

GAHC010145402017



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/6490/2017

ANANTA PRASAD
S/O- LATE RAGHU NATH PRASAD, R/O- WARD NO.6, DHUBRI TOWN, P.O-
DHUBRI, UNDER DHUBRI POLICE STATION, DIST- DHUBRI, ASSAM,
-783301

VERSUS

THE STATE OF ASSAM AND 2 ORS
REP. BY THE COMMISSIONER AND SECRETARY, JUDICIAL DEPARTMENT,
GOVT OF ASSAM, DISPUR, GUWAHATI- 06

2:GAUHATI HIGH COURT
REP. BY THE REGISTRAR GENERAL
GAUHATI HIGH COURT
GUWAHATI- 781001

3:PRESIDING OFFICER/MEMBER
MOTOR ACCIDENT CLAIMS TRIBUNAL
DHUBRI
ASSAM- 78330

Advocate for the Petitioner : MR.D DAS

Advocate for the Respondent : MR.H K DAS

Linked Case : WP(C)/6492/2017

ANJUMA BEGUM

W/O- SRI ANANTA PRASAD
R/O- WARD NO. 6
DHUBRI TOWN
P.O- DHUBRI
UNDER DHUBRI P.S
DIST- DHUBRI
ASSAM
PIN- 783301

VERSUS

THE STATE OF ASSAM AND 2 ORS
REP. BY THE COMMISSIONER AND SECRETARY
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2:GAUHATI HIGH COURT
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GUWAHATI- 781001
3:PRESIDING OFFICER/MEMBER
MOTOR ACCIDENT CLAIMS TRIBUNAL
DHUBRI
ASSAM
PIN- 783301

For the Petitioners : **Mr. K. Sarma, Adv.**

Mr. S. Baruah, Adv

For the Respondents: Mr. J.K. Goswami, GA, Assam,
Mr. H. K. Das, SC, GHC.

BEFORE
THE HON'BLE MR. JUSTICE SUMAN SHYAM

Date of hearing : 21/03/2023.

Date of judgement : 21/03/2023

JUDGEMENT AND ORDER (ORAL)

- 1.** Heard Mr. K. Sarma, assisted by Mr. S. Baruah, learned counsel for the writ petitioners in both the writ petitions. Also heard Mr. J.K. Goswami, learned Government Advocate, Assam, appearing for the respondent no. 1. Mr. H.K. Das, learned Standing Counsel, Gauhati High Court has appeared for the respondent nos. 2 and 3.
- 2.** The petitioners in both the writ petitions, are related to each other as husband and wife. Being aggrieved by the orders of the Disciplinary Authority, both dated 01/08/2017, imposing the minor penalty of withholding two increments despite regularizing their period of unauthorized absence against the applications for Earned Leave/Commuted Leave, these two writ petitions have been filed *inter-alia* contending that after regularizing the period of absence of the petitioners against Earned Leave/Commuted leave applications, there was no occasion for the authorities to impose the penalty on the grounds of unauthorized absence from duty.
- 3.** The facts and circumstances involved in both the writ petitions are identical in nature with the only exception that while the writ petitioner in WP(C) 6490/2017 i.e. Sri Ananta Prasad had applied for Earned Leave (EL) for the period from 27/06/2016 to 26/08/2016, his wife Smt. Anjuma Begum, who is the writ petitioner in WP(C) 6492/2017 had applied for Commuted Leave (CL) for the same period. For the purpose of disposal of both these writ petitions, I propose to refer to the facts involved in WP(C) 6490/2017.
- 4.** The writ petitioner in WP(C) 6490/2017, Sri Ananta Prasad while working as Sherestadar in the office of the Member, Motor Accident Claims Tribunal (MACT) Dhubri i.e. the respondent no. 3, had remained absent from duty for the period from 27/06/2016 to 26/08/2016. On 27/06/2016, the petitioner had sent an application through e-mail addressed to the respondent no. 3 seeking EL for the period from 27/06/2016 to 20/08/2016. It appears that the petitioner had left for Mumbai on 24/06/2016 along with his wife Smt. Anjuma Begum. On 25/06/2016, the brother of Smt. Anjuma Begum had lodged an ejahar with the Dhubri Police station alleging that the writ petitioner and his brother Sri Bankim Prasad had abducted Smt. Anjuma Begum and had threatened him with dire consequences by demanding a sum of Rs. 15 lakhs. Based on the ejahar dated 25/06/2016, Dhubri PS Case No. 658/2016 was registered on 25/06/2016 under sections 364/34 of the IPC. In the meantime, taking note of the unauthorized absence of the petitioner from duty, the respondent no. 3 had issued a notice to the petitioner on 29/06/2023 indicating that his

application for EL was not supported by any medical evidence and that he had unauthorizedly remained absent from duty and had also left the headquarter without permission. Therefore, the petitioner was asked to immediately report for duty by reiterating that his absence from during since 27/06/2016 was unauthorized.

