

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
% *Judgment Reserved on : March 04, 2014*
Judgment Delivered on : March 11, 2014

+ **WP(C) 5598/2003**

DR.ALEX VERGIS C.GEORGE Petitioner
Represented by: Mr.M.K.S.Menon, Advocate with
Mr.Wills Mathews and Mr.Ranjeet
Kumar Jha, Advocates

versus

UOI & ORS. Respondents
Represented by: Ms.Anjana Gosain, Advocate with
Mr.Pradeep Desodya and
Mr.R.N.Parikh, Advocates for UOI

CORAM:
HON'BLE MR. JUSTICE PRADEEP NANDRAJOG
HON'BLE MR. JUSTICE JAYANT NATH

PRADEEP NANDRAJOG, J.

1. On March 22, 2000, the petitioner was served with a charge memo leveling two charges against him. The first charge was that when he was relieved, on transfer, from the 109 Battalion, CRPF on May 29, 1999 in the afternoon and required to report for duty with the 58th Battalion CRPF, petitioner failed to report for duty after permissible joining time and this would constitute a failure to maintain devotion to duty and acting in a manner unbecoming of a government servant thereby violating Rule 3(1) (ii) & (iii) of the CCS (Conduct) Rules, 1964. The second Article of Charge was that without sanction of study leave, the petitioner remained unauthorizedly absent in spite of repeated letters issued to resume duties immediately.

2. For record we may note that relieved on September 25, 1999 in the afternoon from the 109 Battalion and required to report for duty to the 58th Battalion CRPF the unauthorized absence continued not only till when the charge memo dated March 22, 2000 was issued but even beyond till when on February 04, 2001 the petitioner reported for duty.

3. The petitioner joined CRPF as a Medical Officer on October 25, 1993 pursuant to a letter offering appointment issued to him on September 29, 1993. A day prior to his joining, on September 24, 1993, the petitioner informed the Appointing Authority that he was pursuing a research study leading to Ph.D. degree from St.John's Medical College, Bangalore; affiliated with the Bangalore University. He informed that he was registered for the Ph.D. dissertation on August 24, 1993 under the guidance of Dr.T.Venkatesh, Professor and Head of the Department of Biochemistry and Biophysics. Submitting his joining report on October 25, 1993 the petitioner informed the adjutant of the Battalion to which he was attached as under:-

“Sub: JOINING REPORT/ DOCUMENTS/ PRIOR INTIMATION

Dear Sir,

I, Dr.ALEX VERSIS C. GEORGE, am joining the Central Reserve Police Force today (25/October/1993) as MEDICAL OFFICER/GENERAL DUTY OFFICER/ Grade-II/ASSISTANT COMMANDANT on first appointment.

Prior to joining the administration, I take this opportunity to inform that I am already registered for a research study leading to a Ph.D. degree from the Bangalore University, at St.John's Medical College, Bangalore-34 under the guidance of Dr.T.Venkatesh, Professor & Head of Department of Biochemistry & Biophysics on the topic “BIOCHEMICAL MARKERS TO ASSESS STRESS INDUCED CONDITIONS IN HUMANS”. When I spoke on the telephone to the

commanding officer of 91 Btn., I was assured that I would be permitted to continue my studies and I have communicated this matter to the Director General, C.R.P.F., already. Hence I submit my joining report and other documents, on this condition and assurance.

Please do the needful to forward the necessary documents and information to the concerned higher-ups in this connection.

Thanking you.”

4. On November 19, 1993 the petitioner sought formal permission to continue with his studies, realizing that he had registered for the Ph.D. thesis before he joined service under CRPF, and accordingly the petitioner wrote to the Competent Authority seeking permission to continue research as under:-

“Subject :- PERMISSION TO CONTINUE RESEARCH

Respected Sir,

I, Dr.Alex Vergis C.George have the honour to state that before joining this esteemed Force as GDO, Gr.II on 25-10-1993 in 91 Bn, I was doing my Ph.D. on the topic ‘BIOCHEMICAL MARKERS TO ASSESS STRESS INDUCED CONDITIONS IN HUMANS’ from St.John’s Medical College, Bangalore University under the guidance of Dr.T.Venkatesh, Professor & Head of Department of Bio-chemistry, University of Bangalore. The said research it likely to take 5 years for getting the thesis ready for submission and I registered for the Ph.D. Degree in the University of Bangalore on 24-8-93. The attested copies of the following documents are also enclosed for your perusal please.

