

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

Reserved on: 23.07.2014
Pronounced on : 01.08.2014

+ W.P.(C) 1676/2013, C.M. NO. 3163/2013 & 3164/2013

ROOPA. R. JOSHI Petitioner
Through : Sh. Rakesh Tiku, Sr. Advocate with Sh.
Sandeep Kumar, Advocate.

versus

UOI AND ORS. Respondents
Through : Sh. R.V. Sinha, Sh. R.N. Singh and Sh.
A.S. Singh, Advocates, for UOI.
Sh. Saket Singh, Advocate, for TRAI.

CORAM:
HON'BLE MR. JUSTICE S. RAVINDRA BHAT
HON'BLE MR. JUSTICE VIPIN SANGHI

MR. JUSTICE S. RAVINDRA BHAT

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C.M. NO. 3163/2013

Allowed, subject to all just exceptions.

W.P.(C) 1676/2013, C.M. NO. 3164/2013

1. The petitioner, a former member of the Indian Economic Service (IES), is aggrieved by the order of the Central Administrative Tribunal (CAT) dated 04.11.2011 in O.A. 1209/2010. She approached the CAT, feeling aggrieved by the order issued by the Central Government, dismissing her from service on proven misconduct of

unauthorized absence for 4 years, and travelling abroad without intimating the Central Government, the first respondent.

2. The brief facts of the case are that the petitioner, an IES member, was posted as Adviser in the Telecom Regulatory Authority of India (TRAI), the second respondent. She was granted earned leave for 60 days, with effect from 18.08.2003 to 16.10.2003 on personal grounds, by an office order dated 14.08.2003 with the advice to report to Member-Secretary, Tariff Commission, the third respondent. On expiry of leave, she did not rejoin; instead she sent an application dated 13.10.2003 requesting extension of leave without pay till 15.3.2004. The reason for extension claimed by her was her mother's ill health. Again extension of leave was sought till 15.09.2005 by another application dated 12.09.2004; this time it was stated that the petitioner as well as her mother were unwell. During the course of departmental proceedings, the petitioner could not substantiate the claim of her sickness or the ill health of her mother, nor was any supporting material forthcoming. The first respondent, through letters dated 25.10.2004, 10.01.2005, 03.09.2005 and 09.09.2005, asked the petitioner whether she had sought permission to leave the station, as it had transpired that she went abroad, to Muscat. She was also advised to report for duty within fifteen days and that her failing to furnish explanation and rejoin duty would result in a presumption that she had nothing to say in the matter, and that disciplinary action would be initiated against her for unauthorized absence from duty. She was told that pending receipt of explanation, the leave applied for, by her, had not been sanctioned. In the meanwhile, the petitioner wrote to the

respondents, informing that she had returned to India; this letter (of 05.02.2005) furnished an address for further correspondence, at Chandigarh. In spite of the letters of the respondent, the petitioner stayed away and did not report to duty.

3. In her original application for leave, the petitioner omitted mentioning her intention to travel abroad; she also failed to furnish any address of the place she was to visit. She later informed that she was in Muscat, Oman, visiting her brother. In the application made for seeking extension of leave on 13.10.2003, she gave her address as Muscat, Oman.

4. The respondents initiated major penalty departmental proceedings, alleging misconduct on two articles of charge which read as under:

“Article-I

That the said Smt. Roopa R. Joshi while being posted as Adviser in the Telecom Regulatory Authority was granted Earned Leave for the period 18th august, 2003 to 16th October, 2003 and was advised to report to Member Secretary, Tariff Commission on expiry of leave. Smt. Roopa R. Joshi has not reported back for duty since then, despite repeated requests from the Department of Economic Affairs. Smt. Roopa R. Joshi has remained on unauthorized absence from 17th October, 2003 till date.

Article-II

The leave applied on 29.7.2003 by Smt. Roopa R. Joshi was on grounds of personal work. While no permission for going to Muscat was either sought by her nor any such permission was granted, Smt. Roopa R. Joshi had traveled abroad to Muscat, Oman. These acts of Smt. Roopa R. Joshi tantamount to gross indiscipline on the part of Smt. Roopa R. Joshi and are unbecoming of a Government servant

which warrant disciplinary action for violating Rule 3(i) (ii) & (iii) of the CCS (Conduct) Rules, 1964.”