5. When the petitioner had failed to respond to the communication dated 29/06/2016, a show cause notice was issued to him asking him to show cause as to why, a departmental proceeding should not be initiated against him. On 21/07/2016, the petitioner had sent his reply by stating that he had to leave the Headquarter due to a medical emergency, as a result of which, he could not produce the supporting the medical documents. However, on completion of medical checkup and treatment, he would submit all the medical certificates. Accordingly, the prayer for grant of EL and Station Leave permission was reiterated by the petitioner in his reply dated 29/07/2016. The aforesaid explanation of the petitioner was not found to acceptable, as a result of which, the respondent no. 3 had initiated a departmental proceeding against the petitioner. By order dated 26/08/2016, the petitioner was also placed under suspension. On conclusion of the departmental proceeding, the Enquiry Officer had submitted his report wherein, it has been held that the petitioner had acted in an irresponsible manner and in gross negligence of his duty by remaining unauthorizedly absent from duty and by leaving the headquarter during the period from 27/06/2016 to 26/08/2016. Based on such finding of the Enquiry Officer, the impugned order dated 01/08/2017 was issued. The operative part of the order dated 01/08/2017 is reproduced herein below for ready reference :-

“Sri Ananta Prasad, Sherestadar of the Office of the member of MACT is hereby re-instated to his service, deciding to withhold two increments, to come into effect from the date of the order. His suspension period shall be treated as on duty and allowances of suspension period to be regulated under FR.54B. The period of unauthorized leave from 26/6/16 to 26/8/16 is to be adjusted to the prayer for Earned leave made earlier. Communicate the order to all concerned.”

6. It would be pertinent to mention herein that a similar proceeding was initiated against the writ petitioner in WP(C) 6492/2017, who was serving as a Copyist in the MACT, Dhubri at the relevant point of time. A similar order imposing minor penalty was also issued

against her on 01/08/2017.

7. Assailing the orders dated 01/08/2017 impugned in both the writ petitions, Mr. K. Sarma, learned counsel for the writ petitioners has strenuously argued that before leaving the Headquarter, his clients had intimated the authority and had also submitted their respective applications for EL and / or Commuted Leave on 27/06/2016 itself. Since 25th and 26th of June, 2016 were Government holidays and in view of the fact that both the petitioners had submitted their applications for leave, it cannot be argued that they were unauthorizedly absent from duty. According to Mr. Sarma, Earned leave/Commuted Leave are the leaves earned by the employees under the Rules by dint of their continuous service in the department and, therefore, availing such leave is a matter of right, which cannot be denied by the authorities. Under the circumstances, once the employee applies for leave, the employer would be duty bound to grant such application without raising any question.

8. It is also the submission of Mr. Sarma that since the period of absence of both the petitioners were eventually regularized by granting them the EL/Commuted leave, as the case may be, the question of misconduct/unauthorized absence from duty, did not arise at all. Consequently, there was no occasion for the Disciplinary Authority to impose the minor penalty of withholding of two increments upon the petitioners. Mr. Sarma has urged that the minor penalty of withholding of two increments would have a cascading effect throughout the career of the petitioners and even after their retirement, on their pensionary benefits and, therefore, the order of penalty deserves to be interfered with by this Court.

9. Responding to the above arguments, Mr. H.K. Das, learned Standing Counsel, Gauhati High Court, appearing for the respondent nos. 2 and 3 has argued that merely because the writ petitioners had submitted applications for leave, the same cannot lead to the conclusion that such applications would be automatically granted. As a matter of fact, submits Mr. Das, by issuing the notice(s) dated 29/06/2016, both the petitioners were informed that their applications seeking leave had been rejected on the grounds stated therein and they were asked to report back for duty. After receipt of such communication, it was incumbent upon the writ petitioners to immediately report back for duty, which they had failed to do. Mr. Das further argues that the petitioners have not only remained unauthorizedly absent from duty from 27/06/2016 to 26/08/2016 but have also distorted the

facts and presented a version before the authorities which was not true. According to Mr. Das, both the petitioners had left for Mumbai to get married and thereafter, they had spent time at Mumbai to settle down in their married life but the petitioners had incorrectly projected before the authorities that they had gone to Mumbai for medical treatment.

10. By referring to the solitary medical certificate relied upon by both the writ petitioners, Mr. Das has argued that while the petitioner in WP(C) 6490/2017 had claimed that he was suffering from Bronchitis and Breathlessness, his wife, viz. Smt. Anjuma Begum was suffering from skin disease but both the petitioners apparently consulted the same doctor i.e. Dr. Vinod S. Sirodkar, MBBS (Bom) and that too, on 23/07/2016 (typed as 23/05/2016), which is more than a month after they had apparently left Assam. Mr. Das has also pointed out the other discrepancies in the projections made by the petitioners inasmuch as, while the leave application mentions that they had proceeded to Delhi, according to the petitioner's counsel, they had gone to Mumbai. Under the circumstances, Mr. Das submits that totally irresponsible conduct of the petitioners is established on the face of the record. Therefore, the authorities were justified not only in holding the departmental proceeding but also in imposing the minor penalty on the petitioners.

