

A

KRUSHNAKANT B.PARMAR
v.
UNION OF INDIA & ANR.
(Civil Appeal No. 2106 of 2012)

B

FEBRUARY 15, 2012
**[G.S. SINGHVI AND SUDHANSU JYOTI
MUKHOPADHAYA, JJ.]**

Service law:

C

Central Civil Services (Conduct) Rules, 1964 – r. 3(1)(ii) and (iii) - Employee unauthorisedly absent from duty for three consecutive periods - Held guilty of violating r. 3(1)(ii) and (iii) for failure to maintain devotion to duty and conduct unbecoming of government servant - Order of dismissal from service - Said order upheld by the appellate authority, the tribunal and the High Court - On appeal, held: In a Departmental proceeding, if allegation of unauthorised absence from duty is made, the disciplinary authority is required to prove that the absence is wilful, in absence of such finding, the absence will not amount to misconduct - On facts, the Inquiry Officer on appreciation of evidence though held that the appellant was unauthorisedly absent from duty but failed to hold the absence willful – Disciplinary authority as also the Appellate Authority failed to appreciate the same and wrongly held the appellant guilty – Specific defence of the appellant that he was prevented from attending duty by the Controlling Officer and other evidence ignored - Thus, the order of dismissal passed by disciplinary authority, upheld by the Appellate Authority; the tribunal and High Court set aside

G - *Employee reinstated with 50% back wages – Employee having suffered a lot since the proceedings were initiated against him, matter not remitted to the disciplinary authority.*

E

F

G

Appellant was charged for unauthorised absence

H

from duty during three consecutive periods (36 days, 32 days and 234 days). The appellant alleged bias against the controlling officer who prevented him from performing the duty to sign the attendance register. The enquiry officer submitted a report and the charges were proved. The appellant was held guilty of violating Rule 3(1)(ii) and (iii) of the Central Civil Services (Conduct) Rules, 1964 for failure to maintain devotion of duty and his behavior was unbecoming of a government servant. Thereafter, the appellant was dismissed from service. The said order was upheld by the Appellate Authority, the tribunal and the High Court. Therefore, the appellant filed the instant appeal.

Allowing the appeal, the Court

HELD: 1.1. From a bare perusal of the charge memo and the Inquiry Report it can be deduced that the Inquiry Officer proceeded on a wrong premise. [Para 10] [490-E]

1.2. The question whether 'unauthorised absence from duty' amounts to failure of devotion to duty or behaviour unbecoming of a Government servant cannot be decided without deciding the question whether absence is wilful or because of compelling circumstances. If the absence is the result of compelling circumstances under which it was not possible to report or perform duty, such absence cannot be held to be wilful. Absence from duty without any application or prior permission may amount to unauthorised absence, but it does not always mean wilful. There may be different eventualities due to which an employee may abstain from duty, including compelling circumstances beyond his control like illness, accident, hospitalisation, etc., but in such case the employee cannot be held guilty of failure of devotion to duty or behaviour unbecoming of a Government servant. In a Departmental proceeding, if allegation of unauthorised absence from duty is made,

A the disciplinary authority is required to prove that the absence is wilful, in absence of such finding, the absence will not amount to misconduct. [Paras 16, 17, 18, 19]. [492-F-H; 493-A-B]

B 1.3. In the instant case, the Inquiry Officer on appreciation of evidence though held that the appellant was unauthorisedly absent from duty but failed to hold the absence is wilful; the disciplinary authority as also the Appellate Authority, failed to appreciate the same and wrongly held the appellant guilty. No such finding was
 C given by the Inquiry Officer. Though the appellant took a specific defence that he was prevented from attending duty by DCIO, Palanpur who prevented him to sign the attendance register and also brought on record 11
 D defence exhibits in support of his defence that he was prevented to sign the attendance register, but such defence and evidence were ignored and on the basis of irrelevant fact and surmises the Inquiry Officer held the appellant guilty. DCIO, Palanpur, who was the complainant and against whom appellant alleged bias
 E refused to appear before the Inquiry Officer in spite of service of summons. Two other witnesses made no statement against the appellant, and one of them stated that he had no knowledge about absence of the appellant. Ignoring the evidence, on the basis of surmises and
 F conjectures, the Inquiry Officer held the charge proved. Though the Appellate Authority noticed the said facts but ignored such facts giving reference of extraneous allegations which were not the part of the charge and dismissed the appeal with the uncalled observation.
 G [Paras 20, 22, 23 and 24] [493-C; 494-B-G]

H 1.4. The impugned orders of dismissal passed by disciplinary authority, affirmed by the Appellate Authority; Central Administrative Tribunal and High Court are set aside. The appellant is reinstated. Taking into

consideration the fact that the Charged Officer has suffered a lot since the proceeding was drawn in 1996 for absence from duty for a certain period, the proceeding is not remitted to the disciplinary authority for any further action. Keeping in view the fact that the appellant did not work for a long time the appellant is directed be paid 50% of the back wages but there would be no order as to costs. [Para 25] [495-A-C]

M.B. Bijlani vs. Union of India and Ors. (2006) 5 SCC 88: 2006 (3) SCR 896 – referred to.

