
(2014) 09 DEL CK 0195
In the Delhi High Court
Case No : W.P.(C) 5102/2010

Wing CDR SJS Randhawa

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 02-09-2014

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2014) 09 DEL CK 0195

Hon'ble Judges : Najmi Waziri, J;Kailash Gambhir, J

Bench : Division Bench

Advocate : S.S. Pandey, Advocate for the Appellant; Anjana Gosain, Advocate for the Respondent

Final Decision : Dismissed

Judgement

Najmi Waziri, J.—This petition filed under Article 226 of the Constitution of India seeks: (i) setting aside of an order dated 12th December, 2008 whereby the petitioner was awarded "Severe Displeasure" for 12 months by respondent No. 3; (ii) the quashing of an order dated 23.02.2009, which rejected the petitioner's representation against the said order; (iii) seeks the re-consideration of the petitioner's case de hors the aforesaid administrative action for grant of promotion to the rank of Group Captain (Time Scale) along with his batch mates and finally, (iv) his promotion to such rank with all consequential benefits including back wages, arrears etc.

2. The petitioner's case is that while he was posted with Indian Air Force, Head Quarters, Subroto Park, New Delhi; he took admission in a three years MBA course (Part Time) (2006-2009) starting from July, 2006 to May, 2009 from Lal Bahadur Shastri Institute of Management, Delhi after due permission. By posting order dated 11.06.2008, he was transferred to Head Quarters, Eastern Air Command with effect from 11.08.2008. Through a representation dated 12.06.2008, he sought deferment/cancellation of the said posting order in view of the academic course undertaken by him. His representation was rejected on

15.06.2008, which he challenged in Civil Writ Petition No. 5257 of 2008. On 23rd July, 2008 this Court directed that:

"till the next date of hearing, the petitioner shall be treated on leave by utilization of the leave due and available to the petitioner under any category. The petitioner to make necessary application for the same. We make it clear that we are not staying the operation of any transfer of any personnel in the post held by the petitioner. Renotify on 2.12.2008."

Later, on 01.09.2008 this Court passed the following order:

"In view of the limited request by the petitioner, in order to permit him to complete the course by 30.05.2009, it is agreed that either the case of the petitioner would be taken up for grant of extended extraordinary leave with the Central Government for the period for which no leave of any kind is due to the petitioner, or the petitioner may be kept in service in Delhi on a post till 30.05.2009 whereafter he can be transferred as per exigency of service. The petitioner will not object to any place where he may be so transferred.

The writ petition and the application stand disposed of."

The petitioner submits that he applied for "leave under any category" vide application dated 01.09.2008. However, this Court finds that the letter is dated 01.11.2008 and it was received on 02.11.2008 by respondent No. 4 at 2225 hours.

The application for "leave under any category" dated 13.10.2008 records that:

"The Air Force counsel has agreed for grant of EOL which will be regularized by Govt. of India or Study Leave for the entire period i.e. 28 July, 2008 to 31st May, 2009 without any financial loss to me.

In addition, I have agreed to resume duty and complete the course in presence of Hon''ble Judge.

The decision is awaited from the Air Force on confirmation of grant of study leave, as agreed on 1st September, 2008. I will be grateful to the service for the kind gesture."

3. The petitioner contends that he had filed two applications to his Commandant on 24.07.2008, one for the duration of 28.07.2008 to 02.12.2008 and another for study leave from 28.07.2008 to 31.05.2009 and all along the petitioner awaited a response from the respondents. On 06.08.2008, he was intimated that he had been granted 12 days annual leave from 28.07.2008 to 08.08.2008 and the balance of 18 days annual leave due to him for the year 2008, followed by 60 days of furlough leave. The petitioner states that he had made representations to respondent No. 4, his immediate superior through respondent No. 3, vide letter dated 13.08.2008. It is further submitted that he was threatened by respondent No. 4 that his action would be adverse to his interests. The petitioner contends that he received intimation from the respondents on 19.08.2008 that he had

been granted balance of 18 days annual leave from 09.08.2008 to 26.08.2008 and 60 days furlough leave from 27.08.2008 to 25.10.2008 but they did not submit the application of study leave of the petitioner to the sanctioning authority which had already been forwarded by the petitioner vide his letter dated 24.07.2008 and 13.09.2008. By letter dated 24.10.2008, the petitioner was informed that his request for extraordinary leave had been referred to the Central Government and a decision thereon was awaited. In the said letter, it was also mentioned that the petitioner had not submitted any fresh application for grant of study leave in spite of a reminder issued by the Head Quarters dated 18.08.2008. The petitioner was further given liberty to decide whether or not he would join duty on the expiry of his furlough leave. It is not disputed that the petitioner remained absent without leave from 26.10.2008 to 07.11.2008. He reported for duty on 08.11.2008. Accordingly, the respondents issued him a show cause notice/censure notice and after having considered his reply thereto, the respondents held him blameworthy for the aforesaid lapse. Therefore, he was awarded "Severe Displeasure" for 12 months on 12th December, 2008.

