

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

C.W.P No.2835 OF 1991

Date of Decision: May 31 , 2007

KIRTI KUMAR JHINGAN

.....PETITIONER

VERSUS

OIL AND NATURAL GAS COMMISSION AND OTHERS

.....RESPONDENTS

. . .

CORAM: HON'BLE MR. JUSTICE A.N.JINDAL

PRESENT: - Mr. H.S.Gill, Sr.Advocate with Mr.
Vivek Goyal, Advocate for the
petitioner.

Mr. I.S.Sidhu, Advocate for the
respondents.

A.N.JINDAL, J

Kirti Kumar Jhingan s/o late Sh.P.L.Jhingan, Sr. Inspector(Transport)Oil and Natural Gas Commission, resident of House No.1841-F Sector-7C, Chandigarh joined the commission in the pay scale of Rs. 370-640 on 26.11.1976 at Chandigarh later on he was appointed as Assistant Time Keeper in the pay scale Rs.370-640 with effect from 31.12.1981 and thereafter he was appointed as Senior Inspector(TPT)in the pay scale 595-1140 with effect from 01.04.1983.

As per allegation, in the petition on 01.01.1983 when he was returning from his duty he met with serious accident. Therefore, he proceeded on leave with

effect from 02.01.1983 to 25.02.1983 vide Annexure P2. Then on his request, vide order dated 25.02.1983, he was transferred to Dehradun temporarily. Thereafter vide order dated 05.07.1983, he was transferred there in the office of Deputy General Manager, Transport on regular basis. While at Dehradun he remained under the treatment of the doctors. Despite his request for assigning him light duty due to the accident, he was given very heavy duty. Therefore, his health the condition continued aggravating for want of proper treatment and also at the place of his posting at Cherri HP in the forests where he was transferred on 17.08.1986. At cherri, he was attacked by the labourers of the local contractors at the instigation of the Civil Engineers and Project Manager of Oil and Natural Gas Commission about which he vide letter dated 31.08.86, reported to the Regional Manager, Northern Region, Jammu.

The petitioner also developed many diseases like hypertension and nervousness and remained under treatment with effect from 12.09.1986 to 21.01.1987 and thereafter he joined the duty and started attending the court cases on behalf of the commission at Dehradun. He fell ill on 22.01.1987 and 23.01.1987, then due to illness he could not again report to his duty on 24.01.1987 onwards. He also submitted the medical certificate recommending the rest from 31.01.1987 to 20.04.1987. He made representation to the Member Technical Oil and Natural Gas Commission for his transfer to Dehradun but his request was not acceded to and vide

telegram dated 09.09.1987 he was informed that his application for transfer dated 26.05.1987 had been rejected and he was advised to join duty at Jammu. Due to his ill health, he did not join duty and made another representation on 20.08.1987 thereafter, he was advised vide telegram dated 09.09.1987 to report for duty at Jammu in response thereto the petitioner informed the Joint Director (P&A) vide his letter dated 11.09.1987 that he could join his duty on 14.09.1987. Accordingly he reported for duty on 14.09.1987. However, his duty report was not accepted by the General Manager (Tech.) Jammu and his case was referred to the Headquarter. Later on, on the advice from the Headquarter he was advised to submit another joining report with effect from 04.11.1987 which the petitioner submitted accordingly. The petitioner had not been paid his salary, allowances, bonus, medical reimbursement, etc. since 01.08.1986 till date despite his repeated requests. Again due to the multiple diseases attracted by him and due to his inability to perform heavy duty assigned to him against medical advice, he had to proceed on medical leave with permission to leave Headquarter from 16.11.1987 for expert treatment at Dehradun where he remained under treatment till he received memo dated 21.12.1989 (Annexure P1) revealing that he was sanctioned extra-ordinary leave from 13.02.1988 to 16.11.1989 and he was treated to have resigned from service. No enquiry in this regard was conducted. Therefore, order (Annexure P1) considering him to have ceased to be in employment of

the Commission and striking his name from the roll of the Commission is quite ultra vires of the Constitution.