Case Law Reference:

2006 (3) SCR 896 Referred to. Para 21

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2106 of 2012.

From the Judgment & Order dated 26.07.2006 of the High Court of Gujarat in Special Civil Application No. 21778 of 2005.

Nikhil Goel, A. Venayagam Balan for the Appellant.

Sushma Suri for the Respondents.

The Judgment of the Court was delivered by

SUDHANSU JYOTI MUKHOPADHAYA, J. 1. Leave granted.

2. The appellant, who was working as Security Assistant, was proceeded departmentally on 2nd September, 1996 for the following charge:

“While functioning as SA(G) in the office of Deputy Central Intelligence Officer, Palanpur, under Subsidiary Intelligence Bureau, Ahmedabad, unauthorisedly absented from duty between 3.10.1995 and 7.11.1995, 9.11.1995 and 10.12.1995 and from 10.12.1995 to 2.8.1996, thereby

A violating Rule 3(1)(ii) 3(1)(iii) of Central Civil Services (Conduct) Rules, 1964.”

B 3. On receipt of charge-sheet the appellant denied the allegation by his reply dated 7th October, 1996 and also alleged bias against his Controlling Officer, Mr. P. Venkateswarlu with specific stand that he was prevented by him from signing the attendance register and to attend the office. He also explained reasons of absence for certain period for which he had applied for leave.

C 4. During the pendency of the departmental proceedings, the appellant was transferred to another place which he challenged before the Central Administrative Tribunal alleging bias against his superior Officer. The Central Administrative Tribunal by order dated 15th November, 2000 set aside the order by holding ‘the order of transfer is vitiated due to malice in law and fact’ which was affirmed by the Gujarat High Court on 17th August, 2001. After about seven years Inquiry Officer submitted a report on 28th April, 2003 and held that the charge has been proved against the appellant beyond all reasonable doubt, holding him guilty of violating Rule 3(1)(ii) and 3(1)(iii) of Central Civil Services (Conduct) Rules, 1964.

F 5. A copy of the Inquiry Report was forwarded to the appellant who submitted a reply on 13th July, 2003 and raised following objections:

G (i) Mr. Venkateswarlu, the then DCIO, Palanpur who was the complainant against the appellant about absence from duty, against whom the appellant has alleged malice and was the prime witness, refused to attend the inquiry;

H (ii) the Report of the Inquiry Officer is based on statements of two prosecution witnesses, who have not proved the charges;

(iii) the Inquiry Officer failed to discuss the evidence relied on by him;

(iv) the attendance register for the relevant period was not produced and

(v) the defence taken by him that he was not allowed to attend duty has not been dealt with by the Inquiry Officer.

The Joint Deputy Director, SIB, thereafter, dismissed the appellant from service by an order dated 02.12.2003.

6. The appellant challenged the order of dismissal before Central Administrative Tribunal which by order dated 4th May, 2004 refused to entertain the application and allowed the appellant to avail alternative remedy of appeal. Accordingly, the appellant preferred an appeal on 17th May, 2004 before the Director, Intelligence Bureau highlighting lapses committed by the Inquiry Officer, and also alleged bias against the controlling officer who prevented him from performing the duty and to sign the attendance register. The Appellate Authority without discussing the aforesaid objections rejected the appeal by order dated 30th November, 2011 and observed as follows:

“.....the undersigned has come to the same conclusion that the appellant should have been discharged from service under the Temporary Service Rules when the first instance of indiscipline on his part was noticed.

.....the charge against the appellant, Shri K.B. Parmar that he remained absent unauthorisedly has been established beyond doubt.....

Now, therefore, the undersigned, being the competent Appellate Authority hereby rejects the appeal dated 17.5.2004 submitted by Shri K.B. Parmar, against the order of Disciplinary Authority dated 2.12.2003 both on account of being time-barred as well as having no merit and confirms the penalty of removal from service on the said Shri K.B. Parmar vide order dated 2.12.2003.”

