
**Amarnath Pandey Vs Hindustan Steel Works Construction Limited and
Another**

M.P. No. 3065 of 1989

Court: Madhya Pradesh High Court

Date of Decision: Sept. 17, 1996

Acts Referred:

Hindustan Steel Works Construction Limited (H.S.C.L.) Service Rules " Rule 9

Citation: (1997) 1 MPLJ 350

Hon'ble Judges: A.K. Mathur, C.J; S.K. Kulshreshtha, J

Bench: Division Bench

Advocate: V.K. Tankha, for the Appellant; Atul Awasthy, for the Respondent

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

A.K. Mathur, C.J.

Petitioner has, by this petition, prayed that Rule 9(xii) (a) and (b) of the H.S.C.L. Service Rules be declared as void, illegal and ultra vires Articles

14 and 16 of the Constitution of India. He has also challenged order dated 5-5-1989 (Annexure A-16) and prayed for quashing of the same. The

petitioner has further prayed that Order dated 26/27-12-1988 transferring the petitioner from Bhilai to Tanakpur may be quashed.

The petitioner is a Zonal Engineer (Civil) in the service of the Hindustan Steel Works Construction Limited, respondent No. 1 (hereinafter, referred

to HSCL) and was posted at Bhilai, District Durg. He joined the service of the HSCL on 1st March, 1973 as a Technical Assistant. He was

promoted as Assistant Divisional Engineer in 1985 and then he was promoted as Divisional Engineer in 1980. (sic) The petitioner received his last

promotion on 4-4-1988 as Zonal Engineer. By order dated 26/27-12-1988, the petitioner was transferred from HSCL Bhilai to HSCL Tanakpur,

which is challenged by the petitioner in this petition.

On 3-12-1988, a proposal was received by the respondent No. 2 Deputy General Manager from the Assistant General Manager (Personnel and

Administration) Headquarter to examine and send a report for purposes of sparing two officers for Tanakpur and one officer for Ranchi.

According to the proposal, the requirement for Tanakpur was for a Superintending Engineer/Deputy Chief Engineer. The petitioner was neither

Superintending Engineer nor the Deputy Chief Engineer. Therefore, he was nowhere in the panel sent by the respondent No. 2. Another letter was

received from Assistant General Manager (P&A), Calcutta to release at least two Executive Engineers preferably Shri D. Banerji and petitioner

Amarnath Pandey to meet the urgent requirement of Tanakpur. On this, the Deputy General Manager, respondent No. 2, expressed his inability to

spare the petitioner and Shri D. Banerji as they were looking after the specified important jobs in Bhilai. Another note was sent by the Deputy

General Manager, respondent No. 2 stating that it was not possible to spare the petitioner and Shri Banerji who were engaged in certain important

jobs and could not be released for transfer. Respondent No. 2 also protested the method of asking the officers by name when the Chairman-cum-

Managing Director had specifically told that no unit will ask for officer by name from any particular unit.

It is alleged that Assistant General Manager (P&A) is not competent to effect transfers. However, an order dated 26/27-12-1988 (Annexure A-5)

was issued transferring the petitioner from HSCL Bhilai to HSCL Tanakpur with immediate effect. It was stated that this was with the approval of

the authority. However, it was contended that the Manager (Personnel) was not competent to issue transfer order. On receipt of transfer order,

respondent No. 2 sent a detailed note on 3-1-1989 expressing his inability to release the petitioner and Shri Banerji. Thereafter on 4-1-1989,

another memo was sent by the respondent No. 2 informing the authorities about his inability to release the petitioner and Shri Banerji. Thereafter

on 1st February, 1989, the petitioner met with an accident while working on the pipe-line and he was immediately shifted to hospital. The

petitioner received injuries on his right leg and knee. The petitioner sent an application on 3-2-1989 to grant him casual leave for a day - 4th and

5th February, 1989 were Saturday and Sunday. On Monday i.e. 6th February, 1989, the petitioner had to report for treatment at the B.S.P.

Hospital every day where he was given infrared rays and physiotherapy. On 6-2-1989, the petitioner was summoned by the Superintending

Engineer for urgent work in his office, the petitioner being an expert for the job of diversion of water pipe line.

On 9-2-1989, the B.S.P. Hospital doctor advised the petitioner complete rest or else any further pains would be at the petitioner's own peril.

While the petitioner was on leave, an order was passed by the Manager (Personnel) HSCL Bhilai relieving the petitioner for joining at Tanakpur.

