

(2004) 12 CAL CK 0025
In the Calcutta High Court
Case No : C.A.J.M.A.T. No. 015 of 2004

Union of India (UOI) and Others

APPELLANT

Vs

Jag Jeevan Ram

RESPONDENT

Date of Decision : 17-12-2004

Acts Referred:

Central Civil Services (Classification, Control and Appeal) Rules, 1965 — Rule 10(1)

Citation : 108 CWN 497 : (2005) 106 FLR 1202 : (2005) 3 LLJ 679

Hon'ble Judges : N.A. Chowdhury, J; Ashim Kumar Banerjee, J

Bench : Division Bench

Advocate : B.K. Das and D. Sivabalan, for the Appellant; Shyamali Ganguly, for the Respondent

Final Decision : Dismissed

Judgement

Ashim Kumar Banerjee, J.—The instant appeal was filed by the Union of India being aggrieved by the judgment and order dated July 12, 2004 passed in W.P. No. 174 of 2003 filed by the Respondent abovenamed.

2. The Respondent/Petitioner was an employee of Nehru Yuva Kendra, Kamorta. The writ petitioner was on leave for the period from February 12, 1996 to February 25, 1996. He applied for extension upto March 22, 1996. He joined on March 23, 1996 and served the appellant till May 20, 1996. The Appellant by an order dated April 19, 1996 asked the writ petitioner to hand over charge. Accordingly, the writ petitioner handed over charge on May 20, 1996. However, he was neither assigned any duty after May 20, 1996 nor he was paid salary since January, 1996. On November 5, 1996 the appellant authority issued a Memorandum, wherein it was stated that a disciplinary proceeding was contemplated as against the writ petitioner/respondent for long unauthorised absence. The authority observed that the request for regularisation of such unauthorised absence would be considered after receipt of appropriate documents. However, this was without prejudice to the disciplinary proceeding "already initiated" against him by the head office.

3. The writ petitioner immediately replied by his letter dated November 8, 1996 and submitted relevant documents regarding his ailments for consideration of the authority. The authority remained silent on the issue for about 3 and 1/2 years and ultimately issued a show cause on November 10, 2000. The principal allegations as against the writ petitioner/ respondent were as follows:

(i) The writ petitioner/respondent had illicit relationship with one Ms. Shanti, a co-employee, who become pregnant due to such illicit relationship and the writ petitioner/respondent was responsible for the same.

Since March, 1996 the writ petitioner/ respondent was running his own business at Port Blair and absented from duty without obtaining prior permission.

4. The writ petitioner/respondent immediately replied to the said show cause by giving his explanation on February 17, 2000. After a lapse of about seven months, the authority by a Memorandum dated September 8, 2000 submitted a charge-sheet. Although the said charge sheet was dated September 8, 2000, the same was served on October 10, 2000. In the charge-sheet, the first charge which was initially made with regard to illicit relationship with a co-employee was conspicuously absent. The authority proceeded to hold enquiry principally on two aspects i.e. for unauthorized absence and involvement in other employment for the said period. The authority thereafter proceeded and held an enquiry after receipt of the reply from the writ petitioner/respondent. Ultimately, the authority passed the order of removal on April 12, 2002. On May 24, 2002 the writ petitioner/respondent preferred an appeal to the Chairperson of Nehru Yuva Kendra, the appellate authority, prescribed therefor. The appeal was rejected on July 10, 2003.

5. The writ petitioner/respondent approached this Court as against the order of removal dated April 12, 2002 as well as the order of rejection of the appeal dated July 10, 2003. The appellant filed Affidavit-in-opposition inter alia contending that on May 20, 1996 when the Petitioner/appellant was asked to hand over charge he did hand over charge on that day, since then he was placed under deemed suspension and the authority thereafter proceeded against him and ultimately awarded punishment of removal.

6. The learned single Judge by His Lordship's well-versed judgment and order dated July 12, 2004 allowed the writ petition and set aside the impugned order of punishment and directed reinstatement of the writ petitioner/respondent, however, without any back wages.

