

IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment delivered on: 06.12.2012

W.P.(C) 5709/2002

R.K.SHARMA

..... Petitioner

versus

UNION OF INDIA & ANR.

..... Respondents

Advocates who appeared in this case:

For the Petitioner : Dr Surat Singh and Ms Esha Mazumdar.

For the Respondents : Ms Saroj Bidawat and Mr A.S.Tuism Shimray.

CORAM:

HON'BLE MR. JUSTICE BADAR DURREZ AHMED

HON'BLE MR. JUSTICE SIDDHARTH MRIDUL

J U D G M E N T

BADAR DURREZ AHMED, J (ORAL)

1. This writ petition is directed against the order dated 18.02.2002 passed by the Central Administrative Tribunal in OA No.2677/2000. The petitioner had approached the Tribunal by way the said original application being aggrieved by the dismissal order dated 14.07.2000 and the appellate authority's rejection order dated 31.10.2000.

2. The facts of the case are that the petitioner who was working as a

Daftry was issued a charge memo on 04.12.1998 proposing to hold an enquiry under Rule 14 of the CCS (CCA) Rules, 1965.

3. The charge memo contained the following articles of charge:-

“Article I: That Shri R.K.Sharma while functioning as Daftry was absent from duty during following periods without prior permission of the competent authority:

From 9.2.1998 to 23.3.1998

From 24.3.1998 to 23.5.1998

Article II: That Shri R.K.Sharma while functioning as Daftry did not receive intentionally the letter No.11(6)/98-HSM dated 16.4.1998 sent to him by registered post and in this manner he kept the office in dark about his residential address.

Article III: That Shri R.K.Sharma functioning as daftry/ad hoc LDC was absent continuously from duty without prior sanction and intimation during the period 1993-98.

Article IV: That Shri R.K.Sharma while functioning as ad hoc LDC/Daftry was not loyal towards his duties by keeping himself continuously absent from duty without prior sanction of leave.”

4. Thereafter an enquiry was conducted and the enquiry officer submitted his report on 10.04.2000 holding that Articles I, III and IV were proved and the Article II was not proved. The disciplinary authority concurred with the enquiry officer's report and imposed the punishment of dismissal from service by virtue of the order dated 14.07.2000. The petitioner filed an appeal on 25.04.2000 which was rejected by an order

dated 31.10.2000. Thereafter the petitioner filed the said original application which was also dismissed by the Tribunal by virtue of the impugned order dated 18.02.2002.

5. The learned counsel for the petitioner at the first instance took the plea that although the authorities below have held that the petitioner had abstained from work unauthorizedly, there is no finding of “willful” absence as is the requirement under law. He contended that unless and until the disciplinary authority returned a clear finding of willful absence, no misconduct could be attributed to the petitioner. In order to support this contention, the learned counsel for the petitioner placed reliance on a recent decision of the Supreme Court in the case of Krushnakant B.Parmar vs. Union of India and Anr., (2012) 3 SCC 178.

6. On the other hand the learned counsel for the respondent supported the order passed by the Tribunal and submitted that there was a clear unauthorized absence of 106 days on the part of the petitioner and this clearly amounted to misconduct. She submitted that since the petitioner was in a habit of abstaining from work, the order of dismissal from service was not inappropriate. Consequently, she submitted that the decision of the

Tribunal ought not to be interfered with. She also drew our attention to the conclusion arrived at by the disciplinary authority where he has recorded that:- *“The conduct of Shri R.K.Sharma as described by me in the foregoing paras confirm that he is guilty of all these misconduct. Thus the charge of not being loyal to his duties by frequently absenting himself without prior sanction of leave is also proved conclusively. I find charges I, III and IV proved against Shri R.K.Sharma.”*

7. First of all, we should examine the Supreme Court's decision in ***Krushnakant B.Parmar*** (*supra*) which also entailed an order of dismissal at the hands of the disciplinary authority. The Supreme Court in that context observed as under:-

“14. Rule 3(1) (ii) and Rule 3(1) (iii) of Central Civil Services (Conduct) Rules, 1964, relates to all time maintaining integrity, devotion to duty and to do nothing which is unbecoming of a Government servant and reads as follows:

Rule 3 – General.

(1) Every Government servant shall at all times--

(i) maintain absolute integrity;

(ii) maintain devotion to duty; and

(iii) do nothing which is unbecoming of a Government servant.

15. In the case of Appellant referring to unauthorized absence the disciplinary authority alleged that he failed to maintain devotion of duty and his behavior was unbecoming of a Government servant.

16. The question whether 'unauthorized absence from duty' amounts to failure of devotion to duty or behavior unbecoming of a Government servant cannot be decided without deciding the question whether absence is willful or because of compelling circumstances.

17. If the absence is the result of compelling circumstances under which it was not possible to report or perform duty such absence can not be held to be willful.

18. Absence from duty without any application or prior permission may amount to unauthorized absence, but it does not always mean willful. There may be different eventualities due to which an employee may abstain from duty, including compelling circumstances beyond his control like illness, accident, hospitalization, etc., but in such case the employee cannot be held guilty of failure of devotion to duty or behavior unbecoming of a Government servant.

19. In a Departmental proceeding, if allegation of unauthorized absence from duty is made, the disciplinary authority is required to prove that the absence is willful, in absence of such finding, the absence will not amount to misconduct.

20. In the present case the Inquiry Officer on appreciation of evidence though held that the Appellant was unauthorisedly absent from duty but failed to hold the absence is willful; the disciplinary authority as also the Appellate Authority, failed to appreciate the same and wrongly held the Appellant guilty."

8. It is apparent that before it could be held that the petitioner is guilty of misconduct and is liable for the punishment of dismissal from service, it was incumbent upon the disciplinary authority to return a clear finding that the absence was willful. If there is no such finding, the absence of the petitioner from work, although it may be unauthorized, would not amount to

misconduct. In the present case we find that there is no clear finding that the petitioner was willfully absent from work. It is true that some part of his absence was unauthorized but that by itself would not be sufficient, in view of the Supreme Court's decision in *Krushnakant B.Parmar (supra)*, for returning the finding of misconduct and for foisting the punishment of dismissal from service on the petitioner.

9. In these circumstances, the impugned order of the Tribunal and all the authorities below cannot be sustained. As a result the writ petition is allowed and the impugned order is set aside. The consequence of this would be that the dismissal order dated 14.07.2000 would also be set aside. The petitioner would consequently be reinstated, but he would not be entitled to any backwages. The learned counsel for the petitioner has also stated that he is not claiming any backwages.

10. The writ petition is allowed to the aforesaid extent.

BADAR DURREZ AHMED, J

SIDDHARTH MRIDUL, J

DECEMBER 06, 2012/mk