

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Date of decision: 3.11.2008

+ **WPC No. 6446/2002**

VIJAY KUMAR WALI Petitioner
Through: Mr. T. S. Chaudhary, Adv

Versus

UNION OF INDIA & ORS. Respondents
Through: Ms. Shilpa Singh, Adv.

CORAM:

HON'BLE MR. JUSTICE SANJAY KISHAN KAUL

HON'BLE MR. JUSTICE MOOL CHAND GARG

1. Whether the Reporters of local papers may be allowed to see the judgment?
2. To be referred to Reporter or not?
3. Whether the judgment should be reported in the Digest?

SANJAY KISHAN KAUL, J (ORAL).

1. Rule DB.
2. At the request of learned counsel for the parties, matter is taken up for final hearing.
3. The petitioner is sought to be punished pursuant to a departmental inquiry holding him guilty for not obtaining the requisite No Objection Certificate before travel abroad.
4. The petitioner was working as an Upper Division Clerk with the Secretarial Department of Ministry of Defence. The petitioner proceeded abroad on three occasions as under:
 - i) From 3.1.1987 to 7.1.1987 Bangkok & Singapore;
 - ii) From 31.1.1987 to 3.2.1987 Dubai and;
 - iii) From 24.3.1989 to 29.3.1989 Bangkok & Singapore
5. The inquiry against the petitioner started only in the year 1991

when it was alleged that No Objection Certificate from the competent authority to go abroad had not been obtained. The DHQ Identity Card was also not submitted and the petitioner had not indicated how he maintained himself abroad. This resulted in a memorandum dated 10.10.1991 issued to the petitioner along with the statement of article of charges. It appears that no substantive proceedings took place in pursuance to the said memorandum as the petitioner was promoted to the post of an Assistant but on such promotion a fresh memorandum dated 19.5.1993 along with the statement of article of charges was issued. The following three articles of charge were put against the petitioner:

Statement of articles of charge against Shri V. K. Wali, Asstt., Ministry of Defence.

Article-I

Sh. V. K. Wali, while working as UDC in the Ministry of Defence, went abroad as follows:-

- i) Bangkok & Singapore w.e.f. 3.1.1987 to 7.1.87
- ii) Dubai w.e.f. 31.1.1987 to 3.2.1987
- iii) Bangkok & Singapore w.e.f. 24.3.1989 to 29.3.1989

He stayed at hotel Ambassdor while in Dubai, at Metro Guest House while in Bangkok and Arya Samaj Mandir while in Singapore as per the own reply dated 6th July, 1990 and 21st June, 1991. In view of the limited foreign exchange allowed by the Reserve Bank of India for such foreign travels it is evidence that Shri Wali managed the requisite foreign exchange as gifts from some interest persons or his friends/near relatives in contravention of Rules 13 of the CCS (Conduct) Rules, 1964 and even failed to report to the Govt. about such gifts.

Article-II

Shri V. K. Wali, while working as UDC in this Ministry went abroad to Bangkok & Singapore w.e.f. 3.1.87 to 7.1.87, to Dubai w.e.f. 31.1.87 to 3.2.87 and again to Bangkok & Singapore w.e.f. 24.3.89 to 29.3.89 without obtaining NOC from the competent authority. He also did not deposit his DHQ identity card with D(Est.I/Gp.II), Section before proceeding abroad, which is a normal condition for such NOC, thus, creating a probable security risk. Such conduct on the part of Shri Wali is unbecoming of a Govt. Servant in contravention of provisions of Rule 3(1)(iii) of the CCS (conduct) Rules, 1964.

Article-III

Shri V. K. Wali, while working as UDC in the Ministry of Defence visited Bangkok, Singapore and Dubai in 1987 and 1989 on three occasions as mentioned above without obtaining prior sanction of the competent authority for leaving the Hqrs and visiting foreign countries. Despite opportunity having been given to Shri Wali, he has failed to produce any evidence that such permission to leave the Hqrs and visit foreign country was obtained by him. Such a conduct on the part of Shri Wali is unbecoming of a Govt. servant in violation of Rule 3 (1)(iii) of the CCS (conduct) Rules, 1964.

6. On inquiry, article No. 1 did not stand proved while articles No. 2 & 3 were stated to have been proved as per the report of the inquiry officer dated 20.12.1994. The said inquiry report was submitted to disciplinary authority which in turn sought the opinion of the UPSC.

7. The UPSC opined that the proceedings against the petitioner should be dropped as per the communication dated 11.12.1995. The disciplinary authority, however, was not satisfied with the said advice and the UPSC was asked to re-consider the matter. However, even on re-consideration the UPSC by its letter dated 21.11.1997 reiterated its earlier advice.

