

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

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Judgment reserved on: 18.04.2012
Judgment pronounced on: 23.04.2012

+ W.P.(C) 2194/2012

SH. MANOJ KUMAR

..... Petitioner

versus

GOVT. OF NCT OF DELHI AND ORS.

..... Respondents

Advocates who appeared in this case:

For the Petitioner	:	Mr. Yudhvir Singh Chauhan
For the Respondent	:	Mr. Rajiv Nanda, ASC with Ms. Shawana Bari and Mr. Ashijeet

CORAM:

HON'BLE MR. JUSTICE BADAR DURREZ AHMED

HON'BLE MR. JUSTICE V.K.JAIN

V.K. JAIN, J.

1. The writ petition is directed against the order dated 22.11.2011 passed by the Central Administrative Tribunal, Principal Bench (hereinafter referred to the 'Tribunal') whereby OA 353/11 filed by the petitioner, was dismissed.

The facts giving rise to the filing of this writ petition can be summarized as under:-

The petitioner who was working as a Jail Warden, was charge sheeted for unauthorizedly abstaining from duty between 05.08.2007 to 25.06.2008. The period of absence was 05.08.07 to 19.08.07 (15 days), 07.09.07 to 17.10.07(11 days), 20.11.07 to 27.11.07 (08 days), 06.12.07 to 12.12.07 (07 days), 01.01.08, to

05.01.08 (05 days), 27.01.08 to 08.02.08(13 days), 28.02.08 to 10.03.08 (12 days), 22.03.08 to 26.03.08 (05 days), 05.04.08 to 19.04.08 (15 days) and 30.04.08 to 08.06.08.

2. The petitioner received the charge sheet and submitted a reply dated 30.07.2008 claiming that his absence was neither deliberate nor intentional and was purely on account of circumstances beyond his control, he being unwell during this period. The petitioner, however, did not participate in the inquiry despite repeated notices and the inquiry was accordingly held ex-parte. The Inquiry Officer, vide his report dated 05.02.2009 found the charges against the petitioner to be proved. The Disciplinary Authority vide order dated 11.05.2009, imposed penalty of removal from service upon the petitioner, which was ordinarily not be a disqualification for future employment under the Government. The period of absence was treated as unauthorized, without any pay. The appeal filed by the petitioner was dismissed by the Appellate Authority vide order dated 26.08.2010. Being aggrieved by the orders passed by the Disciplinary Authority and the Appellate Authority, the petitioner filed the OA which came to be dismissed by the Tribunal by virtue of the impugned order.

3. During the course of arguments, the first contention of the learned counsel for the petitioner was that since the petitioner was suffering from various ailments during the period of absence, he was not in a position to attend the duty and,

therefore, his absence cannot be said to be deliberate and intentional. Admittedly, the petitioner was governed by CCS (Leave) Rules.

4. Rule 19 of CCS (Leave) Rules To the extent, it is relevant, reads as under:

**“Rule-19. Grant of leave on medical certificate to
Gazetted and non-Gazetted Government servants**

(1) An application for leave on medical certificate made by-

X X X X X

(ii) a non-Gazetted Government servant, shall be accompanied by a medical certificate Form 4 given by a CGHS Doctor if such a Government servant is a CGHS beneficiary or by Government Hospital or by an Authorized Medical Attendant if he is not a CGHS beneficiary; and by an Authorized Doctor of the private hospital, recognized under CGHS/Central Services (Medical Attendance) Rules, 1944, in case of hospitalization or indoor specialized treatment duly approved by the Competent Authority in respect of particular kind of disease like heart disease, cancer, etc., for the treatment of which the concerned hospital has been recognized by the Ministry of Health and Family Welfare: Provided that the non-Gazetted Government servant who is a CGHS beneficiary, if at the time of illness is away from CGHS area or proceeds on duty outside the Headquarters will produce M.C. or F.C. in Form 4 or 5, as the case may be, given by an Authorized Medical Attendant (AMA) or by Registered Medical Practitioner (RMP) if there is no AMA available within a radius of 8 kilometers (kms) from his residence or place of temporary stay outside his Headquarters and also in the circumstances when he finds it difficult to obtain MC or FC from a CGHS Doctor or an AMA;

X X X X

(5) The grant of medical certificate under this rule does not in itself confer upon the Government servant concerned any right to leave; the medical certificate shall be forwarded to the authority competent to grant leave and orders of that authority awaited.

5. Thus, under the rules applicable to him, the petitioner was required to produce either the medical certificate issued by a CGHS dispensary in case he was a beneficiary of CGHS or by an Authorized Medical Attendant in case he was not a member of the Scheme.

