

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

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Judgment reserved on: 26.3.2012
Judgment pronounced on: 29.3.2012

+ W.P.(C) 1691/2012

Union of India And Others

... Petitioners

versus

Shri Hemant Kumar Sharma And Others

... Respondents

Advocates who appeared in this case:

For the Petitioner : Mr. Rajesh Katyal

For Respondent : Mr. Sudharshan Rajan with Mr. Amit Anand & Mr. S.Ritam Khare for R-1
Mr. Naresh Kaushik for R-2

CORAM:

HON'BLE MR. JUSTICE BADAR DURREZ AHMED

HON'BLE MR. JUSTICE V.K.JAIN

V.K. JAIN, J.

1. This writ petition is directed against the order dated 29.9.2011 passed by the Central Administrative Tribunal, Principal Bench, Delhi (hereinafter referred to as the Tribunal) whereby OA No. 4327/2010 filed by respondent No.1 (hereinafter referred to as the respondent) was allowed. The facts giving rise to the filing of the writ petition can be summarized as under:

The respondent, vide application dated 3.3.2009, sought 30 days Earned Leave (E.L.) for the period from 16.4.2009 to 15.5.2009 to go to Australia to meet his son. Simultaneously, he made a request, in the prescribed proforma for permission

to travel abroad. The E.L. was sanctioned by Chief Post Master General vide memo dated 5.3.2009. While granting E.L. for the period from 16.4.2009 to 15.5.2009, the respondent was also permitted to prefix 15.4.2009 and suffix 16.5.2009 and 17.5.2009. Subsequently, he was also granted Restricted Holidays for 13.4.2009 and 14.4.2009 on 12.3.2009. On 12.3.2009, Chief Post General Manager forwarded the application of the respondent, seeking permission/NOC to travel abroad to Postal Directorate. On that application, an endorsement was made by Director (Headquarter) at Kolkata on 8.4.2009 that no separate NOC was required to travel abroad. However, the Chief Post Master General made a note, on the same day, recording that NOC was required for the respondent to leave the country. Relying upon the Department of Personnel & Training's instructions dated 1.09.2008, the respondent made a noting to this effect on that file and proceeded as per his programme. A memo dated 23.10.2009 was issued to the respondent proposing imposition of minor penalty upon him. He filed OA No. 3396/2009 challenging the initiation of penalty proceedings. The Tribunal vide order dated 4.5.2010 directed the petitioners herein to decide the representation which the respondent might make against the charge memo. However, the petitioners vide order dated 26.11.2010 imposed minor penalty of withholding the one increment for a period of 02 years without cumulative effect upon the respondent. OA No. 4327/2010 was then filed by the respondent challenging the

penalty imposed upon on him. The Tribunal, vide impugned order dated 29.9.2011 allowed the OA with costs quantified at Rs.25,000/-.

2. The first question which comes up for our consideration is as to whether the respondent, before proceeding on leave, was required to obtain a separate NOC to travel abroad, even after he had been granted leave for the purpose of travelling abroad.

3. A perusal of the application for grant of leave, submitted by the respondent on 3.3.2009 would show that against the column “nature of period of leave applied for and date for which required”, the respondent mentioned, “30 day E.L. from 16.4.2009 to 15.5.2009 pre-fixing 15.4.2009 G.H. and suffixing 16 & 17.5.2009 Saturday and Sunday”. Against the column “Grounds on which leave is applied”, the respondent mentioned, “Foreign travel”. In the proforma application for travelling abroad, which the respondent had submitted along with the leave application, the respondent had disclosed that he proposed to travel to Australia from 11.4.2009 to 8.5.2009 on a personal visit and that the estimated expense was Rs.55,000/- which he was meeting from his personal funds. He disclosed that his last foreign visit was to Bangladesh in 1996. He also disclosed the address as “31, Caroline Street, Hawthorn East, Melbourne, Australia” in the column “Address of the place in Foreign Country to be visited”. Thus, all the information which could be required for granting NOC to travel abroad, was given by the respondent in the

proforma application for travelling abroad which he had submitted along with the leave application. It is also not in dispute that the proforma application for travelling abroad had passed through the hands of Chief Post Master General, who had sanctioned leave to the respondent for the period from 16.4.2009 to 15.5.2009.

Vide OM No. 11013/7/2004-Estt.(A) dated 18.5.1994, Government of India, Ministry of Personnel, Public Grievances and Pensions (Department of Personnel and Training) inter alia stipulated as under:

Attention of the Ministries/Departments is invited in this connection to the provisions of FR 11 which provides that 'unless in any case it be 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 station/headquarters. It is thus clear that such permission is essential before a 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.

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 regard. 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.

