenting) Officer were appointed by proceedings dated 19.6.2000. An ex parte inquiry was conducted and the Inquiry Officer submitted his report on 9.4.2001. By letter dated 4.7.2001, the Joint Director (Administration) sought for written submissions from the applicant who submitted his written submissions on 17.9.2001, wherein the applicant pointed out that the Inquiry Officer held in his favour and accordingly he conveyed his regrets and unconditional apology to the disciplinary authority and once again requested for regularization of leave and grant NOC. However, by proceedings dated 26.1.2001, which is impugned in this O.A, the third respondent removed the applicant from service. The applicant thereupon preferred a review application before the President of India on 30.9.2001 which was also rejected by proceedings dated 26.8.2003. Aggrieved by the same, the present O.A has been filed.

4. The Tribunal perused the entire material made available on record and set aside the punishment of removal on two counts viz., firstly, the punishment of removal is unconscionable and disproportionate to the charge levelled against the applicant, secondly, the disciplinary authority has not acted fairly and honestly and the extreme action of the disciplinary authority culminating in the removal from service of the applicant is not at all warranted.

5. The learned Assistant Solicitor General, appearing for the Central Government assails the validity and legality of the judgment rendered by the Tribunal by seeking certiorari on the ground that the Tribunal has exceeded its jurisdiction in interdicting the disciplinary proceedings and set aside the dismissal order

directing the authorities to regularize the leave and grant NOC as requested for, which is impermissible under law.

6. On the other hand, Mr. J. Sudheer, learned Counsel appearing for the respondent contended that there is no question of framing of charges in the given situation since the respondent-applicant sought for permission by letter dated 4.5.1998 requesting for EOL for 10 months with effect from 1.6.1998 and no objection certificate to pursue the Post Doctoral Research Work in USA. Since the sanction of leave was not forthcoming the applicant left India on 28.5.1998 to report to the University by 1.6.1998. He also contended that the respondent-applicant sent a letter explaining the circumstances and requested for sanction of the EOL but still a charge memo dated 28.4.1999 was issued by the second respondent instead of passing the order either granting or rejecting the leave and communicating the same to the respondent-applicant. Therefore, the action of the petitioners in keeping the respondent-applicant in dark without taking any decision on the letter dated 4.5.1998 requesting for EOL for 10 months with effect from 1.6.1998 and without issuing no objection certificate, keeping the letter in the office of the 4th petitioner herein viz. The Director, DMRL, thereby causing 16 days delay, issued proceedings dated 26.11.2001 removing the respondent from service with immediate effect is highly illegal and arbitrary and for the unfair acts of the petitioners the respondent-applicant could not be blamed.

7. We have heard the learned Counsel appearing for both sides and also perused the material made available on record.

8. It is necessary to go into the findings and decision of the Inquiry Officer, vide inquiry report dated 19.6.2000, which reads as under:

Findings and decisions

(a) Charge I

(1) The article of charge as worded in (S2) does not provide a true picture. In addition, charging under Rule 3(1)(ii), which is related to "maintaining devotion to duty" in the IO's opinion, is not appropriate in this case.

(2) As the IO understands, the inquiry reveals,

That the said Dr. M.S. Gopalakrishna, while functioning as Sc.D During the year 1998 is absenting himself from duty with effect from July 1st 1998, even before a decision is taken by the competent authority regarding his application for EOL, ignorantly presuming that the EOL would be sanctioned on completion of the required formalities and his absence could be regularized eventually. This act on the part of the said Dr. Gopalakrishna exhibits unbecoming a government servant and contravenes Rule 3(1)(a) of CCS (Conduct) Rules, 1964.

(b) Charge II

(1) The article of charge as worded in (S2) does not provide a true picture.

(2) As the IO understands, the inquiry reveals,

That during the aforesaid period in aforesaid office and while functioning, the said Dr. M.S. Gopalakrishna is reported to have left the country and proceeded to USA impetuously, even before a decision is taken by the competent authority regarding his application for No Objection Certificate, presuming that the NOC would be sanctioned on completion of the required formalities and his leaving the country could be regularized eventually. This action on the part of the said Dr. Gopalakrishna exhibits unbecoming of a Government servant and contravenes Rule 3(1)(iii) of CCS (Conduct) Rules, 1964.

