

THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment reserved on : 06.07.2012

Judgment delivered on: 23.07.2012

+ **W.P.(C) 6831/2011**

**GOVT. OF N.C.T.D., NEW DELHI THROUGH
COMMISSIONER OF POLICE & OTHERS**

... Petitioners

versus

SUNIL TANWAR

... Respondent

Advocates who appeared in this case:

For the Petitioners : Ms Prerna Kumari with Ms Poonam Kumari
and Mr Sudhir Kumar.

For the Respondent : Mr A. K. Behera with Mr Sourabh Ahuja.

CORAM:-

HON'BLE MR JUSTICE BADAR DURREZ AHMED

HON'BLE MR JUSTICE SIDDHARTH MRIDUL

JUDGMENT

SIDDHARTH MRIDUL, J.

1. The present writ petition challenges the correctness of the order dated 09.11.2010 passed by the Central Administrative Tribunal in Original Application No.1830/2007, whereby the Tribunal allowed the said O.A. filed by the respondent herein and issued a direction to the petitioner to reinstate the respondent herein forthwith with all consequential benefits.

2. The facts as are necessary for the adjudication of the present writ petition are as follows:-

- (i) The respondent was appointed as Sub-Inspector in Delhi Police on 12.09.2004.
- (ii) A departmental enquiry was initiated against the respondent vide order dated 22.12.2004 under the provisions of the Delhi Police (Punishment & Appeals) Rules, 1980. Simultaneously the respondent was placed under suspension vide office order dated 23.12.2004.
- (iii) The respondent was charged with unauthorized absence from duty for the following periods:-

S.No	Date of absence	Date of arrival	Period of absence
1.	04.09.2003	22.09.2003	18 days 7 Hrs. 5 Mins.
2.	06.10.2003	31.05.2004	237 days
3.	21.06.2004	29.06.2004	9 days
4.	10.09.2004	Still running absent	

- (iv) The Disciplinary Authority passed the final order dated 27.09.2005, removing the respondent from service with immediate effect.

- (v) The respondent preferred an appeal to the Appellate Authority which was rejected vide order dated 13.09.2006.
- (vi) Being aggrieved by the order of the Appellate Authority dated 13.09.2006, the respondent filed O.A. No.1830/2007 before the Tribunal. Vide order dated 29.06.2009 the Tribunal allowed O.A. No.1830/2007 on the ground that the respondent had been successful in explaining the reasons for his absence and yet the explanation had not been accepted without any logical basis and that the guilt of the respondent had been proved only on the basis of surmises and conjectures and of extraneous considerations.
- (vii) The present petitioners filed a Writ Petition 12143/2009 before this Court assailing the order dated 29.06.2009 passed by the Central Administrative Tribunal in O.A. No.1830/2007. The High Court vide order dated 12.07.2010 set aside the order dated 29.06.2009 and restored the O.A. with the direction to the Tribunal to consider the gravamen of the allegations, stated to have been proved, for unauthorized absence effected from

10.09.2004 till the date the charge sheet was issued and which continued till the date final order dated 27.09.2005 was passed by the Disciplinary Authority and further directed that the finding returned by the Tribunal pertaining to the earlier 3 periods of absence, if they survive for consideration, should the Tribunal exonerate the respondent qua the 4th period of absence, would be amenable to further challenge by the petitioner, if said order is challenged.

(viii) The learned Tribunal vide the impugned order dated 09.11.2010 allowed O.A. No.1830/2007 filed by the respondent with direction to reinstate the respondent forthwith with all the consequential benefits as aforesaid.

(ix) Aggrieved by the impugned order dated 09.11.2010 the petitioner has filed the present Writ Petition.

3. On behalf of the petitioner it is urged that the impugned order is contrary to the facts of the case and to the settled position of service jurisprudence that Courts and Tribunals cannot re-appreciate the evidence

gathered during the course of domestic enquiry and further cannot act as an Appellate Authority.

4. Per contra, on behalf of the respondent herein it is urged that the Court/Tribunal may interfere where the Disciplinary Authority came to a conclusion or finding which no reasonable person would ever reach based on the material on record. It was next argued by the respondent that merely the fact that the respondent was absent from duty during certain periods does not *ipso facto* lead to the conclusion that the respondent was guilty of misconduct and that unless the absence is wilful the employee cannot be held guilty of failure of devotion to duty or behaviour unbecoming of a Government servant. In other words, if the allegation of unauthorized absence from duty is made, the Disciplinary Authority is required to prove that the absence is wilful and in the absence of such finding the absence will not amount to misconduct.

5. Before considering the merits of the rival contentions, it is imperative to consider the conclusions arrived at by the Tribunal in the impugned order for the periods of absence that the respondent was charged with.

6. With regard to the first period of absence from 04.09.2003 to 22.09.2003 the Tribunal observed that the respondent had produced the

certificate dated 01.04.2005 from one Dr J.S. Chauhan of Onkar Clinic to the effect that the respondent was suffering from fever and hepatitis and had been advised bed rest for the above period. The Tribunal noted that the delay in submission of the medical certificate was explained by the respondent by stating that although oral intimation regarding illness was made to the department, however, information regarding medical rest was not recorded because the respondent had already been marked absent and he had, therefore, intended to submit the relevant documents after the period of medical rest was over. The Tribunal also noted that the delay was further explained by stating that after assuming duty the respondent had submitted the medical rest prescription to the Reader of the SHO of the concerned Police Station, however, the same had been misplaced by the latter.

7. With regard to the period from 02.06.2003 to 31.05.2004, the Tribunal noted that one Dr K.S. Anand, D.M. (Neurology), Senior Neurologist, RML Hospital had advised the respondent full bed rest for the following periods; from 06.10.2003 one month; from 07.11.2003 six weeks and from 28.01.2004 eight weeks. The Tribunal also noted that the respondent fell ill again on the 29.09.2003 and proceeded on casual leave. The said Dr K.S.