- 1. Certificate of acceptance by the Guide Dr.T.Venkatesh.*
- 2. Copy of the application for registration.*
- 3. Receipt of acceptance from the University of Bangalore.*

2. I, therefore, very himbly request your kind honour to grant me permission to continue with my research on the subject as mentioned above. I assure that this will in no way interfere my prompt attention to official duties, as the study/research will be done only through occasional contacts with the guide.

Thanking you in anticipation Sir.”

5. Relevant would it be to highlight that in the letter seeking permission to pursue the research leading to the Ph.D. degree, the petitioner categorically informed the Competent Authority that the study/research pursued by him would in no way interfere with petitioner’s official duties and that the research would be undertaken only through occasional contact with the guide.

6. Granting approval to the petitioner to continue research the Competent Authority informed the petitioner as under:-

“OFFICE ORDER

*Dr.Alex Vergis C.George, Medical Officer of 63 Bn. is hereby permitted to do Ph.D on the topic **BIOCHEMICAL MARKERS TO ASSESS STRESS INDUCED CONDITIONS IN HUMANS’** from St.John’s Medical College, Bangalore University under the guidance of Dr.T.Venkatesh, Professor & Head, Department of Biochemistry of St.John’s Medical College, subject to all relevant rules on the subject as well as the following conditions:-*

- (a) The permission does not ipso-facto-confer any right for his continued posting at a particular station for the duration of the course.*
- (b) The pursuit of research should be without detriment to the efficient discharge of his official duties.*
- (c) The grant of permission will not entitle him to leave office by any particular time every day. On occasions*

requiring his presence in office beyond the office hours, he will ungrudgingly stay in office for duty till the time required.

- (d) The Govt. will accept no responsibility for his failure to complete the percentage compulsory attendance prescribed for the course, if any on this account.*
- (e) The permission will not entitle him to claim leave either for preparation or for the duration of examination. Leave, if any, required for this purpose will be sanctioned subject to title and exigencies of work.*
- (f) The Govt. reserve the right to withdraw the permission any time without assigning any reasons.”*

7. Relevant would it be to highlight that in para (e) the petitioner was informed that the permission granted would not entitle him to claim leave either for preparation or for duration of any examination. Leave if any required for the purpose would be sanctioned subject to ‘title’ (sic? - should read entitlement) and exigencies of work.

8. On October 31, 1999, the petitioner prayed to be sanctioned study leave for a period of three years. It appears that he did so for the reason the institution where he was registered for research had hitherto required attendance at the institute. Indeed, on March 31, 1999, St. John’s Medical College, Bangalore issued a policy circular directed at all Ph.D. students requiring them to sign the attendance register kept in the Principal’s office w.e.f. April 01, 1999.

9. In response to his request for being sanctioned study leave for three years, on May 26, 1999 the petitioner was informed by the Competent Authority as under:-

“As per Dte.Signal No.O.II.3454/93-CRC dated 29.4.99 you have been intimated that competent authority will consider grant of study leave to you when these already on study leave come back in 2000. I am therefore, desired by the IGP to request to refer back the proposal accordingly and not to proceed repeat to proceed on study leave on your own without approval from comp authority.”

And we would simply highlight that the petitioner was informed that no study leave could be sanctioned to him till those to whom study leave was sanctioned up to the year 2000 would report back.

10. On June 07, 1999 the petitioner prayed that he be sanctioned extraordinary leave for a period of one year.

11. Before the application submitted by the petitioner to be sanctioned extraordinary leave for a period of one year could be processed, he was relieved from the 109 Battalion in the afternoon on September 25, 1999 and required to join the 58th Battalion, CRPF. As noted hereinabove the petitioner absconded. He did not report for duty till February 04, 2001.

12. In the meanwhile, as noted hereinabove, a charge memo dated March 22, 2000 was served upon the petitioner listing two Articles of Charge to which we have made a reference to in paragraph 1 above.