5. The relevant findings of the enquiry officer are extracted below:

“Article-I

The first spell of leave applied for by the charged officer expired on 16th October 2003, she was due to report back for duty on 17th October 2003. She was informed to report for duty to the Member Secretary, Tariff Commission, New Delhi by Telecom Regulatory Authority of India order dated 14th August 2003. But, she did not report to the cadre nor she applied for further extension of leave. Instead, she left the country without permission from the Competent Authority. She applied for extension of leave from Muscat, Oman. But admittedly no extension of leave was sanctioned to her. She was informed by the Department of Economic Affairs to clarify under what authority she left the country vide Department of Economic Affairs, Office Memorandum dated 25th October 2004. But, no convincing reply was forthcoming from her. Simultaneously, she was advised by the Department, to report for duty, vide its Memorandum dated 25th October, 2004 within fifteen days from the date of the said communication. She was again reminded on 10th January 2005 and 3rd March 2005 to furnish the requisite clarification with direction to join back duty. She defied the directions issued by the Department and failed to report back for duty. It is a fact that the charged officer had not joined duty after the expiry of the leave. Again it is also a fact that the authority competent to grant leave has not sanctioned extension of leave and she remained absent after the end of the leave. This act is nothing but unauthorized absence from duty. Hence, I hold the Article-I of the charge that the charged officer has not reported back for duty on expiry of leave, despite repeated requests from the Department of Economic Affairs and that she has remained on unauthorized absence from 17th October, 2003 to till date, as proved.

Article-II

There was no indication in her leave application of 29th July, 2003 about her foreign visit. The reason cited by her for 60 days earned leave is personal work. There is no evidence on record to show that at this stage she either sought permission to go abroad or that any such permission was granted by the Competent Authority. Her subsequent letter of 29th August 2003, addressed to the Telecom Regulatory Authority of India, regarding her visit to her brother at Muscat cannot be treated as a letter seeking permission to leave the country. In fact, this is only an intimation about her visit abroad and her address in Muscat. Even at this stage, no permission had been sought for by the Charged Officer. The Telecom Regulatory Authority of India, in its letter dated 18th April 2006, has also informed that the Charged Officer had not applied for permission to go abroad before proceeding on leave. It is, therefore, apparent that the Charged Officer left India and traveled abroad to Muscat, Oman without the permission of the Competent Authority. The act of the Charged Officer in leaving the country without the permission from the Competent Authority is tantamount to gross indiscipline on her part and is a conduct unbecoming of a Government Servant which resulted in violation of Rules 3(1)(ii) and (iii) of the CCS (Conduct) rules, 1964. I, therefore, hold the Article II of the charge framed against the Charged Officer as proved."

6. On the basis of the above report, the petitioner was dismissed from service by order dated 07.03.2008; the appeal filed by her was rejected by an order dated 12.06.2008, which was sent to her by registered post. The petitioner, however, stated that this order was made known to her on 07/09.12.2009. It was in these circumstances that she approached the CAT for relief. The CAT, by the impugned

order, rejected the application. The relevant part of the CAT's order is extracted below:

“6. Having heard the learned counsel representing the parties, we are of the view that insofar as the delinquency or indiscipline indulged in by the applicant is concerned, it is an open and shut case. It may be true that for some period that the applicant over stayed leave and was making during the same time applications for extension of leave, she may not have received any reply, but that, in our view, could not possibly be inferred by the applicant as if her entreaties for extension of leave had met with success. We are of the firm view that no response on the part of the respondents to the applications for extension of leave cannot be said as if the extension had been granted. Be that as it may, non response of the respondents to the extension of leave applications made by the applicant is only for a brief period. It may be recalled that the applicant was sanctioned leave from 18.08.2003 to 16.10.2003. Three days before the expiry of leave, i.e., on 13.10.2003, the applicant sent an application seeking leave without pay on ground of ill health of her mother. On 12.09.2004 she sought extension of leave up to 15.03.2005 on ground of her own and her mother's ill health. Vide various communications, as mentioned above, she was requested to clarify whether she had taken permission to leave the station, and was advised to report for duty within fifteen days. She was warned of disciplinary action if she was not to join duties within the stipulated time, and further that pending receipt of clarification from her, the leave applied for by her had not been sanctioned. She would defy all these instructions and would prefer to remain on leave, and admittedly had never joined thereafter, nor even made an offer to join before the disciplinary action initiated against her, during the course of the same, or even thereafter. One of the Fundamental Duties, as enshrined in Article 51A(j) of the Constitution of India, of every citizen is to strive towards excellence in all spheres of individual and collective activity so that the

