Manindra Kumar Vs Union of India and Others

CWJC No. 3766 of 2000

Court: Jharkhand High Court

Date of Decision: March 21, 2001

Citation: (2001) 49 BLJR 1596 : (2001) 90 FLR 75

Hon'ble Judges: M.Y. Eqbal, J

Bench: Single Bench

Final Decision: Allowed

Judgement

M.Y. Eqbal, J.

In this writ application the petitioner has prayed for quashing the order dated 24.4.2000 and 18.9.2000 whereby the

resignation submitted by the petitioner has been rejected and the petitioner has been dismissed from service.

2. Petitioner''s case is that he was working as Assistant Commandant in the Central Reserve Police Force (CRPF). The petitioner applied for leave

from 25.5.1998 to 1.6.1998 which was duly granted. It is alleged by the petitioner that his father was seriously ill and his kidney was not

functioning in proper manner. For regular check up the petitioner remained at Chandigarh and ultimately petitioner''s father died on 7.12.1999 at

Chandigarh. In the meantime the respondents issued charge- sheet against the petitioner on 5.5.1999 of a departmental proceeding. The petitioner

submitted his show cause and denied the charges levelled against him. The petitioner, thereafter, received no information about the departmental

proceeding and he came to know about submission of an ex parte inquiry report when he received a letter dated 30.12.1999 along with ex parte

inquiry report for filing second show cause. The petitioner submitted his show cause against the ex parte inquiry and the respondents passed final

order on 18.9.2000 dismissing the petitioner from service.

3. Mr. A.K. Sinha, learned senior counsel appearing on behalf of the petitioner assailed the impugned order as being illegal and wholly without

jurisdiction. Learned counsel firstly submitted that under CCS rules action can be taken for unauthorised absence but punishment by way of

dismissal from service cannot be passed. Learned counsel submitted that the petitioner, because of the long treatment of his father who died

subsequently, was not in a position in work and as such, the petitioner submitted his resignation on 21.5.1999. In response to the said letter of

resignation the respondents, by letter dated 6.9.1999, called upon the petitioner to deposit three months'' pay and allowance and cost of training

and the petitioner deposited the said amount. Inspite of that the respondents illegally refused to accept the resignation.

4. Mrs. Sheela Prasad, learned Additional Standing counsel, has drawn my attention to the counter affidavit filed by the respondents and

contended that the petitioner after availing 7 day''s casual leave, sent an application for extension of 45 days'' earned leave on the ground of his

father''s illness. The petitioner''s request for extension of leave was not accepted and he was directed to report for duty vide letter dated

10.6.1998. The petitioner did not report for duty after 45 days. The petitioner was again given reminders to submit his joining but the petitioner did

not report for duty. Consequently a charge was served on the petitioner and an Enquiry Officer was appointed. Learned counsel further submitted

that under CCS rules punishment of dismissal can be imposed after full-fledged departmental inquiry on the charge of unauthorised absence.

5. From the facts stated in the affidavits and the rival contentions made by the parties, the admitted facts which emerge are that the petitioner

applied for seven days leave from 25.5.1998 to 1.6.1998 which was duly granted by the respondents. The petitioner then applied for extension of

leave for 45 days on the ground of his father''s illness but the same was not granted because of non-submission of medical certificate and the

petitioner was directed to join. It is also not disputed that the petitioner''s father died at Chandigarh on 7.12.1999. It is also not disputed that the

petitioner submitted his resignation on 27.5.1999. In reply to the said resignation the respondents, vide letter dated 6.9.1999, called upon the

petitioner to submit undertaking certificate and also informed that he will have to deposit three months'' pay and allowance or the cost of training. A

copy of the said reply dated 6.9.1999 has been annexed as annexure 9 to the writ application. The petitioner deposited Rs. 29,500/-. The

respondents, by letter dated 24.4.2000, informed the petitioner that his request for resigning from service could not be accepted because of less

refund of amount and because of the fact that the petitioner is facing departmental proceeding. A copy of the said letter dated 24.4.2000 has been

made Annexure 10 to the writ application.

6. On these admitted facts now the question that falls for consideration is as to whether the punishment by way of dismissal of the petitioner from

service is Justified or the same is disproportionate to the charges levelled against him.

7. As noticed above, the petitioner could not join his service alter expiry of leave because of his father''s illness. Since the petitioner was not in a

position to leave his father at Chandigarh in that condition who ultimately died, he because of some difficulties, submitted his resignation. The

application for resignation was processed by the respondents by calling the petitioner to submit undertaking and also to deposit three months'' pay

or the cost of training. The petitioner, as per his own calculation, deposited Rs. 29,500/-. Simultaneously, the respondents initiated departmental

proceeding for unauthorised absence. On the one hand they refused to accept the resignation because of less deposit of amount and because of the

pendency of the departmental proceeding and on the other, the departmental proceeding was conducted ex parte and ex parte inquiry report was

submitted and on the basis of that the impugned order of dismissals was passed. I am, therefore, of the definite opinion that in the facts and

circumstances of the case, the order of dismissal of the petitioner from service is a harsh punishment and disproportionate to the charges levelled

against him i.e. for unauthorised absence. The matter needs reconsideration by the respondents-authorities in the matter of acceptance of

resignation and/or imposing reasonable punishment in accordance with law.

8. This writ application is, therefore, allowed and the impugned order of punishment is quashed. The matter is remitted back to the respondent-

authority for re-consideration of the matter and for passing appropriate order in the matter of resignation and/or in the matter of imposing

reasonable punishment in accordance with law.

9. Petition allowed.