7. The appellant challenged the order of punishment and

A the appellate order in Original Application No. 619 of 2004 before the Central Administrative Tribunal which was dismissed by order and judgment dated 28th September, 2005 and affirmed by the Gujarat High Court.

B 8. Learned counsel appearing on behalf of the appellant has taken us through records including report submitted by the Inquiry Officer and the order passed by the Appellate Authority and argued that the Inquiry Officer failed to consider the relevant evidence produced by the appellant and misdirected himself in arriving at the finding of guilt against him. He would further
 C contend that no specific finding has been given with regard to the charge that he violated Rule 3(1)(ii) and Rule 3(1)(iii) of the Conduct Rules.

D 9. Per contra, according to the learned counsel for the respondents, departmental inquiry was conducted in accordance with law, and after providing full opportunity to the appellant, on appreciation of evidence, as the Inquiry Officer held the appellant guilty, the Appellate Authority affirmed the same.

E 10. We have heard learned counsel for the parties. From a bare perusal of the charge memo and the Inquiry Report it can be deduced that the Inquiry Officer proceeded on a wrong premise.

F The appellant was principally charged for unauthorised absence from duty during three consecutive period: (i) 3rd October, 1995 to 7th November, 1995 (36 days); (ii) 9th November, 1995 to 10th December, 1995 (32 days); and (iii)
 G 10th December, 1995 to 2nd August, 1995 (234 days), in violation of Rule 3(1)(ii) and Rule 3(1)(iii) of the Rule 3(1)(ii) and Rule 3(1)(iii) of Central Civil Services (Conduct) Rules, 1964.

H 11. The charge was sought to be proved by respondents on the basis of statement of three witnesses, namely, (i) Shri P. Venkateswarlu, DCIO, SIB, Hyderabad, (ii) Shri B.P. Jivrani,

ACIO-II, Palanpur and (iii) Shri L.N. Thakkar, JIO-I(MT), Gandhidham, and seven documentary evidence, including attendance register of the office of DCIO, Palanpur, but the complainant refused to appear in the Inquiry in support of complaint and charge. A

12. The records suggest that on 11th August, 1995, the appellant requested the respondents to transfer him from Palanpur to any nearest place at Ahmedabad or Nadiad or Anand which was accepted by respondents and an order of transfer was issued by the respondents on 21st August, 1995 transferring the appellant to the office of DCIO, Nadiad with immediate effect. On 25th August, 1995, the Joint Assistant Director, SIB ordered to release the appellant from Palanpur to join duty at Nadiad with effect from 31st August, 1995. In view of such order the appellant was relieved and joined at Nadiad. However, the order of transfer was cancelled by the respondents on 4th September, 1995 and he was transferred at a distance place which was challenged by him before the Central Administrative Tribunal. After cancellation of the order of transfer the appellant sent a complaint on 18th September, 1995 before the authorities that the DCIO, Palanpur, Mr. P. Venkateswarlu was not allowing him to join duty. The order of transfer was challenged by him before the Central Administrative Tribunal, Ahmedabad alleging bias against Mr. Venkateswarlu, DCIO, Palanpur, in-charge of the office which was accepted by the Central Administrative Tribunal and the order of transfer was set aside. Thereafter appellant joined duty on 11th December, 1995 and proceeded on leave for 11 days due to illness of his father. B
C
D
E
F

13. The Inquiry Officer noticed the aforesaid facts and held the appellant was unauthorisedly absent between 3rd October, 1995 and 7th November, 1995; 9th November, 1995 and 10th December, 1995; 10th December, 1995 and 2nd August, 1995. However, while coming to such contention, the authority failed to decide whether such absence amounted to misconduct. The G
H

A evidence led by the appellant in support of his claim that he was prevented to sign the attendance register and to perform duty though noticed the Inquiry Officer on presumption and surmises, held the charge proved.

B 14. Rule 3(1)(ii) and Rule 3(1)(iii) of Central Civil Services (Conduct) Rules, 1964, relates to all time maintaining integrity, devotion to duty and to do nothing which is unbecoming of a Government servant and reads as follows:

C **“Rule 3 – General.**

(1) Every Government servant shall at all times—

(i) maintain absolute integrity;

(ii) maintain devotion to duty; and

D (iii) do nothing which is unbecoming of a Government servant.”

E 15. In the case of appellant referring to unauthorised absence the disciplinary authority alleged that he failed to maintain devotion of duty and his behaviour was unbecoming of a Government servant.