Since the petitioner was on leave, the relieving order dated 15-2-1989 was not served upon him. It is alleged that the petitioner again protested

against this illegal relieving on 15-12-1989. The respondent No. 2 again requested to the Assistant General Manager (P&A) Calcutta to

reconsider the case of the petitioner for cancellation of his transfer. On 12-5-1989, the Assistant Surgeon, Government Hospital, Bhilai declared

the petitioner fit to join duties from 13-5-1989. Copy of fitness certificate dated 12-5-1989 is placed on record as Annexure A-15. The petitioner

reported for duty on 13-5-1989 at his office at Bhilai, but he was informed that he was already relieved by order dated 15-2-1989. Then the

petitioner informed the Office Superintendent that he had not handed over the charge as yet and how could he have been relieved on 15-2-1989

without handing over charge.

It is alleged that the petitioner received by registered post a termination order passed in terms of Rule 9(xii) (a) and (b) of the HSCL Service

Rules. According to the termination order, petitioner's services stood automatically terminated on grounds of abandonment of service of the

company and his name was struck off from the rolls of the Company with effect from 16-2-1989. Copy of termination order is on record as

Annexure A-16. The petitioner is challenging this order of termination along with the vires of Rule 9(xii) (a) and (b) of the HSCL Rules. The

validity of Rule 9(xii) (a) and (b) has been challenged on the ground that it is ultra vires Article 14 of the Constitution of India as it permits

automatic termination of service without any opportunity to the delinquent employee. It is alleged that the rule is illegal, void and arbitrary. The

order of termination has also been challenged on the ground that as per rules, notice was never served on the petitioner before passing the order of

termination from service.

A return has been filed by the respondents. It has been pointed out that a notice was sent to the petitioner at his home address. It is stated that the

transfer order was served on the petitioner well in time. On coming to know about transfer, the petitioner seems to have made various efforts

through his controlling officers to impress upon the Head Office of the respondent Company not to release him from Bhilai unit. Since the transfer

order is said to have been received by the petitioner before he was relieved from duty, it was submitted that the relieving order was despatched by

registered post on 15-2-1989 and the envelope containing the relieving order was received back with postal endorsement that the petitioner was

always absent from his house on various dates including 27-2-1989, 28-2-1989, 1-3-1989, 2-3-1989 and finally on 6-3-1989. Therefore, the

envelope was returned to the respondent on or about 8-3-1989. It is alleged that the petitioner deliberately attempted to proceed on medical

leave.

It is alleged by the respondents that the order of termination of service of the petitioner was sent to him at his house by registered post. It is alleged

that after ascertaining that the termination order has been issued, the petitioner procured a medical certificate from the Government Dispensary,

Chhaoni. It is alleged that the termination order dated 5-5-1989 was received in Bhilai Office of the respondents on 9-5-1989. It is further alleged

that before this termination order, notice dated 18/20th March, 1989 was sent from Delhi Office of the respondent Company which is on record

as Annexure R-X to the petitioner by registered post at his permanent address as well as at his local address at Bhilai. The letter was returned with

the endorsement that "the house was locked during the visit of the postman" and "the individual always remains absent". Thus, the petitioner did

not receive this communication as he deliberately avoided service. However, the petitioner was fit to discharge his duties and ultimately the order of

termination was passed on 5-5-1989.

We have heard learned counsel for parties and perused the record. So far as the factum of issue of notice is concerned, it is admitted by the

respondents as per return filed that before termination order dated 5-5-1989 was served on the petitioner, no notice as contemplated under the

rules was served upon him, Rule 9(xii) (a) and (b) reads as under :

9. LEAVE, HOLIDAYS AND ABSENCE :

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(xii) An employee who;

(a) absents himself without permission for more than 8 calendar days, or

(b) having been laid off under the provisions of the Industrial Disputes Act, fails to report, without sufficient reasons, within 8 days of the posting of

regular notice or being otherwise duly notified, shall be deemed to have left the services of the Company of his own accord with effect from the

date he was due to return to work and the employee concerned shall be intimated accordingly and his service shall automatically be terminated,

provided, however, no explanation satisfactory to the Management is furnished immediately in reply to the Company's communication by the

employee concerned.