11. In so far as the arguments regarding regularization of the period of absence of the petitioners having a vitiating effect on the order of penalty, Mr. Das has argued that such a recourse had to be taken only to keep their service record in order and also to avoid further prejudice being caused to the petitioners in the matter of computation of their pensionary benefits. The same cannot, in the submission of Mr. Das, have any bearing in the order of penalty which have been imposed upon both the petitioners based on the categorical finds of misconduct recorded by the Enquiry Officer. In support of his above arguments, Mr. Das has placed reliance on the decisions rendered by the Hon'ble Supreme Court of India in the cases of ***Maan Singh Vs. Union of India and others*** reported in **(2003) 3 SCC 464** ; ***Delhi Transport Corporation Vs. Sardar Singh*** reported in **(2004) 7 SCC 574** and ***State of Punjab Vs. Dr. P.L. Singla*** reported in **(2008) 8 SCC 469**.

12. I have considered the submissions advanced by learned counsel for both the sides and have carefully gone through the materials available on record.

13. As would be apparent from the facts narrated above, there is no doubt about the fact that both the petitioners, who were working under the establishment of the respondent

no. 3, had remained absent from duty with effect from 27/06/2016 to 26/08/2016. There are documentary evidence not only to show that during that period they were in Mumbai, in the State of Maharashtra, but the material available on record also demonstrate that the petitioners got married at Mumbai (Maharashtra) under the provisions of the Special Marriage Act, 1954 during that period. From the above, it is amply established that the whole purpose of the petitioners going to Mumbai was to get married, away from the family members so as to avoid any opposition from the family of Smt. Anjuma Begum.

14. As noted above, both the petitioners have relied upon a medical certificate issued by a general practitioner from Mumbai. However, there is nothing on record to show that either of the petitioners were actually suffering from any such disease prior to 27/06/2016, which would require specialized medical treatment at Mumbai. It is also not understood as to why, the petitioners had to ignored the facilities of specialized medical treatment available at Guwahati i.e. Guwahati Medical College and Hospital, having a number of doctors and had to go to Mumbai to avail treatment under a doctor, who did not have any specialized degree. Be that as it may, on a careful examination of the materials on record, this Court is unable to accept the submission of Mr. Sarma that the petitioners had to leave for Mumbai urgently so as to avail medical treatment. There is no evidence on record to support such a contention. If that be so and considering the fact that there is no dispute about the fact that both the petitioners had remained absent from duty during the period from 27/06/2016 to 26/08/2016, there can be no doubt about the fact that the conduct of the petitioners were irresponsible and therefore, were sufficient to invite disciplinary action from the authorities. As a matter of fact, this Court is of the opinion that not to speak of furnishing proper explanation before the Disciplinary Authority, the petitioners have failed to offer satisfactory explanation even before this Court explaining the reason and the circumstances under which they had left Head Quarter and had remained absent from duty during the relevant period.

15. In so far as the arguments of Mr. Sarma that the EL/Commuted leave is a right of the employees, which he or she acquires under the Rules, there can be no doubt about the fact that an employee would be entitled to apply for the leave, as may be permissible under the Rules. However, save and except availing casual leave, grant of other categories of leave is a matter of discretion of the employer and if such discretion is exercised in a reasonable manner and after taking due note of the facts and circumstances of each case, it cannot be

said that grant or rejection of Earned Leave/Commutated leave would be illegal merely because it does not meet the expectation of the employee. In the present case, there is nothing to indicate that the employers have acted in an arbitrary or illegal manner while declining the application of Earned leave/commuted leave applied for by the petitioners.

16. Coming to the last question as to whether the regularization of the period of absence of the petitioners from duty by treating the period of absence as on leave, would have a vitiating effect on the order of penalty, the said aspect of the matter has also been dealt with in several decisions of the Supreme Court wherein it has been held that merely because the period of absence is regularized, the same would not automatically set at naught the order of penalty, which may include an order of dismissal from service. After summing up the law laid down in various relevant decisions, the Supreme Court had made the following observations in the case of **Dr. P.L. Singla (Supra)** as relied upon by Mr. Das, which is reproduced herein below for ready reference :-

“14. 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 unauthorized 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."

17. In view of the ratio laid down in the case of ***Dr. P.L.Singla (Supra)***, I find force in the submission of Mr. Das that the order regularizing the period of absence from duty of both the petitioners was meant to set the records in order so as to avoid break in their service and also any future complication in the matter of pensionary benefits. Therefore, such a recourse, in the opinion of this Court, would not have any adverse bearing on the order of penalty.

18. For the reasons stated herein above, I do not find any justifiable ground to interfere with the impugned orders of penalty. Since there is no allegation in the writ petition as regards violation of the any procedural safeguard or principles of natural justice, this Court does not find any scope to grant relief to the petitioners in both the writ petitions. The writ petitions are, therefore, held to be devoid of any merit and are accordingly dismissed.

There would be no order as to costs.

JUDGE

Sukhamay

Comparing Assistant