F 16. The question whether ‘unauthorised absence from duty’ amounts to failure of devotion to duty or behaviour unbecoming of a Government servant cannot be decided without deciding the question whether absence is wilful or because of compelling circumstances.

G 17. If the absence is the result of compelling circumstances under which it was not possible to report or perform duty, such absence can not be held to be wilful.

H 18. Absence from duty without any application or prior permission may amount to unauthorised absence, but it does not always mean wilful. There may be different eventualities due to which an employee may abstain from duty, including

compelling circumstances beyond his control like illness, accident, hospitalisation, etc., but in such case the employee cannot be held guilty of failure of devotion to duty or behaviour unbecoming of a Government servant. A

19. In a Departmental proceeding, if allegation of unauthorised absence from duty is made, the disciplinary authority is required to prove that the absence is wilful, in absence of such finding, the absence will not amount to misconduct. B

20. In the present case the Inquiry Officer on appreciation of evidence though held that the appellant was unauthorisedly absent from duty but failed to hold the absence is wilful; the disciplinary authority as also the Appellate Authority, failed to appreciate the same and wrongly held the appellant guilty. C

21. The question relating to jurisdiction of the Court in judicial review in a Departmental proceeding fell for consideration before this Court in *M.B. Bijlani vs. Union of India and others* reported in (2006) 5 SCC 88 wherein this Court held: D

“It is true that the jurisdiction of the court in judicial review is limited. Disciplinary proceedings, however, being quasi-criminal in nature, there should be some evidence to prove the charge. Although the charges in a departmental proceeding are not required to be proved like a criminal trial i.e. beyond all reasonable doubt, we cannot lose sight of the fact that the enquiry officer performs a quasi-judicial function, who upon analysing the documents must arrive at a conclusion that there had been a preponderance of probability to prove the charges on the basis of materials on record. While doing so, he cannot take into consideration any irrelevant fact. He cannot refuse to consider the relevant facts. He cannot shift the burden of proof. He cannot reject the relevant testimony of the witnesses only on the basis of surmises and conjectures. E F G H

A He cannot enquire into the allegations with which the delinquent officer had not been charged with.”

B 22. In the present case, the disciplinary authority failed to prove that the absence from duty was wilful, no such finding has been given by the Inquiry Officer or the Appellate Authority. Though the appellant had taken a specific defence that he was prevented from attending duty by Shri P. Venkateswarlu, DCIO, Palanpur who prevented him to sign the attendance register and also brought on record 11 defence exhibits in support of his defence that he was prevented to sign the attendance register, this includes his letter dated 3rd October, 1995 addressed to Shri K.P. Jain, JD, SIB, Ahmedabad, receipts from STD/PCO office of Telephone calls dated 29th September, 1995, etc. but such defence and evidence were ignored and on the basis of irrelevant fact and surmises the Inquiry Officer held the appellant guilty.

E 23. Mr. P. Venkateswarlu, DCIO, Palanpur, who was the complainant and against whom appellant alleged bias refused to appear before the Inquiry Officer in spite of service of summons. Two other witnesses, Shri Jivrani and Shri L.N. Thakkar made no statement against the appellant, and one of them stated that he had no knowledge about absence of the appellant. Ignoring the aforesaid evidence, on the basis of surmises and conjectures, the Inquiry Officer held the charge proved.

G 24. Though the aforesaid facts noticed by the Appellate Authority but ignoring such facts giving reference of extraneous allegations which were not the part of the charge, dismissed the appeal with following uncalled for observation:

H “The appellant even avoided the basic training required for the job and asked JAD Ahmedabad to send all the training papers for his training at IB Training School, Shivpuri (Madhya Pradesh) to his residence at Ahmedabad. ‘An untrained officer is of no worth to the department’.”

KRUSHNAKANT B.PARMAR v. UNION OF INDIA 495
[SUDHANSU JYOTI MUKHOPADHAYA, J.]

25. In the result, the appeal is allowed. The impugned orders of dismissal passed by disciplinary authority, affirmed by the Appellate Authority; Central Administrative Tribunal and High Court are set aside. The appellant stands reinstated. Taking into consideration the fact that the Charged Officer has suffered a lot since the proceeding was drawn in 1996 for absence from duty for a certain period, we are not remitting the proceeding to the disciplinary authority for any further action. Further, keeping in view the fact that the appellant has not worked for a long time we direct that the appellant be paid 50% of the back wages but there shall be no order as to costs.

N.J.

Appeal allowed.