7. I have carefully perused the said judgment and order of His Lordship. His Lordship considered each and every aspect of the matter as well as the evidence adduced by the parties before the enquiry officer, specially the ailments of the writ petitioner. His Lordship found that there was inordinate delay in proceeding as against the writ petitioner/ respondent by the appellant, that too without any formal order of suspension. His Lordship held that the proceedings were vitiated by serious infirmities. I do not find any scope or interference at all. I feel that

considering the facts and circumstances His Lordship proceeded in a right direction and the judgment is absolutely accurate.

8. I, however, wish to add few words by approaching the problem from a different angle. The writ petitioner was relieved of his duty in May, 1996. He was not paid his salary from January, 1996. Assuming that the period commencing from May 20, 1996 till the date of removal he was under deemed suspension the authority admittedly did not pay a single farthing on account of suspension allowances.

9. On the issue of suspension it was contended on behalf of the appellant that Rule 10(1) of CCS/CCA Rules, 1965, a Government servant who chose to remain absent from duty or overstayed leave without permission and his movement is not known to the authority, he should not be placed under suspension, as this would attract subsistence allowance.

10. In the instant case, admittedly, the petitioner/respondent joined on March 23, 1996 and was in continuous service until May 20, 1996 when he had to hand over charge at the instance of the Respondent authority. For the subsequent period, neither he was allotted any duty nor was he paid any subsistence allowance. I am unable to find out any reason how this particular Rule could be made applicable in the instant case. In this regard, the Apex Court's decision in the case of *Mithilesh Singh v. Union of India and Ors.* was relied on. In the said case, a constable of the Railway Protection Special Force left his duty by leaving his arms without informing the appropriate authority and came back after 25 days and asked for ex post facto leave. The authorities immediately proceeded against him and awarded punishment for removal from service. In the instant case, the writ petitioner admittedly joined on March 23, 1996 and served the respondent till May 20, 1996 when he was asked to hand over charge. The respondent authority thereafter waited for four years to proceed against him. How this judgment can be made applicable in the instant case, is a question which has not been properly answered by the learned Counsel appearing for the appellant.

11. The authority initially charged the writ petitioner/respondent with a grave offence of moral turpitude. When the formal charge-sheet was given the said charge was conspicuously absent. The writ petitioner was proceeded with on the ground of unauthorised absence and making financial gain during the period of absence.

12. The above facts would show how biased the respondent authority was. If the writ petitioner/respondent was really involved in such illicit relationship with a co-employee, why the appellant did not proceed as against him contemporaneously, is a question whose answer is not known to me. In November, 1996 when the writ petitioner was asked to produce documents in support of his ailment to substantiate his unauthorized absence the respondent authority upon receipt of the explanation should have considered the same, contemporaneously and

should have communicated the result to the writ petitioner within a reasonable period but it was not done. If these are not the instances of bias, I do not know what more it could be.

13. I am convinced that the Respondent authority was determined to remove the writ petitioner/respondent from service. For an erring employee his employer is entitled to proceed as against him for his wrong and punish him adequately. For that a proper procedure is laid down in Service Jurisprudence. If a person is convicted of an offence he must be convicted through due process of law and the rules prescribed therefor. I am constrained to say that it was not done in the instant case.

14. The other aspect which I wish to highlight is "stale charge". The offence was committed in the year 1996 and formal charge-sheet was given in the year 2000. The charge-sheet was served after a month from the date of its issue. The authority took another two years to complete the proceeding. This is contrary to the well-settled principles of law in Service Jurisprudence.

15. I have highlighted the above two aspects only to supplement the well-versed and accurate decision of His Lordship. I have no hesitation to affirm the said decision of His Lordship impugned in this appeal.

16. His Lordship disallowed back wages. No cross-objection was filed on behalf of the Respondents. Hence I do not wish to deal with that issue.

17. In the result, the appeal fails and is hereby dismissed. The respondent authority must pay the costs of this appeal to the respondent/writ petitioner assessed at Rs. 15,000/- to be paid within a fortnight from date.

N.A. Chowdhury, J.

18. I agree.