Considering the points listed in Section 6b, the IO humbly suggests the disciplinary authority to pardon the charged officer Dr. M. S. Gopalakrishna provided the CO admits, regrets and apologizes in writing for the impetuous and ignorant acts committed by him.

9. But the disciplinary authority vide order dated 26.1.2001 in exercise of powers conferred by Rule 1 (viii) of the CCS (CCA) Rules 1965 imposed the penalty of removal from service, which reads as under:

ORDER

Whereas Dr. M.S. Gopalakrishna, SC "D", DMRL, Hyderabad applied for 30 days earned leave on personal ground from 1.6.1998 to 30.6.1998;

Whereas Dr. M.S. Gopalakrishna SC "D" took EL on personal grounds giving local address as his leave address but proceeded abroad to USA to join the University of Cleveland as Post Doctoral Research Assistant"

Whereas Dr. MS Gopalakrishna SC "D" left the country without obtaining No Objection Certificate from the competent authority and joined a foreign institution without proper approval of the Government;

Whereas Dr. M.S. Gopalakrishna SC "D" did not report for duty on 1 July 98 after expiry of Earned Leave;

And whereas a Charge Sheet was issued to him under Rule 14 of CCS (CCA) Rules 1965 vide Memorandum No. RD/Pers-12/5678/GP-II/DMRL dated 28 April 1999 for his unauthorized absence with effect 1.7.1998 as well as proceeding abroad without obtaining NO Objection Certificate;

And Whereas an inquiry was conducted to go into the charges contained in the charge sheet under Rule 14 of CCS (CCA) Rules";

And Whereas the Inquiry Report submitted by the Inquiry Officer in the above inquiry established the charges thus confirming that Dr. MS Gopalakrishna, SC "D" acted in a manner unbecoming of a Government servant and contravened Rule 3(1) (iii) of CCS (Conduct) Rules and Rule 25(2) of CCS (Leave) Rules;

And Whereas a copy of Inquiry Report was provided to Dr MS Gopalakrishna, SC "D" for representation, if any;

And Whereas Dr MS Gopalakrishna, SC "D" Submitted his reply to the above Inquiry Report vide his letter dated 14 Sep 2001.

And Whereas after taking into account the entire facts and circumstances of the case as also the reply dated 14 Sep 2001 of Dr. M.S. Gopalakrishna, SC "D" the President considers that the conduct of Dr MS Gopalakrishna SC "D" is such as to warrant the imposition of the penalty of REMOVAL FROM SERVICE on him for his above stated acts of misdemeanor;

Now Therefore, in exercise of the powers conferred by Rule II (viii) of the CCS (CCA) Rules 1965, the president hereby impose the penalty of REMOVAL FROM SERVICE on Dr. MS Gopalakrishna, SC "D" with immediate effect.

10. A perusal of the above order discloses that the disciplinary authority while disagreeing with the findings of the Inquiry Officer did not give any reasons and opportunity of hearing to the delinquent employee for inviting his remarks and curiously passed the order of removal from service. Therefore, the respondent-applicant sought for review of the order to the President of India and the review authority vide order dated 26.8.2003 passed the following order:

In your review petition you have stated that the reasons for disagreement on inquiry report were not recorded by the disciplinary authority. In this connection it is clarified that the inquiring authority had at no place absolved you of the above charges. The Inquiry Officer in the concluding para of his report has said that your act of the absenting w.e.f. 1.7.1998 exhibited unbecoming of a Government Servant. Thus the I.O in his report has not said that the charge of your having been absent without any sanction of leave w.e.f. 1.7.1998 is not upheld. So far as the second charge of your leaving the country for USA without NOC from the competent authority, the IO in his report has concluded that this act on your part exhibited unbecoming of a Government Servant. The IO in his report had however suggested that the disciplinary authority may pardon the CO if he admits, regrets and apologizes in writing for the impetuous act committed by you. Thus it could be seen that IO has at no stage disproved the charges against you. He had only suggested to the disciplinary authority to consider your pardon, in case you submit any apology in writing. You did apologize in your reply of 14.9.2001 to the inquiry report which was considered by the disciplinary authority who after taking into account all the facts and the circumstances of the case, passed the impugned penalty order of 26.1.2001. Thus Rule 15(2) of CCS (CCA) Rules is not attracted in this case as there was no disagreement between the finding of the IO in the inquiry report and the disciplinary authority.