13. The petitioner participated before the Inquiry Officer and from the record we find that ASI(M) K.Rajeevan and Assistant Commandant R.K.Choudhary were examined on August 08, 2001. The record would reveal that the petitioner had said that he did not intend to put any question to the witnesses when opportunity was granted to him to cross-examine the two. The two witnesses simply proved the notices sent to the petitioner requiring him to report for duty as also that the petitioner did not respond thereto. They proved the record pertaining to petitioner being relieved from

the 109 Battalion in the afternoon of September 25, 1999 and that the petitioner was to join the 58th Battalion which he did not.

14. The Inquiry Officer submitted a report holding that the charges were proved. Furnishing the report of the Inquiry Officer to the petitioner for his response and considering the same the Disciplinary Authority agreed with the view taken by the Inquiry Officer that the petitioner had committed a serious misconduct, when on being relieved on September 25, 1999 from the 109 Battalion and required to join the 58th Battalion, the petitioner did not join back till February 04, 2001. The penalty of being dismissed from service was inflicted upon the petitioner on July 11, 2003.

15. Without exhausting the statutory remedies available by way of filing an appeal the instant writ petition was filed.

16. It is in the aforesaid backdrop of the facts that we need to consider the contentions urged by the petitioner in support of his case.

17. The first contention was that he was not served with the 'call up' notices statedly sent by the department to him. As per the petitioner he was at Bangalore pursuing research for the Ph.D. thesis. The letters were addressed at Trivandrum. The respondents would urge that the address at Trivandrum was in all probability the place where petitioner's father was residing. The respondent would highlight that the petitioner himself had been corresponding from said address.

18. In our opinion, we need not settle said controversy for the reason it is not an obligation of the employer to send letters to the employee praying that he should join for duty. It is the obligation and the duty of every employee to report for duty.

19. The second plea that the petitioner was not granted adequate opportunity to cross-examine ASI (M) K.Rajeevan and Assistant Commandant R.K.Choudhary is sans any factual basis. The fact being, and

as per the record of the inquiry, that the two were examined during inquiry on August 08, 2001. The petitioner has signed at the bottom of the examination-in-chief of the two witnesses. The petitioner has signed thereafter where it is written that in spite of opportunity granted the petitioner had no questions to ask the two witnesses.

20. The case is clear and simple. The petitioner had already obtained registration for pursuing a Ph.D. course before he joined service. He informed the department when he joined service that he was registered for a Ph.D. course. So informing, petitioner told the department that his studies would not interfere with his work because he would occasionally be contacting his guide. With effect from April 01, 1999, the University made attendance compulsory for even Ph.D. scholars. Petitioner sought three years' study leave which was declined to him on May 26, 1999 giving good reasons that those to whom study leave had been sanctioned would be joining back in the year 2000 and only then the petitioner would be granted study leave. The petitioner sought extraordinary leave, but before the application could be processed the petitioner absconded.

21. The period of absence spans from September 25, 1999 till February 04, 2001. The period is too long.

22. Learned counsel for the petitioner had urged that the department was not justified in not sanctioning study leave, a plea which we reject for the reason, letter dated May 26, 1999 written by the department clearly informed the petitioner that those who had already been sanctioned study leave till 2000 would be returning in the year 2000 and only then the petitioner would be considered for study leave to be sanctioned. After all, requirement of hands to work has to be kept in view by the department. The contention that extraordinary leave could have been sanctioned overlooks that it is not a case where grant of extraordinary leave is a matter of right.

Those who join service know fully well that leave being sanctioned to them would be contingent upon the exigencies of service and the requirement of the employer to have minimum working strength. Merely because petitioner applied for extraordinary leave he would have no right to the same being sanctioned.

23. In any case, if the petitioner was of the view that leave ought to have been sanctioned to him, he ought to have approached a court of law. The petitioner could not become a judge of his own cause and avail self-sanctioned leave and that too for nearly one year and six months. It is too long a period.

24. The last contention urged was that the penalty of dismissal from service was grossly disproportionate to the gravity of the wrong.

25. We do not think so.

26. A government servant who absconds from duty for nearly one year and six months commits a serious misconduct. We are not shocked at the penalty levied. Our judicial conscience is not shaken. It is trite that unless the penalty shocks the judicial conscience it cannot be said to be disproportionate to the gravity of the wrong.

27. We dismiss the writ petition but without any order as to costs.

(PRADEEP NANDRAJOG)
JUDGE

(JAYANT NATH)
JUDGE

MARCH 11, 2014

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