Vide OM No. 11013/8/2004-Estt.(A) dated 7.11.2000, Government of India, Ministry of Personnel, Public Grievances and Pensions (Department of Personnel and Training) inter alia stipulated as under:

The undersigned is directed to refer to this Department's OM No. 11013/7/94-Estt. (A) dated 18th May, 1994 on the subject mentioned above in which it has inter alia been clarified that 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. It has also been clarified that in case 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 authority should keep this aspect in mind while granting the leave applied for.

The above instructions have been reviewed and it has been decided that 'while granting leave the sanctioning authority shall take prior approval, if required, for permitting the officer to go abroad as per the existing instructions.'

Vide OM No. 11013/7/2004-Estt.(A) dated 5.10.2004, Government of India, Ministry of Personnel, Public Grievances and Pensions (Department of Personnel and Training) inter alia stipulated as under:

The undersigned is directed to refer to this Department's O.M. No. 11013/7/94-Estt. (A) dated the 18th May, 1994 in which it has inter alia, been clarified that the Government servant should take permission for leaving station/headquarters especially for private visits abroad. It has also been clarified in O.M. No. 11013/8/2000-Estt. (A) dated the 7th November, 2000 that the leave sanctioning authority while granting leave shall take prior approval, if required, for permitting the officer to go abroad as per the existing instructions. Despite these instructions, instances have come to the notice of the Government where Government servants have left their headquarters without taking prior permission and proceeded abroad.

The High Court of Delhi, in its judgment dated the 28th May, 2004 in the Criminal Writ Petition No. 1004/03 (Chandra Kumar Jain Vs. Union of India,) has observed that a Government servant who had visited some foreign countries 161 times on private visits without permission was never questioned and no one in the customs and the other departments suspected why a Government servant was so frequently (161 times), making private visits without permission. The High Court has, therefore, directed the Central Government to frame guidelines on foreign private visits of the Government servants.

Keeping in view the observation of the High Court the Ministries/Departments are requested to bring the existing instructions on the subject matter to the notice of all concerned and ensure that Government servants take prior permission before leaving for visits abroad as required under these instructions. When such permission to visit abroad is sought the Government servant is

required to furnish information relating to the proposed and previous private visits as per the proforma (enclosed).

4. It would thus be seen that in view of the decision communicated vide OM dated 18.5.1994, though it was essential for a Government servant to take permission to go abroad, no separate permission for this purpose was required, if the Government servant concerned had indicated his intention of leaving the Headquarter along with the leave address while applying for leave. It is also evident from a perusal of OM dated 18.5.1994 that in case leave to visit the foreign country was sanctioned, that would also imply grant of permission to go abroad and that is why the leave sanctioning authority was required to keep this aspect in mind while granting the leave sought by the Government servant. The respondent before us had not only applied for grant of E.L. to go abroad but had also disclosed his address during the leave period in the proforma application for grant of NOC to travel abroad, and it is not in dispute that leave sanctioning authority i.e. Chief Post Master General had the proforma application for grant of NOC with him when he granted leave to the respondent. A perusal of the note dated 4.3.2009, on the basis of which leave was sanctioned by Chief Post Master General on 5.3.2009, would show that the proforma application for grant of NOC to travel abroad to the respondent was also placed before him with complete details. In view of OM dated

18.5.1994, grant of leave by Chief Post Master General, who was the leave sanctioning authority, would therefore imply grant of permission to go to Australia to the respondent.

It appears from a letter No.3-3/2000/SPG dated 2.11.2000 issued by Department of Posts, Dak Bhawan, New Delhi, a copy of which was filed by the petitioners herein (respondents before the Tribunal) along with their reply in the OA that the case of grant of NOC to Group A Officers to visit a foreign country, was to be referred to Directorate for decision. If this is so, and consequently Chief Post Master General was not competent to issue NOC to the respondent to travel abroad, it was incumbent upon the Chief Post Master General to defer grant of leave till the NOC to travel abroad was accorded by the Directorate in terms of the letter dated 2.11.2000. If, instead of deferring the decision on the leave application, Chief Post Master General chose to grant leave to the respondent without awaiting the decision of the Directorate in the matter of grant of NOC, the blame would squarely lie upon him (Chief Post Master General) and not upon the respondent. Once the leave was sanctioned by Chief Post Master General and grant of leave was conveyed to the respondent and relying upon the OM dated 18.5.1994 and after expressly referring to that OM in the note recorded by him on 8.4.2009, he chose to travel abroad, such an act on the part of the respondent cannot be said to be an act of misconduct or dereliction of duty. This is more so,

when Director (HQ) also vide note dated 8.04.2009 took the stand that no separate NOC was required by the respondent. Despite persistent questioning during the course of arguments no explanation was given to us by the learned Counsel for the petitioners as to why Chief Post Master General sanctioned leave to the respondent when OM dated 18.5.1994 required him to keep the aspect of grant of NOC in mind while granting the leave applied for by a Government servant.