Petitioner preferred a Departmental appeal which also met the same fate. Now the petitioner has challenged the order dated 21.12.1989 (Annexure P1) on the following grounds:

- a) The Appointing Authority of the petitioner was General Manager, Personnel whereas the impugned order of penalty was passed against him by Deputy General Manager(MM) who was not competent authority to pass such order. Therefore, the order being violative of Regulations 34 and 35 of the Conduct Discipline and Appeal Regulations 1976 read with C.2 Powers of Administration of Discipline under the Delegated Powers 1984.
- b) The impugned order being passed without conducting an enquiry as contemplated by Regulation 36 of the Conduct Discipline and Appeal Regulations 76, is also void.
- c) The Regulations No.14(5) was not applicable to the case of the petitioner but he was to dealt with in accordance with the provisions of Regulation 17 of the Leave Regulations, 1968.
- d) The impugned order is violative of Article 311(2) of the Constitution of India.
- e) The rule 14(5) of the leave application 1968 is ultra vires of the Article 14 and 16 of the Constitution and also against the principles

of Natural Justice.

f) The petitioner was not suffering from any disease mentioned in Regulation No.14(5) of the Leave Regulations Act 1968 whereas he remained on leave on account of his injuries on the right foot heel and other ailments like hypertension and nervousness.

g) He was not offered any opportunity of hearing before passing the order.

Oil and Natural Gas Commission in its reply to the petition, controverted all the allegations submitted that the petitioner remained on leave of the kind due w.e.f. 12.9.1986 to 29.1.1987 and he submitted the joining report at Dehradun on 22.1.1987. After attending his duties for two days i.e. 22.1.1987 and 23.1.1987 he went absent from duties w.e.f. 24.1.1987. Medical Certificate, Annexure P-12, contradicts the case of the petitioner because medical certificate reveals the petitioner remained ill w.e.f. 31.1.1987 but it does not explain the absence of the petitioner from 24.1.1987 to 31.1.1987. In disobedience to the instructions, the petitioner, did not join his duty in July 1987 and preferred to postpone his joining to 13.9.1987. Thus, his long absence from duty could not be explained. It was further, submitted that despite the Head Office directions, conveyed which directed vide its message 27.10.1987 to allow the petitioner to join to regularise the period of his absence and the period, upto his

joining, was by treating the same as of leave of the kind due he did not join but ultimately joined on 4.11.1987.

Regarding the regularization of his absence period it was submitted that the services for the aforesaid period were regularized and all the emoluments due to him were paid to the petitioner. It was further submitted that after 16.11.1989 the petitioner did not report for duty nor he submitted any leave of the kind due. Petitioner, however, on direction by the respondent appeared for the check up in the clinic as prescribed by the respondent on 27.11.1987 when he was referred to Post Graduate Institute, Chandigarh vide Card No. 23840 dated 27.11.1987 . But the petitioner failed to get himself examined at PGI within any reasonable period rather he choose to be absent from duty without any leave or any information to the respondent.

It was further, submitted that the petitioner is carrying on his private business at Dehradun under the name of M/s Kirti property Dealer and Kirti Driving School. But he has distorted the facts to mislead the Court in order to have a favourable order.

Regarding the opportunity of hearing it was submitted that the petitioner was served with show cause notice vide Annexure P27 which was responded by him by filing the reply P28 and letter for personal hearing was also sent to him vide Annexure P29 and after giving due opportunity of hearing order Annexure P1 was passed against him.

The prestine question raised by the counsel for the petitioner is that no doubt after exhausting all kinds of leave from 16.11.1987 to 13.2.1988 he could not attend the duty due to his illness from 14.02.1988 to 21.12.1989 yet the intention of the Rule 14(5) is not that petitioner should be condemned unheard and he be deemed to have resigned from service.

In this regard he has placed reliance on various judgments:-

K.G.Khosla Compressors Ltd. vs. Presiding Officer, Labour Court, Faridabad 1999 Vol-IV, SLR Page 594.

West Bengal State Electricity Board and others vs. Desh Bandhu Ghosh and others, 1985 Vol-III, Supreme Court Cases Page-116

Jai Shankar, vs. State of Rajasthan 1966 AIR 1966 Supreme Court 492.

The State of Assam and others vs. Akshaya Kumar Deb 1975, SLR, Page 430.

Uptron India Ltd. vs. Shammi Bhan and another 1998, Vol-III , Supreme Court cases page 47.

Delhi Transport Corporation vs. Daya Nand and others 2003, Vol-II Page-79.

