(2004) 08 JH CK 0024

Jharkhand High Court

Case No: Writ Petition (S) No. 6518 of 2002

Binay Kumar Singh		APPELLANT
	Vs	
Union of India (UOI) and Others		RESPONDENT

Date of Decision: Aug. 24, 2004

Acts Referred:

- Central Civil Services (Leave) Rules, 1972 - Rule 19(3)
- Central Industrial Security Force Rules, 1969 - Rule 35
- Constitution of India, 1950 - Article 226

Citation: (2004) 4 JCR 796

Hon'ble Judges: Tapen Sen, J

Bench: Single Bench

Advocate: Aparesh Kumar Singh, for the Appellant; C.G.S.C., for the Respondent

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

Tapen Sen, J.
Heard the ''parties with their consent, this writ petition is being dlsposed-off at his stage.

2. The petitioner, who was posted as an Inspector (Execution) in the Central Industrial Security Force Onit at Bokaro applied for earned leave for 25 (twenty five) days for the period 28.2.2001 to 24.3.2001. He was required to report back on 23.3.2001.

3. On 22.3.2001, the petitioner seftt a letter for extension of his leave on account of having fallen ill with hepatitis. That application is Annexures 3, and upon perusal thereof it is evident that the petitioner supported his case by submitting photostat copies of medical certificates and reports of the pathological examinations. These reports are Annexure 2 and Annexure 9 series. Annexure 9 beginning at page 39

shows diagnosis as hepatitis advising complete rest for 15 (fifteen) days. It is dated 23.1.2001. At page 40 it is evident that the petitioner was re-examined on 5.4.2001 and he was advised a further rest of 15 (fifteen) days on 5.5.2001. The doctor who is the Deputy Superintendent Sub-Divisional Hospital, Dahapur. Patna certified that the petitioner was under his treatment from 21.3.2001 to 14.5.2001 and that he was fit to resume his duties from the day the said certificate was issued, i.e. 5.5.2001. The application of the petitioner for extension of his leave, as has already been stated above was sent on 22.3.2001 and it appears that this application was not at all considered by the respondents because, on 28.3.2001 the respondent No. 6 communicated allegation of unauthorized absence and directed the petitioner that he should immediately give his joining. This letter dated 28.3.2001 appears to have been sent to the petitioner by a registered letter dated 2/3.4.2001 wherein while adverting to the application of the petitioner dated 22.3.200 i, the Commandant (Administration) informed the petitioner that his application for extension of twenty days had been considered by the competent authority, who had ordered him to resume his duties forthwith.''

4. After having been certified lo be fit for duty, the, petitioner proceeded to join at Bokaro Steel Limited in its C.I.S.F. Unit and gave his joining on 6.5.2001 and submitted an appropriate application along with medical documents referred to earlier. One month thereafter, -i.e., on 6.6.2001, the respondent No. 6 issued a charge-sheet informing the petitioner that action was proposed to be taken in view of Rule 35 of the Central Industrial Security Force Rules, 1969. The charge-sheet is Annexure 10 and the imputation of misconduct is unauthorized absence for a period of 43 days. The petitioner filed his cause on 7.6.2001 (Annexure 11), whereafter a disciplinary proceeding was held, and on 23.6.2001 (Annexure 12), the respondent No. 6 passed, the first impugned order imposing a minor punishment of withholding the annual increments for three years without affecting the pay revision in future. The petitioner filed an appeal which was rejected on 18.8.2001. From the reasons given by the Commandant rejecting the Appeal, this Court is astonished at the manner in which he has proceeded to reject the appeal of the petitioner. Let it be recorded that the Commandant is not a medically trained person and yet he makes remarks which are surprising to this Court. How does he know that merely because the petitioner had not got himself "admitted" in the Hospital, his excuse, therefore, was a mere pretext? How does he say that the petitioner was not "that ill" that he could riot undertake a journey for purposes of coming and joining? This Court takes Judicial notice of the fact that hepatitis can some times be fatal and a person who contracts such a disease should be very careful and his movements should be very restricted. The attitude of the appellate authority in rejecting the appeal on these grounds appear to be misdirected and without any sound reason. The authorities should have taken into consideration that'' while dealing with a case where the employee had submitted an explanation, that ought to have received proper consideration and that too, when the application for extension had been

received by them prior to expiry of the period of leave. It is also astonishing that the authorities have made, an attempt to misinterpret the certificate of the doctor by saying thai it showed that the petitioner had been advised bed rest, but none of the prescriptions given by the O.P.D. proved that the petitioner was actually in bed. How does a Commandant of the Central Industrial Security Force make such wild propositions? Let it be recorded that even Rule 19(3) of the Central Civil Services (Leave) Rules, 1972 authorizes the competent authority, who grants leave, to secure a second medical opinion. This was not done and the Commandant, at his own level, came to a finding, which, as lias already been stated, is not reasonable. It appears, therefore, that the entire gamut of dealing with the matter was a mere ruse only to find faults with the petitioner. The petitioner met the same fate at the hands of the Revisional Authority also, who. at paragraph 6, supported the findings of the Appellate Authority and it appears that the Revisional Authority became extremely technical while dealing with the matter without actually considering the case of petitioner in its proper perspective. From the counter affidavit, it does not appear that the respondents have a case that the petitioner is a habitual offender. The Supreme Court in the case of Shri Bhagwan Lal Arya Vs. Commissioner of Police Delhi and Others, has held that the disciplinary authority without caring to examine the medical aspects of a person acts with a total non-application of mind. Paragraph 12 of the said judgment is quoted herein :

The disciplinary authority without caring to examine the medical aspect of the absence awarded to him the punishment of removal from service since their earlier order of termination of the appellant''s service under the Temporary Service Rules did not materialize. No reasonable disciplinary authority would term absence on medical grounds with proper medical certificates from government doctors as grave misconduct in terms of the Delhi Police (Punishment and Appeal) Rules, 1980. Non-application of mind by quasi-judicial authorities can be seen in this case. The very fact that the respondents have asked the appellant for re-medical clearly establishes that they had received the applicant''s application with medical certificate. This can never be termed as willful absence''without any information to competent authority and can never be termed as grave misconduct.

This Court takes notice of the fact that for a period of absence of 90 (ninety) days in relation to another employee, namely P.K. Rariga, A.S.I., the respondents have regularized that period as is evident from Annexures 18 and 18/1 brought on record. The inquiiy report (Annexure 18) brought on record by the petitioner vide rejoinder to the counter affidavit shows that he had got himself treated for two months before a Government Hospital and'' one month before a private Hospital.

5. The fact that this Court is taking notice of Annexures 18 and 18/1 does not mean thai this Court is making any adverse remarks calling for reopening or reviewing that order. All that this Court takes notice of is that the respondents appear to have adopted one yard-stick for one employee and another for the petitioner. This

amounts to discrimination on their part.

6. For the foregoing reasons, this writ petition deserves to be allowed and it is accordingly allowed to do so. The impugned orders are set aside and quashed and''the matter is remanded to the authorities for passing fresh Order in accordance with law after taking into consideration the observations made herein.

There shall, however, be no order as to costs.