4. The learned counsel for the petitioner submits that as a consequence of this administrative action, the petitioner suffered grossly in his promotion to the next higher rank of Group Captain (Time Scale) and other consequential benefits. He submits that the said action is fully unjustified. He further submits that the Ministry of Defence, Government of India had already written to the Air Head Quarters vide letter dated 22.10.2008 that there was no provision for grant of extraordinary leave without pay. The letter also opined that in the absence of statutory provisions for grant of such leave, the Air Head Quarters should have informed this Court appropriately. The said letter further stated that the alternate option as suggested by this Court i.e., retention of the petitioner till May 2009, was well within the powers of the Air Head Quarters. The learned counsel for the petitioner submits that this order was never communicated to the petitioner. His posting, however, was subsequently retained in Delhi, where he continued till the completion of his academic course. The learned counsel for the petitioner submits that since the petitioner's office was in close proximity of his residence i.e., merely 100 yards away, there was no cause why he would not have attended the office had he been told that his application for leave had not been sanctioned. He submits that the petitioner, who had superannuated, could not have declined to report for duty had he been intimated otherwise. He submits that the petitioner has been a disciplined officer of a disciplined force, always adhering to rules and never contemplated doing anything contrary to the rules. Therefore, the learned counsel submits that the censure against the petitioner is unjustified, arbitrary and is liable to be set aside.

5. In response, Ms. Anjana Gosain, the learned counsel for the respondents submits that the petitioner had been intimated vide letter dated 24th October, 2008 that his leave would be expiring on 25th October, 2008. By 27th October, 2008 he was again intimated that his leave had expired. Vide letter dated 24th October, 2008 he was informed that:

"... meanwhile 60 days furlough leave granted to you is expiring on 25th October, 2008. You have not preferred any fresh application for grant of Study Leave in spite of the reminder issued by this HQ letter of even number dated 18th August, 2008.

You may therefore decide as to whether to join the duty or not on expiry of the furlough leave granted to you."

By letter dated 27th October, 2008 he was intimated that:

"Further to this HQ letter of even reference dated 24th October, 2008.

You are hereby informed that your posting to the HQ EAC has been cancelled vide Air HQ (VB) PO/643 dated 24th October, 2008. You are also informed that the furlough leave granted to you has expired on 25th October, 2008."

6. On 30th October, 2008, the petitioner was again informed, with reference to the Head Quarters" letters dated 24th October and 27th October, 2008 about the serious concern over his not having joined back to duty. The relevant extract of the letter reads as follows:

"it is noted with serious concern that in spite of specific notice to you about your cancellation of posting for retention in Delhi by Air HQs and the expiry of leave including furlough granted to you on 25th October, 2008, you have not joined the duties and continued to be absent without sanction of any leave. You are to report this HQ immediately. Your study leave application has not been processed as leave dated are invalid consequent to Hon"ble Delhi High Court Orders dated 1st September, 2008 and you did not prefer any fresh application and now you have been retained in Delhi by cancellation of posting to HQ EAC."

7. The learned counsel for the respondents submits that the petitioner had been informed and indeed reminded time and again about his leave getting over and there was no reason for his not reporting back to duty. Thereafter, a notice was pasted at his residence as per laid down procedure. She submits that the petitioner's absence for a total period of 13 days invited severe displeasure which was justified. She submits that despite repeated intimation that his leave had expired and he should join duty immediately, there was no response from the petitioner. She submits that the impugned orders are justified and as per rules.

8. This Court is of the view that insofar as the petitioner was aware and was reminded repeatedly that his leave had expired on 25th October, 2008 and had also been intimated that he would continue to stay on in Delhi, he was nonetheless required to report back to duty as there was no sanctioned leave beyond 25th October. He could not have assumed that he could stay on leave till his application was responded to by the Government. It is also immaterial that he was not communicated the substance of the Government's reply dated 22.10.2008, which had declined the grant of extraordinary leave to the petitioner. Till such time that the petitioner had no sanctioned leave, he was

expected to report to work. He served in a disciplined force. The edifice of such a force is based upon and sustained through strict observance of the rules; otherwise it would seriously impair the command structure, battle preparedness and optimal utilization of the force. Indiscipline compromises public interest. The higher the officer in seniority, the greater the responsibilities that would rest upon his/her shoulders. Therefore, the effect of indiscipline too would be correspondingly magnified. For a disciplined force, the non- adherence to rules is to be viewed with due alacrity and seriousness. It should be swiftly crushed. There is no explanation forthcoming for the petitioner's absence from duty without authorization for 13 days from 26th October, 2008 till 7th November, 2008. In such a circumstance, the respondents took action as per the laid down procedure.

9. This Court finds no reason to interfere with the said orders. The petition is without merit and is accordingly dismissed.