

HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

WRIT PETITION No. 25116 of 2000

ORDER:

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The petitioner, who was working as a Security Officer in Bank of Baroda, Rajkote, preferred the present writ petition under Article 226 of the Constitution of India, declaring the action of the respondents authorities in terminating his services as Security Officer, as illegal, arbitrary and improper.

The averments in the affidavit filed in support of the writ petition would show that the petitioner herein, who was a post graduate having MBA degree was selected as a Commissioned Officer in the Indian Army as the second Lieutenant during the year 1976. Basing on the merit he was commissioned into combat force ie. infantry and posted to Maratha regiment. As a result of his continuous service in the forward areas, the petitioner was medically advised to take retirement from army service. In the year 1986 the petitioner took premature retirement from the Army as he was frequently subjected to Lumbago/back ache. During the year 1988, the petitioner was selected as a Security Officer in the respondents bank, which is a post in specialist category, and was posted to Andhra Pradesh Region-I, Hyderabad (fifth respondent). His duties included looking after the security affairs of Region-II, Visakhapatnam and Karnataka region. In the year, 1994 the petitioner gave a representation dated 02.03.1994 asking for his retention in Hyderabad for a period of two years on compassionate grounds. On 30.07.1994 the petitioner gave another representation to retain him at

Hyderabad as his health was a not better and also on the ground that his old aged parents are residing with him. The other ground on which he sought for retention in Hyderabad was that his wife was working as a teacher in a local school at Hyderabad and the said school has no branches at any other place. While things stood thus, the writ petitioner was posted to Regional Office, Rajkot in the year 1994. On receiving the orders of transfer, he is alleged to have again made a representation seeking retention in Hyderabad on the same grounds. However, the writ petitioner was relieved from his duties as Security Officer in Hyderabad. As the request of the writ petitioner was not accepted, he joined his duty in Rajkote as a Security Officer. He was posted to Ahmedabad, where he worked till 1996 and when he was on leave, he was re-transferred to Rajkote and posted as Security Officer. It is stated that pursuant to the representation made by the writ petitioner, the respondents bank vide their letter dated 24.04.1997 converted the petitioner from the specialist category to the generalist category with effect from 15.04.1997. While things stood thus, the petitioner applied for privilege leave from 05.01.1998 to 03.02.1998 for availing leave travel concession and accordingly he was sanctioned leave from 05.01.1998 to 03.02.1998 for availing leave Fare Concession for Home Town. He was also sanctioned an advance of Rs.12,000/-. Vide letter dated 01.02.1998, the petitioner sought for extension of leave by another 30 days as he had some urgent work. The said application was received in the regional office on 10.02.1998 which was rejected on 11.02.1998. The regional office directed the petitioner to report to duties, but the writ petitioner neither reported to duty nor submitted any valid reasons for his absence. A memo was issued on 21.04.1998 along with the statement of

allegations and articles of charge by the disciplinary authority. The writ petitioner did not attend the enquiry proceedings despite being given an opportunity to participate in the enquiry. After perusing the material available on record, the enquiry officer held that all the allegations in the charges are proved and accordingly submitted his report. Basing on the findings of the enquiry officer, the punishment of removal from service, which shall not be a disqualification for future employment, was imposed on the writ petitioner vide order dated 31.12.1998. Aggrieved by the said order, the petitioner preferred an appeal before the Appellate Authority under Regulation 17 of Bank of Baroda Officer Employees (Discipline and Appeal) Regulations, 1976. After going through the material placed before the authority, the appellate authority, did not find any merit for re-consideration of the punishment imposed on the petitioner and accordingly rejected the appeal. Challenging the said order the present writ petition came to be filed.

The main grounds which are raised in the writ petition are that the petitioner could not join duty at Rajkote due to sickness of his parents and also the inconvenience caused to his wife, who used to work as a teacher in a local school at Hyderabad. It is also stated that on 08.02.1998 the petitioner slipped and fell down in bath room which caused serious sprain in the back and aggravated the lumbago/back pain which relapsed due to family worries. It is also stated that though the petitioner has been converted from specialist category to generalist category with effect from 15.04.1997 he was not posted to Andhra Region wherein there are many branches of the respondents' bank in which he could have been accommodated as an officer on general duties.

A counter came to be filed by the respondents bringing to the notice of the Court about the un-authorised absence of the petitioner for nearly seven months and his conduct in not joining duty in spite of repeated letters being sent by the respondents bank asking him to join duty in view of the nature of duties performed by him as a security officer. Even though the petitioner was informed that his application for extension of leave is rejected and his absence from 04.02.1998 onwards was treated as un-authorised absence, the petitioner did not join duty. It is the case of the respondents that disciplinary proceedings were initiated against the petitioner for his un-authorised absence and the petitioner never participated in the enquiry even though he was given sufficient opportunity, as such the orders passed by the disciplinary authority cannot be said to be illegal or improper.

It is also stated that on an earlier occasion also, disciplinary proceedings were initiated against the petitioner for remaining authorisedly absent from 11.05.1996 to 21.07.1997. During enquiry, he admitted all the charges and he was imposed punishment of stoppage of one increment without cumulative effect.