nation constantly rises to higher levels of endeavour and achievement. This duty, in our view, would be more pronounced if a person is holding a public office. The applicant, in our view, has remained totally remiss to this Fundamental Duty. She would remain on long unauthorized leave and would try to justify her remaining unauthorizedly absent on totally made-up grounds, and thus would not be entitled to any lenient view either from the Government or from the Tribunal or Courts. That being so, the second plea of the learned counsel as regards quantum of punishment needs to be summarily rejected. We may, however, mention that the learned counsel representing the applicant, for taking a lenient view in the matter, would rely upon the judgment of the Hon'ble Supreme Court in Government of India v George Phillip [(2006) 13 SCC 1]. We are rather surprised as to how this judgment would help the cause of the applicant. In fact, the same runs counter to the claim of the applicant. It was a case of an employee, who had gone abroad for higher studies. His over stay on leave for a period of two years attracted, pursuant to departmental proceedings, removal from service. The Tribunal interfered in the matter and directed the respondents to consider imposing lesser punishment, upon which he was compulsorily retired. He challenged the said order as well and this time, the Tribunal found fault with the procedure adopted in the enquiry, went into merits of the case, and quashed the order of punishment. In writ carried against the order of the Tribunal, the High Court would confirm the order, except back wages, with the direction that if the respondent was to report for duty within a period of six months, he would be reinstated in service. Hence, the appeal before the Supreme Court. As regards merits of the controversy, it was held that once, an order was passed by the Tribunal upholding the finding that the applicant had indeed indulged into misconduct, but interfered only as regards quantum of punishment, there was no question for the Tribunal to go into the merits of the controversy again, and further that the order of compulsory retirement was

commensurate and, in any case, not excessive to the misconduct indulged in by him.”

7. It is argued by Mr. Rakesh Tikoo, learned senior counsel for the petitioner that the findings of the departmental enquiry are untenable. It was submitted that till she returned in February, 2005, she was not intimated that her application for extension of leave was rejected. Counsel submitted that since her mother suffered from a prolonged bout of ill health, the petitioner was constrained to stay back and look after her. Emphasizing that the petitioner's intention was never to stay out of her job, it was submitted that the moment the petitioner intimated her return, the respondent should have intimated her posting and also that her application for leave was rejected, in which event she could have taken remedial action. Stating that the rejection of her application was intimated much later, Counsel argued that, in order to save her from embarrassment, the petitioner had sought for voluntary retirement in February 2005; even that request was later turned down. It was submitted that the fault in not intimating her overstay could have been dealt with less severely, and the petitioner could have been permitted to retire voluntarily as that would not have caused prejudice to anyone. On the other hand, the dismissal order was harsh, as it forfeited her entire previous service of over 25 years and denied her pension and other terminal benefits. Counsel relied on the decision reported as *State of Punjab vs. Dr. P. L. Singla* (2008) 8 SCC 469 to say that the penalty in the present instance is disproportionate to the misconduct alleged and found.

8. The respondent urged that no infirmity can be found with the initiation and conduct of departmental proceedings. The charges alleged against the petitioner were established on the face of the record. No *mala fides* or illegality in the proceeding could be found; in these circumstances, the CAT acted correctly in not interfering with the decision of the respondent in issuing the dismissal order.

9. The facts which emerge from the above discussion are that the petitioner applied and was initially granted leave for the period 18.08.2003 to 16.10.2003. Her later requests for extensions were not acceded to. Although she sought to allege that several letters had been written to the respondents, seeking extension of leave, few of those letters were on the record. What is clear, however, is that no extension of leave beyond 16.10.2003 was sanctioned. In these circumstances, there was no justification for not reporting for work after 16.10.2003. When she returned sometime in beginning of 2005, a letter was written to the respondents by her on 5.2.2005 intimating that her address for correspondence was somewhere in Chandigarh. By a letter dated 28.2.2005 she applied for voluntary retirement. That application was rejected subsequently by the respondent. The most striking aspect in the case is that even after her return, in 2005, the petitioner never reported for duty; she also did not report for duty after her request for voluntary retirement was turned down. During the proceedings, apart from emphasizing that she sought for extension of leave, she was unable to show any material or document substantiating her plea with respect to existence of compelling circumstances, in the form of prolonged ill health of her mother, constraining her continued absence

from duty. The other fact which emerged during the departmental proceeding was that at no stage did the petitioner, a public employee, formally intimate that she was travelling abroad. In this background of established facts and circumstances, in this Court's view, the respondents clearly established the charges of misconduct alleged against her.