So far as your contention that your order should have been signed personally by DG R&D himself, the same is not tenable because as per Authentication (Orders and other Instruments) Rules, any order passed by the President can be communicated on his behalf by the designated appointments and it is not imperative that the DG R&D himself should sign such letters as the appointments below him have also been authorized vide above rules to sign communications on

behalf of the President.

11. The Tribunal while taking into consideration of the facts at paragraph 9 of the order held as under:

We have given our anxious consideration to all the pleadings of the rival sides. We find strong force in the pleadings of the applicant. The admitted facts are that by his letter dated 7.1.1998 at Annexure A-I, the applicant had written to the 4th respondent seeking permission to spend one year as a Post Doctoral Fellow in an overseas University/Institute, specifically in the Universities in USA as also in Germany. By letter dated 6.2.1998 in Annexure A-II, the respondents had recommended the same and forwarded to the 2nd respondent for grant of necessary permission at an early date. By letter dated 6.4.1998, the Assistant Director (personnel of the 2nd respondent's office has communicated permission to apply for doing postdoctoral fellowship to the applicant subject to the condition that similar facilities are not available within the country and also if his services could be spared. The permission was further subject to the condition that he would not request for financial assistance but pursue the study at his own expenses; it was further stated that the permission does not guarantee grant of leave; and that copies of all correspondence should be submitted to the second respondent. Accordingly, the applicant corresponded with the University of Cleveland State in USA by letter dated 10.4.1998 at Annexure A-IV and by letter dated 22.4.1998 at Annexure A-V, the said University was pleased to offer full time funds available contract at Cleveland State University for the period from 1.4.1998 to 31.3.1999 for a salary of \$ 24,000/-. By letter dated 22.4.198, the applicant accepted the offer and then sent a representation dated 4.5.198 vide Annexure A-6 to the 4th respondent wherein he requested for EL without pay and allowances from 1.6.1998 for a period of 10 months as also for no objection certificate. He enclosed all the documents particularly the letter of offer from the Cleveland State University. The prescribed format for obtaining no objection certificate was also enclosed together with other necessary documents. The said application, together with the certificates of leave already availed by the applicant, availability of Scientists for the said leave period and vigilance clearance etc were forwarded to the 2nd respondent on 22.5.1998 by the Chief Administrative Officer of the office of the 4th respondent. We also find that in the O.A, as also during the course of hearing, it was stated that the applicant was in continuous touch with the officers in the Headquarters and he was assured by the officials that the same would be sanctioned expeditiously. From the copies of the relevant file produced before the Bench for perusal by the respondents, it is seen that the application was processed in the office, vide the Minute Sheet No. 10, by the Admin. Superintendent wherein he noted that permission was sought from the Director (4th respondent) for processing with R&D Headquarters for issue of no objection certificate for obtaining passport-cum-proceeding abroad to visit USA for a period of 10 months from 1.6.1998 to 31.3.1999. The note was put up to the Director. It appears from the Director was not in town and so it was eventually signed by him only on 22.5.1998. This is clear from the next note