Anand of RML Hospital diagnosed the respondent and concluded that the respondent was suffering from epileptic attacks and advised medical rest.

8. For the period between 21.06.2004 and 29.06.2004 it was noted by the Tribunal that the respondent availed the benefit of casual leave during this period which was duly granted and thereafter extended. It is also noted by the Tribunal that the respondent had sent intimation to the department which was recorded in the Daily Diary of Police Station Chanakyapuri vide DD No.27-B. One Dr J.S. Chauhan, the attending doctor had confirmed the same. Further, PW-3 HC Brij Mohan had corroborated the DD entry and the respondent's return to duty on the 29.06.2004.

9. With respect to the 4th period from 10.09.2004 onwards, it is observed by the Tribunal that the respondent was sanctioned paternity leave for a period of 15 days from 16.08.2004 vide order dated 17.08.2004. It was further noted that thereafter the respondent had sought extension for a period of 21 days in view of the fact that his wife had developed certain complications after childbirth and had to undergo surgery. It was observed that the leave sanctioning authority granted 7 days earned leave w.e.f. 03.09.2004 to the respondent with the condition that no further extension would be granted. In this behalf it is noticed that the then ACP

Chanakyapuri who was asked to conduct an enquiry into the matter, submitted his report dated 24.11.2004 supporting the stand of the respondent and confirming that the respondent's wife was indeed keeping unwell and had undergone surgery. It was noted that the respondent was then posted as Duty Officer at Police Station Chanakyapuri, however, he did not join duty on account of his wife's ill health.

10. Thus, the Tribunal came to the conclusion that the respondent had been satisfactorily able to explain the periods of absence and that the conclusion of the Disciplinary Authority in holding the charge to be proved was perverse and arbitrary.

11. With regard to the last spell of absence from 10.09.2004, the Tribunal agreed with the respondent that the said period of absence could not have been taken as unspecified period beyond the date when the disciplinary proceedings were initiated against the respondent i.e. 22.12.2004. It further agreed with the respondent that since the respondent had been placed on suspension by an order dated 23.12.2004, the period thereafter could not be considered as being part of the period of absence.

12. Vide the impugned order the Tribunal held that the respondent had put in about 9 years of service before the spell of absence occurred, and the

respondent had not been habitually absenting himself from duty, and that the Government must keep in view the genuine problems and the welfare of its employees and consider the genuine reasons for absence from duty. Consequently a strict and rigid view ought not to be taken by a welfare State.

13. Thus, the Tribunal allowed the O.A. and issued the impugned directions.

14. Coming to the contentions of the petitioner herein, it is trite to state that the Court/Tribunal may interfere with the finding of the Disciplinary Authority **where that authority held proceedings against the delinquent officer in a manner inconsistent with the principles of natural justice or in violation of statutory rules prescribing the mode of conduct or where the conclusion or finding reached by the Disciplinary Authority is based on no evidence or if the conclusion or finding be such as could not be reached by any reasonable person.**

15. Further a catena of judgments of the Supreme Court have held that, if the conclusion upon consideration of the evidence, reached by the Disciplinary Authority, is perverse or suffers from patent errors on the face of the record or is based on no evidence at all, a writ of certiorari could be issued. In this behalf the decisions of the Supreme Court in **B.C. Chaturvedi**

v. Union of India & Ors: AIR 1996 SC 484 and Union of India v. H.C.

Goel: (1964) 1 LLJ 38 SC can be cited with profit. Therefore, although the Court cannot sit as an appellate authority over the findings of the Disciplinary Authority, it can interfere when the findings of the Disciplinary Authority are illogical or shocking to the conscience of the Court.

16. Evidently, in the present case the evidence recorded by the enquiry officer and the inferences drawn by him were at variance with the material and evidence on record and could be interfered with by the Tribunal on the ground of being perverse and suffering from patent error on the face of the record.

17. Further, in the present case it is observed that although the respondent was absent from duty during certain periods it did not inescapably and inevitably lead to the conclusion that the respondent was guilty of misconduct.

18. In Krushnakant B. Parmar v. Union of India & Anr.: 2012 (2) SLJ 19 (SC) the Supreme Court whilst deciding an appeal on unauthorized absence and misconduct observed as under:-

“16. The question whether ‘unauthorised absence from duty’ amounts to failure of devotion to duty or behaviour unbecoming of a Government servant **cannot be decided**

without deciding the question whether absence is wilful 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 cannot be held to be wilful.

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

19. In a departmental proceeding, if allegation of unauthorised absence from duty is made, the Disciplinary Authority is required to prove that the absence is wilful, in absence of such finding, the absence will not amount to misconduct.”

19. In the present case there is no finding or even a hint of an allegation that the absence of the respondent was wilful. It was further seen that there were compelling circumstances beyond the control of the respondent i.e. illness, hospitalization etc. which prevented the respondent from returning to duty. In such a case, as held by the Supreme Court in ***Krushnakant B. Parmar*** (*supra*), the respondent could not be held guilty of wilful absence or failure of devotion to duty or behaviour unbecoming of a Government

servant. Therefore, the Disciplinary Authority had not proved that the absence of the respondent was wilful and in the absence of such finding the absence cannot amount to misconduct.

20. In view of the foregoing discussion, and upon a consideration of the facts and circumstances, we are in agreement with the impugned order directing reinstatement of the respondent herein forthwith with all consequential benefits.

21. The writ petition is devoid of merit and is hereby dismissed without any order as to costs.

SIDDHARTH MRIDUL, J

BADAR DURREZ AHMED, J

JULY 23, 2012

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