6. During the course of arguments before us, the petitioner did not claim that he was a member of CGHS. He does not claim that he was hospitalized during the period of his absence. Therefore, he was required to produce medical certificates from an Authorized Medical Attendant. Only one medical certificate purporting to be issued by a government doctor was pointed out to us by the learned counsel for the petitioner. This medical certificate purports to be issued by Dr. A.K. Pandey, of Primary Health Centre, Mehrauli. It has been certified by the doctor that Manoj Kumar was suffering from backache and the period of absence from duty from 07.09.07 to 18.10.07 was absolutely necessary for restoration of his/her health. Even if, we presume that the doctor who issued this certificate was an Authorized Medical Attendant, this could justify absence of the petitioner only for the period 07.09.07 to 18.10.07. With respect to the other periods of absence, no medical certificate issued by any government hospital or any authorized medical attendant

was brought to our notice. On going through the purported medical certificates filed with the petition we could not find medical certificate issued by a government doctor or a government hospital.

7. Since the petitioner did not produce any medical certificate from an authorized medical attendant with respect to his absence from duty except between 07.09.07 to 18.10.07, his absence from duty was clearly unauthorized.

8. More importantly, the petitioner, despite receiving a charge-sheet and submitting a reply, chose not to participate in the inquiry. He thereby did not avail the opportunity which was available to him, to establish before the Inquiry Officer, that he was genuinely sick, during the period he did not attend duty and, therefore, had a sufficient cause for remaining away from the work. For this purpose, the petitioner could have produced evidence including the private doctors from where he claims to have received treatment during the period of his absence. When questioned, as to why the petitioner did not participate in the inquiry, the learned Counsel for the petitioner stated that since the petitioner was not getting salary he could not participate in the inquiry. The explanation given by the learned Counsel on behalf of the petitioner is not convincing at all. An employee who has been charge-sheeted for remaining absent from duty and who has an opportunity to establish his illness during the course of the inquiry must necessarily avail that opportunity in case he is genuinely sick and convince the Inquiry Officer in this

regard. Non-payment of salary could not have prevented the petitioner from participating in the inquiry and proving the illness claimed by him. Had the petitioner participated in the inquiry that he was genuinely sick and was not in a position to attend the duty, it could have been open to him to say that his taking treatment from private doctors would not show that his absence from duty was intentional and, hence, though the leave may be denied to him on account of non-submission of medical certificate from an Authorized Medical Attendant, the penalty imposed on him was not called for. The petitioner however, chose to altogether stay away from the inquiry. We, therefore, find no ground to interfere with the finding recorded by the Inquiry Officer, which has been accepted by the Disciplinary Authority and confirmed by the Appellate Authority.

9. The other contention of the learned Counsel for the petitioner was that the punishment awarded to the petitioner was wholly disproportionate to the charge proved against him. In support of his contention the learned Counsel for the petitioner has relied upon **Union of India And Others v. Giriraj Sharma: AIR 1994 SC 215** and **Mahesh Chand v. UoI & Others: 145(2007) DLT 588 (DB)**.

10. As regards the quantum of punishment, this Court in **WPC 2431/2011 Ex. Head Constable Manjeet Singh v. Union of India & Ors**, had, inter alia, observed as under:-

“It is a settled proposition of law that neither the Central Administrative Tribunal nor the Writ Court can interfere

with the punishment awarded in a departmental proceeding, unless it is shown that the punishment is so outrageously disproportionate, as to suggest lack of good faith. While reviewing an order of punishment passed in such proceedings, the Court cannot substitute itself for the Appellate Authority and impose a lesser punishment merely because it considers that the lesser punishment would be more reasonable as compared to the punishment imposed by the Disciplinary Authority. The Court or for that matter even the Tribunal can interfere with the punishment only if it is shown to be so disproportionate to the nature of the charge against the delinquent official that no person, acting as a Disciplinary Authority would impose such a punishment. The following observations made by Supreme Court in **V.Ramana v. A.P.SRTC And Others: (2005) III LLJ 725 SC** are pertinent in this regard:

“The common thread running through in all these decisions is that the court should not interfere with the administrator’s decision unless it was illogical or suffers from procedural impropriety or was shocking to the conscience of the court, in the sense that it was in defiance of logic or moral standards. In view of what has been stated in *Wednesbury* case the court would not go into the correctness of the choice made by the administrator open to him and the court should not substitute its decision for that of the administrator. The scope of judicial review is limited to the deficiency in decision-making process and not the decision.

To put it differently unless the punishment imposed by the disciplinary authority or the Appellate Authority shocks the conscience of the court/Tribunal, there is no scope for interference. Further to shorten litigations it

may, in exceptional and rare cases, impose appropriate punishment by recording cogent reasons in support thereof. In a normal course if the punishment imposed is shockingly disproportionate it would be appropriate to direct the disciplinary authority or the Appellate Authority to reconsider the penalty imposed.”