To the contrary the counsel for the respondents have also cited judgements:-

Buckingham and Carnatic Co. Ltd.vs.Venkatiah and another, AIR 1964 Supreme Court 1272.

(1989) 3 Supreme Court Cases 448 Pyare Lal Sharma vs. Managing Director and others, Managing Director Jammu and Kashmir Industries Ltd., Srinagar vs. Pyara Lal Sharma

(1996) 11 Supreme Court Cases 404 Hindustan Paper Corporation vs. Purnendu Chakrobarty and others.

W.P.(C) No.604/2001 Balram Sharma vs. Union of India and others decided on 29.11.2004.

And urged that, though service is not a charity bestowed upon the employee yet, in order to maintain the control, discipline and morals the employer Conduct Rules are required to be abided by its employees so that they may not take the service for a ride and the money spent upon the employees may not go waste. No doubt every citizen of India has liberty to move about and the proposed action to be taken against him must be dealt with as per instructions and guidelines issued under Article 311(2) of the Constitution of India. But in this case the petitioner appear to be not interested in the service and took it as a joke and was habitual absentee. Even after exhausting all kinds of leave, he did not attend to his duties and continued placing conditions over the respondents instead of reporting for duty.

The petitioner was given due opportunity of hearing and after examining the explanation set up by him and opportunity of personal hearing the order discharging him from service was passed, therefore, he cannot come to contend that he was not given due hearing. Having given due consideration to the rival contentions, I do not deem

it a fit case where the petitioner deserved any concessions. Leave can't be claimed as a matter of right but it is controlled by the provisions as incorporated by different departments in the rules constructed by them. Rule 4 of the NGC Leave Rules provides as under:

"RIGHT TO LEAVE: Leave cannot be claimed as a matter of right. Discretion is to rest with the competent authority to grant leave, to refuse or revoke such leave at any time according to the exigencies of service of the company."

Even with regard to the extra-ordinary leave, the rules provide that same shall be available in special circumstances. It would thus be seen that grant of leave is not to be automatic but is at the discretion of the respondent i.e competent authority. Precedence has been given to business of the Company over the right of leave. It is a worst type of case for the petitioner where he even after exhausting all kinds of leave, remained absent. He was sanctioned leave from 16.11.87 to 13.02.1988 but thereafter, since no leave of the kind due in his favour, therefore, he even did not ask for granting any such favour for the aforesaid period for granting him exemption.

In view of the facts, it would be seen that the petitioner had conducted himself in a manner giving primacy to his personal life over the requirement and exigencies of service. Petitioner resisted his transfer at different places and he preferred to stay at Dehradun

obviously for the reason that he has been running business there. The respondent was accommodated by deferring his transfer for sufficient long time but still he was not satisfied. He never obeyed the command of the superiors rather he was in the habit of accusing and placing the conditions over the respondents. He did not report for duty after exhausting the leave for more than one year and 10 months. Such act and conduct of gross defiance would not be countenanced by any employer constitutional mandate may be in favour of liberty to its citizens and following of the procedure before the action is taken against an employee but it does not mean absolute liberty and it also does not protect those who are indisciplined and spoil the very intent and spirit of the constitution.

Notwithstanding the fact that the appellant committed continuous negligence in imparting the obligation imposed upon him. Yet the respondents did best efforts to take him into service and also complied with the process of law before dispensing with his services. The petitioner has been duly served with the show cause notice by invoking Rule 14(5) of the Leave Application 1968 and in his reply, the appellant, instead of responding to the show cause notice by requesting the respondent to join him, started raising grounds against the respondent that:

- a) He was assigned heavy field duty in hilly Northern Region.
- b) He was put to harassment and his life

was endangered as a result of reconnoissance between the departmental officer and the working contractors posted at Dehradun.

c)His appeal for transfer to Dehradun has not been acceded. The Department did not allow him to go to Dehradun. He has been facing prolonged treatment for about seven years and his medical bills had also not been paid.

He was also called upon to appear before the Deputy Director Punishment and Appeals on or before 15.10.1989 but he did not appear to explain his position. Thereafter, considering the reply as well as the medical certificate, the department treated him as deemed to have resigned from his appointment.