8. The matter did not rest at this as the respondent, thereafter, in consultation with the DOPT decided to disagree with the advice of the UPSC and imposed on the petitioner a penalty of withholding of increments of pay for a period of two years with cumulative effect as per order dated 3.11.1999. This also resulted in the consequence of the reversion of the petitioner to the substantive post of UDC with effect from the date of penalty from the post of ad-hoc Assistant which he was occupying, as per the order dated 18.2.2000.

9. The petitioner aggrieved by the said order filed OA No. 2296/2000 before the Central Administrative Tribunal but the same was rejected by the impugned order dated 23.1.2002. It is thereafter that the present writ petition has been filed.

10. It is the case of the respondents that the two charges against the petitioner stand proved. These relate to failure to obtain a No Objection Certificate from the competent authority and non-deposit of his DHQ identity card. The second part of the charge is that the petitioner ought not to have left the Headquarters and visit foreign countries without such prior sanction. In nut shell, the whole issue

revolves around the failure of the petitioner to obtain the No Objection Certificate before proceeding abroad. However, according to learned counsel for the petitioner there is no substance in the charges leveled against the petitioner. In this regard, he has invited our attention to a memorandum dated 1.9.1986 which reads as under:

No. 63013/1/86/D(Est.I/Gp.I)
Government of India,
Ministry of Defence,
New Delhi, the 1st September, '86'

MEMORANDUM

Subject: Issue of 'No Objection Certificate' for getting an Indian Passport and visiting abroad.

With reference to his application dated 01.07.1986 Shri Vijay Kumar Wali, UDC, Ministry of Defence, is informed that this Ministry have no objection to his getting an Indian passport for the purpose of visiting USA & Middle East subject to the following conditions:-

- (a) He will not extend his leave applied for and sanctioned, otherwise he will render himself to disciplinary action.
- (b) He will have to give an undertaking that he will not take up any employment or undertake any study abroad without first resigning from his post in this Ministry.
- (c) He will have to give the correct leave address during his visit abroad.
- (d) He will deposit his DHQ Identity Card with D(Est.I/Gp.II) before going abroad.

Sd/-

(G.B. Wadawadagi)

Under Secretary to Government of India

Shri Vijay Kumar Wali,
UDC, D(Est.2/Cash)

11. The aforesaid was issued specifically to the petitioner in pursuance to a leave application made by the petitioner giving a No Objection of the Ministry of Defence for the issuance of a Passport to the petitioner subject to fulfillment of the conditions specified in the said memorandum.

12. It is after the issuance of the passport based upon the conditions stipulated in the memorandum dated 1st September, 1986 that the petitioner submitted applications for his visit abroad on three occasions in the following manner :-

To

The Accounts Officer,
D(Est.2/Cash),
Ministry of Defence,
New Delhi.

Subject: Grant of Casual Leave for leaving country

Sir,

I wish to visit Singapore for tourism. I, therefore, request you to kindly grant me three days C/L w.e.f. 5th to 7th January 87 for the purpose.

As warranted vide this office Memo No. A/63013/1/86/D(Est.1/GP.1) dated 1-9-86, I undertake:-

- (i) that I will not extend the leave applied for
 - (ii) that I will not accept any employment or study abroad.
- As my visit is very short and halt there is uncertain hence no address.

My application may kindly be transmitted to the competent authority.

Thanking you,

Yours faithfully,
(Vijay Kumar Wali)
U.D.C.

Dated
8-12-86

To

The Accounts Officer,
D(Est.2/Cash),
Ministry of Defence,
NEW DELHI.

Sir,

I intend to go Dubai for tourism, therefore, request you to kindly grant me a day's C/L for 3.2.87. As per instruction of Memo No. A/63013/1/86/D(EST.T/GP.I) dated 1-9-86, I undertake:-

- (i) that I will not extend the leave applied for
- (ii) that I will not accept any employment/study abroad.
- (iii) Since my visit is very short and halt there is subject to availability of accommodation in any hotel hence no address.

My application may kindly be forwarded to the competent authority and oblige.

Thanking you,

Yours faithfully,
(V. K. Wali)
UDC

Dated
8/1/87

To

The Accounts Officer,
D(Est.2/Cash),
Ministry of Defence,
NEW DELHI.

Subject: Grant of Casual Leave for going abroad

Sir,

I want to go Bangkok and Singapore for the purpose of tourism. I, therefore, request your goodself to grant me C/L for

3 days (27,28, & 29th March 89).

With reference to Memo No. A/63013/1/86/D(Est.I/Gp.I) dated 1.9.1986, I under-take that neither I will extend the leave applied for nor will accept any employment/study abroad. Because my visit is short and halt there are uncertain, therefore no leave address.

You are requested to forward my application to competent authority and oblige.

Thanking you,

Yours faithfully,
(Vijay Kumar Wali)

Dated: 15/2/1989
U.D.C.