A perusal of the material on record placed before the Court and the orders passed by the authorities would show that the petitioner while working as Security Officer in Regional Office, Rajkote, is alleged to have committed gross misconduct in terms of Regulation 3 read with Regulation 24 of the Bank of Baroda Employees' (conduct) Regulations, 1976. Three charges came to be framed against him which are as under:

1. He has been remaining away from duty un-authorisedly w.e.f. 04.02.1998

2. He violated, flouted the rules, regulations and procedures of the Bank
3. He did acts unbecoming of a Bank Officer.

It is an admitted fact that the petitioner proceed on leave from 05.01.1998 to 03.02.1998 and availed Leave Fare Concession for home town. Vide his letter dated 04.02.1998 he requested the Regional Manager, Rajkote, to extend his leave for a further period of 30 days which was rejected on the ground of administrative exigencies and the same was informed to the writ petitioner advising him to report to duty immediately. As the petitioner failed to join the duty, the Regional Office vide letter dated 13.02.1998 informed the petitioner that his leave from 04.02.1998 is being treated as un-authorised absence. In spite of it, the writ petitioner neither joined the duty nor wrote any letter enclosing the reason for his un-authorised absence. Thereafter, a memo along with articles of charges and statement of allegations were sent to him on 21.04.1998 advising him to submit his written statement of defence within 15 days. Though the entire material was served on the writ petitioner, he did not make any effort to contest the matter and accordingly an enquiry officer was appointed to enquire into the matter. It is also not in dispute that the petitioner neither participated in the enquiry nor did he made any representation explaining the circumstances as to why he could not attend the enquiry. Since the petitioner was neither present before the enquiry proceedings nor submitted any defence, an exparte order came to be passed against him. Challenging the said order, the petitioner preferred an appeal, wherein, the appellate authority after referring to all the material on record found that the acts of the writ petitioner was contrary to

the regulations of the bank and that such it cannot be said that he has been victimized. It was also held that there was no violation of any principles of natural justice while dealing with the case of the writ petitioner.

From the material on record, it is clear that in the appeal the petitioner has come forward with the theory of sickness due to fall in the bath room by producing the medical certificates issued by one Dr. Pulla Rao of Kishore Nursing Home. Though the petitioner in para No.23 of the affidavit categorically stated that on 08.02.1998 he slipped and fell down in the bath room causing serious sprain in back and aggravated the lumbago back pain, but the medical certificate dated 31.01.1998 shows that the writ petitioner had fall in the bath room in the morning of that day ie. 31.01.1998, due to which he suffered back pain and that he was advised to take rest for a period of 20 days i.e. till 20.02.1998. The certificate which is placed on record at Page No.49 of the papers filed along with the writ petition totally falsifies the plea of the petitioner. If really, the petitioner had a fall in bath room on 08.02.1998, it is very strange as to how the doctor gave a certificate stating that the petitioner had fallen in the bath room on the morning of 31.01.1998 and that he has to take rest from 31.01.1998 to 20.02.1998. The said period of rest was being extended from time to time. When there is any amount of doubt with regard to the fall on 08.02.1998, the reason given by the petitioner for his un-authorised absence and non-prosecution in the enquiry cannot be accepted.

The record which has been placed before the Court would show that the petitioner was given an ample opportunity to participate in the enquiry. In spite of receiving notices along with

material, the petitioner failed to turn up before the enquiry officer. As stated earlier, the reason given for not attending the enquiry appears to be palpably false. Further, the medical certificates which are placed before the Court would clearly show that the doctor has only advised him to take bed rest for couple of months. It is not the case of the petitioner that he was not in a position to give any written explanation or intimate by way of a letter as to the allegations made or as to why he could not participate in the proceedings. His conduct appears to be totally irreprehensible.

In a situation like this, the Apex Court in ***State of Punjab v. Dr. P.L.Singla***^[1] observed as under:

“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.”

As seen from the judgment referred to above, the Apex Court has categorically held that in security services where discipline is of utmost importance, even a few days of overstay is to be viewed very seriously. In the instant case, the petitioner herein was working as a Security Officer in a bank with lot of responsibilities. In fact, while working in Hyderabad, the petitioner was incharge of not only the state of Andhra Pradesh but also some regions of Karnataka. That being the position, the un-authorised absence for nearly eight months and his non-joining to duty in spite of his request for extension of leave being rejected, definitely amounts to misconduct in terms of Regulation 3 read with Regulation 24 of the Bank of Baroda Employees' (conduct) Regulations, 1976.

In view of the above this Court is of the opinion that there is no violation of principles of natural justice; the charges made against the petitioner are fully established; and the punishment awarded cannot be said to be disproportionate to the offence alleged. Hence the orders passed by the third respondent dated 31.12.1998 which were confirmed by the second respondent vide proceedings dated 12.11.1999 needs no interference. Hence, the writ petition is liable to be dismissed.

Accordingly, the writ petition is dismissed. No order as to costs. Consequently, miscellaneous petitions, if any, pending in this Writ Petition shall stand closed.

**JUSTICE C. PRAVEEN
KUMAR**

14.08.2015
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[\[1\]](#) (2008) 8 SCC 469