In **B.C.Chaturvedi v. Union of India: 1995(6) SCC 749**, Supreme Court, after considering a Constitution Bench decision in **State of Orissa And Others v. Bidyabhushan Mohapatra: (1963) ILLJ 239 SC** and some other decisions, inter alia held as under:

“A review of the above legal position would establish that the disciplinary authority, and on appeal the appellate authority, being fact-finding authorities have exclusive power to consider the evidence with a view to maintain discipline. They are invested with the discretion to impose appropriate punishment keeping in view the magnitude or gravity of the misconduct. The High Court/Tribunal, while exercising the power of judicial review, cannot normally substitute its own conclusion on penalty and impose some other penalty. If the punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of the High Court/Tribunal, it would appropriately mould the relief, either directing the disciplinary/appellate authority to reconsider the penalty imposed, or to shorten the litigation, it may itself, in exceptional and rare cases, impose appropriate punishment with cogent reasons in support thereof.”

11. The petitioner before us was absent from duty for almost one year, he was posted as a warden in jail. His unauthorized absence from duty is bound to have

some effect on the functioning of the jail in which he was posted. He made no effort to substantiate the explanation given by him for his unauthorized absence from duty. In this regard, the following observations made by the Supreme Court in **State of Punjab v. Dr. P.L.Singla: AIR 2009 SC 1149** are apt:

Unauthorized absence (or overstaying leave), is an act of indiscipline. Whenever there is an unauthorised absence by an employee, two courses are open to the employer. The first is to condone the unauthorized absence by accepting the explanation and sanctioning leave for the period of the unauthorized absence in which event the misconduct stood condoned. The second is to treat the unauthorized absence as a misconduct, hold an enquiry and impose a punishment for the misconduct.

An employee who remains unauthorisedly absent for some period (or who overstays the period of leave), on reporting back to duty, may apply for condonation of the absence by offering an explanation for such unauthorized absence and seek grant of leave for that period. If the employer is satisfied that there was sufficient cause or justification for the unauthorized absence (or the overstay after expiry of leave), the employer may condone the act of indiscipline and sanction leave post facto. If leave is so sanctioned and the unauthorized absence is condoned, it will not be open to the employer to thereafter initiate disciplinary proceedings in regard to the said misconduct unless it had, while sanctioning leave, reserved the right to take disciplinary action in regard to the act of indiscipline. We may note here that a request for condoning the absence may be favourably considered where the unauthorized absence is of a few days or a few months and the reason for absence is stated to be the sudden, serious illness or unexpected bereavement in the family. But long unauthorized absences are not usually condoned. In fact in Security services where discipline is

of utmost importance, even a few of days overstay is viewed very seriously. Be that as it may.

12. In ***Giriraj Sharma*** (supra) the respondent had overstayed only for 12 days and for this absence his services were terminated. It was observed by Supreme Court that punishment of dismissal for overstay of 12 days, in the facts and circumstances of the case, was harsh since the circumstances had compelled the respondent to overstay beyond the leave granted to him. While quashing the order of High Court, the Supreme Court left it open to the department to visit the respondent with a minor punishment. In ***Mahesh Kumar*** (supra) the first period of overstay of 32 days was on account of celebrations in the family, followed by the demise of his father. The second absence was on account of demise of his mother, followed by his illness. The total overstay in that case was for 85 days. While quashing the dismissal of the petitioner and leaving it to the Disciplinary Authority to decide upon the lesser punishment, this Court inter alia observed as under:

x x x x There may be cases where resumption of duties may not be an impossibility but given regard to what human life and affairs are, circumstances may sufficiently justify a delayed joining back for duties. Suffice it to say that it would all depend upon the facts and circumstances of each case whether the overstaying of leave was or was not justified. No strait-jacket formula can be formulated or applied in such cases nor can any norms be prescribed for a uniform application to all situations. What is to be kept in mind by the disciplinary authority and those hearing appeals against the orders of punishment is whether overstaying

of leave was for such a long period and so unjustified that the same smacked of indiscipline, defiance or desertion. Whether the justification advanced for late resumption of duty was factually false or wholly unacceptable being moon shine and whether the person concerned was a habitual offender in the sense that he was incorrigible in his conduct and disrespect for the rules regulating his service conditions. It is only where the authorities find the case to be hopeless on all these fronts that they may be justified in getting rid of the man by dismissing him. In other cases, a lesser punishment ought to be sufficient to meet the ends of justice.

13. In the case before us, the petitioner has remained absent from duty for almost one year and he made no attempt to justify his absence, by participating in the inquiry and satisfying the Inquiry Officer with respect to his alleged illness. In the facts and circumstances of this case, it cannot be said that the punishment awarded to the petitioner is so disproportionate to the charge held proved against him as to shock the conscience of the Court. Consequently, we find no valid ground to interfere with the penalty imposed upon the petitioner.

14. For the reasons stated hereinabove the writ petition is hereby dismissed without any order as to costs.

V.K.JAIN, J

BADAR DURREZ AHMED, J

APRIL 23, 2012

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