sheet dated 22.5.1998 which was submitted by the Chief Administrative Officer to the Director for forwarding the same to the Headquarters for sanction of EOL with effect from 1.6.1998 to 31.3.1999 as also the no objection certificate. It was specifically mentioned in the note that a check list of certificates required by the Headquarters was prepared and kept below for perusal. It is seen that the Director saw the note and signed it on 22.5.1998. From the Minute Sheet 10 of the 4th respondent it is further seen that the Admin. Superintendent has noted, vide para 2, that in response to the letter sent by the 4th respondent R&D Headquarters has sent a fax message dated 27.5.1998 stating that they have received the application only on 26.5.1998 and that the date of his proceeding abroad on 1.6.1998 was too optimistic, it is not clear from the above note that it was intimated to the applicant. In the meanwhile, the applicant submitted leave application dated 29.5.1998 requesting for grant of 30 days EL from 1.6.1998 to 30.6.1998 on personal reasons which has been granted by Dr. A.M. Srirama Murthy, his Group Coordinator. A query was raised in the note as to how the officer applied for 30 days EL with effect from 1.6.1998 on personal grounds when he has applied for 10 months EOL with effect from 1.6.1998 which was under consideration at R&D Headquarters. The Director had then ordered to obtain comments from the Group Coordinator, vide his note dated 3.6.1998 and the Group Coordinator has recorded next, that since the Headquarters had commented that EOL from 1.6.1998 was too optimistic and obviously, therefore, Dr. M.S. Gopala Krishna (applicant) cannot avail EOL from 1.6.1998 and he can only decide commencement of EOL after his EOL is accepted. Thus, his EL and EOL are not concurrent. From the above proceedings, it is clear that since there was going to be delay in processing of the papers at Headquarters for sanction of EOL with effect from 1.6.1998, the applicant had felt the need to obtain permission for EL for one month during the month of June, so that EOL could be processed with effect from 1.7.1998. From the Inquiries made by him with the officers at the Headquarters also, it appeared to him that things were progressing as per plan. However, since his reporting at Cleveland State University could not be changed from 1.6.1998 and if he did not report on 1.6.1998, he would not be taken by the University authorities and the entire purpose would be defeated, the applicant has, under the bonafide belief that his leave will be sanctioned in due course, has left the country.

12. The learned Counsel appearing for the respondent-applicant has drawn our attention to the judgment of the Supreme Court reported in State of Punjab Vs. Dr. P.L. Singla, wherein the Supreme Court at paragraphs 12 and 14 held as under:

12. An employee who remains unauthorisedly absent for some period (or who overstays the period of leave), on reporting back to duty, may apply for condonation of the absence by offering an explanation for such unauthorized absence and seek grant of leave for that period. If the employer is satisfied that there was sufficient cause or justification for the unauthorized absence (or the overstay after expiry of leave), the employer may condone the act of indiscipline

and sanction leave post facto. If leave is so sanctioned and the unauthorized absence is condoned, it will not be open to the employer to thereafter initiate disciplinary proceedings in regard to the said misconduct unless it had, while sanctioning leave, reserved the right to take disciplinary action in regard to the act of indiscipline.

14. Where the employee who is unauthorisedly absent does not report back to duty and offer any satisfactory explanation, or where the explanation offered by the employee is not satisfactory, the employer will take recourse to disciplinary action in regard to the unauthorized absence. Such disciplinary proceedings may lead to imposition of punishment ranging from a major penalty like dismissal or removal from service to a minor penalty like withholding of increments without cumulative effect. The extent of penalty will depend upon the nature of service, the position held by the employee, the period of absence and the cause/explanation for the absence. Where the punishment is either dismissal or removal, it may not be necessary to pass any consequential orders relating to the period of unauthorized absence (unless the rules require otherwise). Where the punishment awarded for the unauthorized absence, does not result in severance of employment and the employee continues in service, it will be necessary to pass some consequential order as to how the period of absence should be accounted for and dealt with in the service record. If the unauthorized absence remains unaccounted it will result in break in service, thereby affecting the seniority, pension, pay, etc, of the employee. Any consequential order directing how the period of absence should be accounted, is an accounting and administrative procedure, which does not affect or supersede the order imposing punishment.

13. In *R.C. Sood Vs. High Court of Judicature at Rajasthan and Others*, the Supreme Court held that "We have no doubt that the action taken by the Court was not bona fide and amounts to victimization. This is certainly not expected from a judicial forum, least of all the High Court, which is expected to discharge its administrative duties as fairly and objectively as it is required to discharge its judicial functions."

14. In the light of the above factual contentions, the point that arises for consideration is as to whether the Tribunal has exceeded its limit so as to warrant our certiorari jurisdiction.

15. We have perused the order passed by the Tribunal. Admittedly, the respondent sought for EOL by letter dated 4.5.1998 to go abroad to pursue his Post Doctoral Research Work, for ten months with effect from 1.6.1998 and for No Objection Certificate, but no orders were passed either granting or rejecting the leave and the same is still pending till today. The Tribunal has perused the entire record and gave cogent and plausible reasons stating that the authorities have not acted fairly and imposed extreme punishment of removal from service therefore, directed the respondents to regularize the leave and grant NOC as requested for by the respondent-applicant.