There is yet another aspect of the matter with respect to grant of NOC to travel abroad. The respondent applied for the grant of NOC on 3.3.2009. He was to commence journey on 10.4.2009. For more than one month neither the application for grant of NOC was rejected nor was the respondent asked to submit any additional/further information with respect to his application. When questioned in this regard, the learned Counsel for the petitioners could not give us any explanation for the petitioners not taking any decision on the application of the respondent for grant of NOC for more than one month, despite the fact that while submitting the application on 3.3.2009 he had disclosed that he proposed to commence journey on 10.4.2009. We cannot accept the contention that an employee seeking travel abroad, and applying for grant of NOC in this regard in the prescribed proforma, should wait indefinitely and postpone his visit at the cost of considerable expense and inconvenience to him even when he gives sufficient time to his superiors, to take decision on his request for grant of NOC.

5. Another important aspect of this case is that Chief Post Master General, who had sanctioned the leave, even while recording a note on 8.4.2009 that the respondent was required to obtain NOC, did not revoke the leave which he had granted to the respondent. We would like to note here that while sanctioning leave it was clearly stipulated in the order that it could be cancelled in the interest of service. Again, there is no explanation from the petitioners as to why the Chief Post Master General did not revoke the leave when he found that no clearance from the Directorate was forthcoming for grant of NOC to the respondent.

6. During the course of arguments we specifically asked the learned Counsel for the petitioners as to whether NOC was ultimately rejected or granted by the Directorate of Posts. We were informed that till date no decision has been taken on the application for grant of NOC. If we consider this non-action in the light of the note recorded by Director (HQ) on 8.4.2009, we feel that the reason for inaction could be the view in the Directorate that in view of grant of E.L. no separate NOC was necessary. We fail to appreciate how the petitioners could have initiated penalty proceedings, against the respondent without first taking a decision on his application for grant of NOC. Nothing in law prevented the Competent Authority from granting NOC even after the respondent had left for Australia. For that matter he could also have rejected the request for grant of NOC, for some cogent and valid

reasons. That having not been done, the petitioners in our view were not justified in initiating penalty proceedings against the respondent.

We also take note of the fact that while applying for NOC, the respondent had given complete information required as per the proforma prescribed for this purpose. This is not the case of the petitioners that the application submitted by the respondent for grant of NOC lacked in some material particulars. As noted earlier, no further information was called from the respondent at any point of time. Considering the fact that no decision so far has been taken by the Competent Authority on the application of the respondent for grant of NOC coupled with the fact that the application submitted by the respondent in this regard disclosed all the particulars required in terms of the prescribed proforma and no further information was called from the respondent at any stage, we do find merit in the contention of the learned Counsel for the respondent that the petitioners had absolutely no valid ground on which the request of the respondent for grant of NOC could be rejected by them and that is why they, instead of taking any decision on the application, chose to proceed departmentally against him so as to cover up the lapse on the part of Chief Post Master General in sanctioning leave to the respondent without obtaining clearance from the Directorate with respect to grant of NOC to the respondent.

7. During the course of arguments, it was also contended by the learned Counsel for the petitioners that the respondent applied for casual leave for 9.4.2009 though under the Rules he could not have clubbed a Casual Leave with the Earned Leave. We note that the Respondent had applied for Casual Leave for 9.4.2009; 10.4.2009, 11.4.2009 and 12.4.2009 were holiday/Saturday/Sunday. Thus, strictly speaking he was not directly clubbing the Casual Leave with Earned Leave and there was no bar on clubbing Restricted Holiday with Earned Leave. Of course, the effect of taking Casual Leave on 9.4.2009 would be that Casual Leave/Holiday/Saturday/Sunday/Restricted Holiday and Earned Leave stand combined. If this was held to be not permissible as per Leave Rules, the petitioners could have treated the respondent to be on E.L. w.e.f. 9.4.2009 onwards, but, once the respondent had applied for leave and therefore was not unauthorizedly absent on 9.4.2009, the petitioners could not have initiated the penalty proceedings against him merely because he applied for Casual Leave in combination with RH and/or EL. Merely, applying for C.L. cannot amount to misconduct merely because a C.L. leave cannot be combined with leave of any other kind though it is open to the Competent Authority to grant E.L. instead of C.L. to the employee concerned for the whole of the leave period. While taking this view we are proceeding on the assumption that the employee does have the E.L. available to him for the period in question and therefore the view taken by us would not apply in case of an

employee, who applies for C.L. in combination of R.H. and/or E.L. but does not have enough E.L. to his/her credit at the relevant time.

For the reasons given in the preceding paragraphs we are of the considered view that this is not a fit case for exercise of our extraordinary jurisdiction under Article 226 of the Constitution of India to interfere with the impugned order dated 29.9.2011 passed by the Tribunal. The writ petition is devoid of any merit and is hereby dismissed, without any orders as to costs.

V.K.JAIN, J

BADAR DURREZ AHMED, J

MARCH 29, 2012

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