No doubt, no arbitrary power is vested with the employer to throw his employee out of the job when he has spent considerable time of his precious life in the service but the law required that he must be called upon to explain his absence from duty and he should be given opportunity of hearing before proceeding against him. The crux of the judgments as cited by the counsel for the petitioner is that:

1)No employee should be condemned unheard.

2)Before proceeding against him it would be expedient in the interest of

Justice to hold some enquiry into the precision of the allegations.

- 3) He should be given show cause notice before the action is taken against him.

In this case no further enquiry was required as the plaintiff had admitted his absence and made an excuse about his illness which he could not prove by any cogent evidence. It is not a case where the petitioner was condemned unheard. A show cause notice was issued to him to which he furnished a reply which was duly considered by the authorities before passing the order under Rule 14(5) of the Leave Regulations 1968. In the similar circumstances the Apex Court while discussing the judgment of *D.K.Yadav vs. J.M.A. Industries Ltd.* (1993) *Supreme Court Cases* 259 so as to find out the justification for holding enquiry the Apex Court in *Hindustan Paper Corporation vs. Purnendu Chakrobarty and others* (1996) 11 SCC 404 ruled out the necessity for holding enquiry by making following observation:-

"We have extracted Rule 23 in full. The explanation to the Rule specifically states that certain items enumerated thereunder shall not be treated as a penalty at all within the meaning of Rule 23. For our case the relevant sub clause is (vi)(E) which says that proceeding on leave without prior sanction and remaining unauthorisedly absent for more than 8

consecutive days; and/or overstaying his sanctioned leave beyond the period originally granted or subsequently extended for more than 8 consecutive days would result in loss of lien of the appointment of the employee. In this case we have seen that the first respondent had proceeded on leave without prior sanction and remained unauthorisedly absent for more than 6 months consecutively which obliged the appellant-Corporation to issue communication to the first respondent calling upon him to explain. Unfortunately, the first respondent, for reasons best known to him, has not availed himself of the opportunity as seen earlier but replied in a half hearted way which resulted in the impugned order. Therefore, under the circumstances, it cannot be said that the principles of natural justice have not been complied with or the circumstances require any enquiry as contemplated under Rule 25. In the case cited by the learned counsel for the first respondent, this Court has held:

'that the law must, therefore, be now taken to be well settled that procedure prescribed for depriving a person of livelihood must meet the challenge of

Article 14 and such law would be liable to be tested on the anvil of Article 14 and the procedure prescribed by a statute or statutory rule or rules or orders affecting the civil rights or result in civil consequences would have to answer the requirement of Article 14. So it must be right, just and fair and not arbitrary, fanciful or oppressive. There can be no distinction between a quasi-judicial function and an administrative function for the purpose of principles of natural justice. The aim of both administrative inquiry as well as the quasi-judicial inquiry is to arrive at a just decision and if a rule of natural justice is calculated to secure justice to put it negatively, to prevent miscarriage of justice, it is difficult to see why it should be applicable only to quasi-judicial inquiry and not to administrative inquiry. It must logically apply to both.'

On a consideration of the entire facts, we are of the view that the test laid down by this Court, as extracted above, has been satisfied by the appellant-Corporation and therefore, when viewed from the point of Rule 23(iv)(E), there was no good reason for the High Court to interfere

with the impugned order of the appellant-Corporation dated 05.01.1989."

Again while discussing the Rule 14(5) of the Leave Regulation 1968 highlighted in case W.P.(C) No.604/2001 *Balram Sharma vs. Union of India and ors* decided by High Court of Delhi on 29.11.2004 observed that the principle of natural justice could not be said to have given good bye while discharging the petitioner from service.

In this case also in the light of the fact that the petitioner appears to be half hearted in serving the respondents. He remained attracted towards Dehradun and was always interested to be posted there and he started such representations within 6 years of service that is 1983 and his own pleadings as set up by him reveal that he remained on leave for most of the time and before he was discharged from service he either remained on leave or over stayed the leave and did not attend his duties for more than 2 years. Instead of joining duties, he continued finding faults to with the officers of the Department.

He was given due opportunity to explain his absence but he could not give any plausible and satisfactory reply. Therefore, he cannot be said to have been condemned unheard and principles of natural justice were infringed.

Consequently finding no merit in the petition the same is hereby dismissed.

May 31, 2007
Ruchika

(A.N.JINDAL)
JUDGE