16. We have given our anxious consideration. This Court normally while exercising judicial review does not interfere with the imposition of punishment and substitute its own finding to that of disciplinary authority. If the punishment is so excessive and disproportionate to the charge levelled against the respondent-applicant, in such situation the Court while exercising judicial review remit back the matter to the disciplinary authority to impose a lighter punishment. In the given case the Inquiry Officer himself mentioned at 6(b) Points to be considered in favour of the Charged Officer, which reads as under:

(b) Points to be considered in favour of the CO

(1) The earliest official record relevant to this case is the CO's application seeking permission to correspond with the foreign universities, forwarded (D3a) to the HQs on November 26th 1997. Therefore, the CO had all along been keeping DMRL informed about his intentions to pursue post-doctoral studies abroad. This is further corroborated by Dr. A.M. Sriramamukrthy's (the CO's Group Co-ordinator) testimony (SW2) that he came to know about the CO's intention to pursue post doctoral work abroad after the CO's PhD work (in July 197). Also, there was no procedural lapse until the CO's application seeking permission for NOC and EOL to proceed abroad, considered complete in all respects (SW1"), was forwarded (S3) by DMRL on May 22nd 1998. The CO's motives and actions were neither clandestine nor manipulative. When the awaited clearance for NOC and EOL did not materialize in time, the panicked CO impetuously and ignorantly decided to leave the country immediately to join Cleveland University, presuming regularization of his leave once the NOC is issued and the EOL is sanctioned by the HQs. This was further fuelled by the then (May 1998) prevailing situation (D2), where, further postponement of the CO's departure perhaps would have costed him what he refers to as his life time opportunity."

(2) The CO's expression of inability to postpone the reporting date at the Cleveland University with a reason that it would eat into the already truncated NASA sponsored programme period sounds genuine.

(3) the CO's pleading for inability to report at DMRL in response to S7 and S8, on the grounds of financial difficulties and uncertainty of visa for returning to USA, sounds reasonable.

(4) Hypothetically, supposing the CO had the clearance for NOC and EOL before May 31st 1998, the events would not have mushroomed to this extent. Hypothetically considering, if the two tier procedure followed for obtaining the NOC and EOL is a little shorter, the events perhaps would have taken a different course. It is to be noted that the CO's first application seeking permission to correspond with the foreign universities and institutions, forwarded (D3a) on November 26th 1997, was turned down (D4a dated December 15th 1997) on the grounds that it lacked specific information about the university and the assignment. The application was renewed (D3b) on February 6th 1998 with

specifics and was cleared (D4b) on April 6th 1998. Finally, based on the offer for the period April 1st 1998 to March 31st 1999, informed through letter (D5) dated April 22nd 1998, the CO submitted his application for NOC and EOL on May 4th 1998 and the same was forwarded on May 22nd 1998 to HQs. Essentially it so happened in this case the time taken for the offer for the post doctoral fellowship was too short compared to the normal time required for the procedures related to the clearance for NOC & EOL and that has resulted in series of undesirable developments.

17. The Inquiry Officer gave a suggestion that the disciplinary authority to pardon the charged officer, provided the Charged Officer admits, regrets and apologizes in writing for the impetuous and ignorant acts committed by him. Hence, the disciplinary authority has not followed the procedure while disagreeing with the findings of the Inquiry Officer and imposed major punishment of removal from service and there is no explanation offered by the petitioners with regard to the action taken on EOL also on NOC and that itself shows lapses on the part of the authorities in not acting fairly and reasonably with regard to the application made by the delinquent officer for his EOL and NOC.

18. In the circumstances, we have come to the conclusion that the punishment imposed by the disciplinary authority suffers from procedural irregularities and also unconscionable and disproportionate to the charge levelled against the respondent-applicant. Therefore, the order passed by the Tribunal in setting aside the impugned order of removal is hereby quashed.

19. Having regard to the facts and circumstances of the case, we are of the opinion that the matter is required to be considered by the Disciplinary Authority by imposing minor punishment. Accordingly, the Disciplinary Authority is directed to consider and dispose of the case of the respondent-applicant by imposing minor punishment other than the removal, within a period of two months from the date of receipt of a copy of this order. The Disciplinary Authority is also directed to pass appropriate orders with regard to the period in which the respondent-applicant remained absent.

20. Accordingly, the Writ Petition is allowed. There shall be no order as to costs.