10. Was the penalty imposed disproportionate? For a court exercising judicial review under Article 226 of the Constitution, to say that penalty for a proven misconduct is so severe and harsh as to be termed "disproportionate", there has to be a finding that the measure is "*an outrageous defiance of logic*" (a term used in *Ranjit Thakur v Union of India* 1987 (4) SCC 611) or that which is "*unreasonable*" or is an "*award of punishment which is grossly in excess to the allegations..*" (Ref *Chairman cum Managing Director, Coal India Limited & Anr v Mukul Kumar Choudhuri & Ors* AIR 2010 SC 75). The earlier decision in *B.C. Chaturvedi v Union of India* 1995 (6) SCC 749 stated the governing principle as follows:

"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 authority/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. In the present case, we notice that the petitioner was a senior IES officer working as Advisor with the Telecom Regulatory Authority. Her leave was sanctioned only till 16th October, 2003. She did not report for

duty, despite knowing that her leave was never sanctioned thereafter and that her request for voluntary retirement was turned down. She never returned to Delhi; she went instead to Chandigarh. Her absence – till 2008- was in effect for nearly 5 years. This court is alive to the fact that when a public employee, and a senior level officer at that, stays away from work, the department or agency is put under severe manpower strain, because it would have to burden other officers with additional duties. The higher the position, the greater the responsibilities and frequently, such absences contribute to delayed decision making and other adverse consequences. Having regard to these circumstances, this court is not persuaded by the petitioner's submission that the penalty of dismissal was disproportionate as to be called shockingly unreasonable or irrational. The reliance on the decision in *Dr. P.L. Singla* (supra) is inapt, because that was a decision where the Supreme Court set aside concurring judgments of the courts below; the findings of the lower courts were that since the employee had been granted extraordinary leave, there was an implied condonation of his unauthorized absence of five years. In fact, the Supreme Court observed that:

“10. Where the employee who is unauthorizedly absent does not report back to duty and offer any satisfactory explanation, or where the explanation offered by the employee is not satisfactory, the employer will take recourse to disciplinary action in regard to the unauthorised absence. Such disciplinary proceedings may lead to imposition of punishment ranging from a major penalty like dismissal or removal from service to a minor penalty like withholding of increments without cumulative effect. The extent of penalty will depend upon the nature of service, the

position held by the employee, the period of absence and the cause/explanation for the absence. Where the punishment is either dismissal or removal, it may not be necessary to pass any consequential orders relating to the period of unauthorized absence (unless the rules require otherwise). Where the punishment awarded for the unauthorized absence, does not result in severance of employment and the employee continues in service, it will be necessary to pass some consequential order as to how the period of absence should be accounted for and dealt with in the service record. If the unauthorized absence remains unaccounted, it will result in break in service, thereby affecting the seniority, pension, pay etc., of the employee. Any consequential order directing how the period of absence should be accounted, is an accounting and administrative procedure, which does not affect or supersede the order imposing punishment.

11. In this case, the punishment was imposed by order dated 16.9.1999/11.10.1999. That order was not cancelled, revoked or withdrawn. The subsequent order dated 25.1.2001 merely accorded extraordinary leave in regard to the period of absence, but did not condone the unauthorized absence nor wipe out the punishment already imposed. The said order was only consequential to the imposition of punishment. Its effect was to maintain continuity of service of the respondent, but deny salary for the period of absence and not to count the period of absence as qualifying service for the purposes of pension. Its effect is certainly not to exonerate the respondent from the charge of unauthorised absence nor to wipe out the punishment. If the intention was to revoke the punishment, the order dated 25.1.2001 would have clearly stated so. But it did not.

12. The assumption by the courts below that when an order is passed according extra-ordinary leave for the period of absence, it will have the effect of effacing or erasing the punishment already imposed, is therefore incorrect and is a serious error of law. When the trial court and the appellate

court had committed this serious error, the High Court ought to have formulated an appropriate question of law and allowed the second appeal. Instead, it chose to dismiss the second appeal putting its seal of approval on a wrong interpretation of law leading to serious repercussions in regard to discipline and administration. The judgment of the High Court confirming the orders of the courts below, therefore calls for interference.”

Here, the petitioner never reported back for duty and contested the penalty as if she acted correctly; her leave was never sanctioned; nor was the absence condoned, *ex-post facto*. Therefore, it cannot be said that the penalty was disproportionate.

12. For the foregoing reasons, the writ petition is meritless; it is dismissed without any order as to costs.

S. RAVINDRA BHAT
(JUDGE)

VIPIN SANGHI
(JUDGE)

AUGUST 1, 2014