13. This shows that the petitioner had well in advance submitted the initial application on 1.7.1986 in pursuant where to a memorandum dated 1.9.1986 was issued and thereafter he made formal applications referred to above. The petitioner proceeded abroad and rejoined the duty within the stipulated time. The proceedings against the petitioner began more than five years after his first visit.

14. Learned counsel for the petitioner has also referred to another office memorandum dated 18.5.1994 which is general in nature and reads as under:

No.11013/7/94-Estt(A)
Government of India
Ministry of Personnel, Public
Grievances & pensions
(Department of Personnel & Training)
New Delhi, dated the 18.5.1994

OFFICE MEMORANDUM

Subject: Requirement of taking prior permission by Govt. servants for leaving Station/headquarters-clarification regarding

The undersigned is directed to say that doubts have been expressed by Ministries/Department as to whether a Government servant is required to take permission before leaving station/headquarters during leave or other-wise especially for visits abroad.

2. Attention of the Ministries/Departments is invited in this connection to the provisions of FR which provides that 'unless in any case it is otherwise distinctly provided the whole time of a Government servant is at the disposal of the Government which pays him...' Article 56 of the Civil Service Regulations also provides that no officer is entitled to pay and allowance for any time he may spend beyond the limits of his charge without authority. It is implicit in these provisions that a government servant is required to take permission for leaving stations headquarters. It is thus clear that such permission is essential before government servant leaves his station or headquarters and more so

when he proposes to go abroad during such absence, as such visit may have wider implications.

3. However, separate permission may not be necessary where a Government servant has indicated his intention of leaving headquarters/station along with leave address while applying for leave. The leave application form prescribed under the CCS(Leave)Rules, 1972 contains necessary columns in this regards. In case the leave applied for the purpose of visiting foreign country is sanctioned it would imply that permission for going abroad is also granted and therefore leave sanctioning authorities should keep this aspect in mind while granting the leave applied for. In the case of officers who are competent to sanction leave for themselves they should obtain permission for leaving station from their superior authority. Failure to obtain Permission of competent authority before leaving station/headquarters especially for foreign visits is to be viewed seriously and may entail disciplinary action.

4. Ministry of Finance etc. are requested to bring the contents of this Office memorandum to the notice of all Government Servants serving under their control and ensure that these are strictly followed by all concerned.

Hindi version will follow.

Sd/-
(Krishna Menon)
Under Secretary to the Govt. of India

15. It is the plea of learned counsel for the respondents that though the condition of the aforesaid memorandum may have been satisfied, the same came into effect being only in 1994 and, thus, cannot have retrospective effect.

16. On hearing learned counsel for the parties, we find that the action of the respondent in initiating the departmental proceedings, the findings of the inquiry officer and as also of the disciplinary authority unsustainable in law and facts on record. The impugned order by Central Administrative Tribunal is also unsustainable.

17. The facts of the case clearly show that not only that the petitioner intimated about his plans to travel abroad in advance but also submitted a formal application indicating his destination and giving the requisite undertakings. The petitioner applied for casual leave for the same. If the petitioner was entitled to travel on some other kind of leave then those applications were liable to be rejected by the respondent informing the petitioner of the kind of leave he

should have applied for. Undisputedly, this was not done. All that was informed to the petitioner in advance was complied with by the petitioner. Merely because after few years, the respondent finds that the application should have been in a particular form and the respondent having not done so, they cannot be permitted to the same as an issue to start departmental proceedings. It is not even a case that after his first visit or any subsequent visit the respondent informed the petitioner of the process to be followed by the petitioner or informed him that the procedure followed by the petitioner was not in accordance with the norms.

18. The aforesaid also appears to be the reason that the advice of UPSC was in favour of the petitioner but the respondents took an adamant stand and refused to abide by the advice of the UPSC. This gives credence to the suspicion of the petitioner that he was sought to be penalized by the superiors as he had made certain complaints.

19. The petitioner has been made to suffer for no fault of his own, deprived of his promotion and even suffer a demotion as he was on an ad-hoc post. This is apart from the financial deprivation which was visited on the petitioner.

20. We, thus, allow the writ petition and issue a writ of mandamus quashing the impugned inquiry report of the inquiry officer dated 20.12.1994, order of the disciplinary authority dated 18.2.2000 and the order of Central Administrative Tribunal dated 23.1.2002 making the rule absolute. The petitioner would also be entitled to all the consequential monetary and promotional benefits which he has been deprived of and the deductions made on account of disciplinary action shall also be restored to the petitioner.

21. The necessary action in this behalf shall be taken within a

period of two months from today. The arrears would also be cleared in favour of the petitioner after re-fixation of his pay within the same period. The petitioner shall also be entitled to the costs of Rs.5000/-.

SANJAY KISHAN KAUL, J

MOOL CHAND GARG, J

NOVEMBER 3, 2008

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