The rule aforesaid clearly says that if an incumbent has absented without permission for more than 8 days, or having been laid off under the

provisions of the I. D. Act, fails to report, without sufficient reasons within 8 days of the posting of regular notice or being otherwise duly notified,

shall be deemed to have left the services of the Company of his own accord with effect from the date he was due to return to work and the

employee concerned shall be intimated accordingly and his service shall automatically be terminated, provided however, no explanation satisfactory

to the Management is furnished immediately in reply to the company's communication by the employee concerned. In the present case, the notice

was issued on 18/20th March, 1989 and it was sent to the permanent address as well as local address of the petitioner and at both the places, the

endorsement was received that the incumbent was not available. Therefore, it is certain that this show cause notice was not served on the petitioner

and as per rule, after notice and after receipt of explanation, if the explanation is not found satisfactory, the services of the incumbent can be

terminated. Thus, according to this rule also, the minimum requirement of service of notice before passing the order of termination has not been

dispensed with.

In the present case, the admitted position is that notice was sent by the respondent Company to the petitioner but somehow, it could not be served

on account of absence of the petitioner during this time. It is also admitted that the petitioner did meet with accident on 1-2-1989 and he was on

medical leave and he has placed medical certificate issued by the Medical Department of Bhilai Steel Plant Hospital in which it is clearly mentioned

that his medical leave was extended upto 26-3-1989. This certificate was also subsequently sent by the petitioner along with fitness certificate. Be

that as it may, whether the certificate reached to the authorities in time or not, but one thing is clear that the show cause notice, which is

contemplated under Rule 9 of the HSCL Service Rules, was not served on the petitioner and the petitioner's explanation could not be considered

by the authorities, whether his absence was justified or not. Therefore, the order to the extent that the petitioner was not served with the show

cause notice and in absence of that the order of termination dated 5-5-1989 (Annexure A-16) cannot be sustained.

Now coming to the question of validity of Rule 9(xii) (a) and (b) of the HSCL Rules, it may be relevant to mention that a similar rule came up for

consideration before the Hon'ble Supreme Court in the case of Jai Shanker Vs. State of Rajasthan, , in which the rule 13 of the then Jodhpur

State, namely Jodhpur Service Regulations was considered. It was regarding overstaying of the incumbent on leave. Rule reads as under :-

13. An individual who absents himself without permission or who remains absent without permission for one month or longer after the end of his

leave should be considered to have sacrificed his appointment and may only be reinstated with the sanction of the competent authority.

Note. - The submission of an application for extension of leave already granted does not entitle an individual to absent himself without permission.

This rule was interpreted by their Lordships to mean that notwithstanding the rule, rules of natural justice should be followed. Their Lordships

observed -

7. In our judgment, Jai Shanker was entitled to an opportunity to show cause against the proposed removal from service on his overstaying his

leave and as no such opportunity was given to him his removal from service was illegal. He is entitled to this declaration. The order of the High

Court must, therefore, be set aside and that of the District Judge, Jodhpur, restored. The question of what back salary is due to Jai Shanker must

now be determined by the trial Judge in accordance with the rules applicable, for which purpose there shall be a remit of this case to the Civil

Judge, Jodhpur.

In the context of the aforesaid rule, their Lordships observed that rule of natural justice should be adhered and at least notice to show cause should

be given, though their Lordships did not strike down the rule but only read down the same to the extent that such a rule should be complied with.

This judgment was again reaffirmed in the case of The State of Assam and Others Vs. Akshaya Kumar Deb, , where the F.R. 18 of Assam

Fundamental and Subsidiary Rules came up for consideration and there also, their Lordships of the Hon"ble Supreme Court, referring to one more

decision in the case of Deokinandan Prasad Vs. The State of Bihar and Others, , reiterated the same principle and read down the rule observing

that the principles of natural justice should be adhered to. Therefore, we do not propose to strike down Rule 9(xii) (a) and (b) of the HSCL

Service Rules but hold that whenever such a rule is resorted to, notice to show cause should be given to the incumbent before terminating his

services for his absence. We therefore, uphold the validity of the said rule with the requirement of following the principles of natural justice before

an order of termination is issued.

In the present case, we are satisfied that the notice which was issued on 18/20th March, 1989 was not served on the petitioner and hence the

petitioner could not represent before the authorities to the effect whether his absence during the period in question was justified or not. As such,

there is breach of principles of natural justice in the present case and the same has prejudiced the right of the petitioner. Hence, we set aside the

order of termination dated 5-5-1989 Annexure A-16 and direct to reinstate the petitioner. However, this will not prejudice the right of the

respondents to proceed against the petitioner if they so choose in accordance with the rules. The petition is allowed. There shall be no orders as to

cost. Security if any be refunded to the petitioner.