

Surender Kumar Mudgal Vs. Uoi

Surender Kumar Mudgal Vs. Uoi

SooperKanoon Citation : sooperkanoon.com/918362

Court : Delhi

Decided On : Jun-01-2011

Judge : Pradeep Nandrajog; Suresh Kait, Jj.

Appeal No. : W.P.(C) 1056/1995

Appellant : Surender Kumar Mudgal

Respondent : Uoi

Advocate for Def. : Ms.Jyoti Singh; Mr.Amandeep Joshi; Mr.Dinesh Yadav, Advs.

Advocate for Pet/Ap. : Mr.S.P.Sharma, Adv.

Judgement :

1. The petitioner questions the order dated 7.9.1992 dismissing him from service as also the order dated 10.2.1993 rejecting the departmental appeal filed against the order dated 7.9.1992 and also the order dated 13.12.1993 rejecting the Revision Petition filed by the petitioner.

2. Facts pleaded by the petitioner are that he joined CRPF as a Constable on 16.6.1983 and was deputed, after initial training, to join the 73rd Battalion, CRPF and that in the year 1988, for a period of 3 years, he was sent on deputation to the Delhi Armed Police and that on 13.5.1991, a date by which he completed 3 years' service on deputation under the Delhi Armed Police, he was attached with the 3rd Battalion, DAP, and on 13.5.1991 he was repatriated to CRPF but before he could

obtain the necessary 'No Dues Certificate' and obtain a formal order relieving him from DAP, to enable him to join CRPF, he became sick and was detected as suffering from viral Hepatitis on 31.5.1991 which lasted till February 1992. As per the petitioner, due to sickness he could not get processed his case for issuance of a formal release order, post issuance of a 'No Dues Certificate' from the Administrative Officer of the 3rd Battalion, DAP. He recovered from the sickness on 9.3.1992 and thereafter reported to the CRPF authorities on 4.4.1992.

3. As per the petitioner, he was thereafter served a charge-sheet alleging unauthorized absence. Petitioner claims to have filed necessary proof of his sickness and raises a grievance that he was not permitted to lead defence evidence and that the Inquiry officer submitted a hurried finding against him. It is alleged that on 3.4.1992, ignoring that date notified was 8.4.1992, defence was closed and in respect of which order the petitioner claims, a denial of an opportunity to defend himself.

4. We highlight that in para 5 of the writ petition the petitioner has admitted having received a communication from the Commandant of the 73rd Battalion, CRPF requiring him to seek medical opinion from the CRPF Base Hospital, Jharoda Kalan and pursuant thereto the petitioner got himself examined on 6.2.1992, but claims that report of medical examination was never given to him.

5. Petitioner asserts that he sent by post to the Commandant of the 3rd Battalion, DAP medical papers of his sickness and thus states that since he was not formally relieved from the Delhi Armed Police he continued to inform the Commandant of the 3rd Battalion, DAP of his sickness and therefrom petitioner seeks to conclude that he informed the competent authority of his being sick.

6. Before dealing with the response we would highlight, with reference to the record of inquiry conducted against the petitioner, original whereof was produced at the time of hearing that on 16.3.1992 charge memo was issued to the petitioner alleging continued unauthorized absence from 30.5.1991 till date when the charge memo was issued. It was listed in the Article of Charge that the petitioner was relieved on 13.5.1991 on repatriation to join the 73rd Battalion, CRPF latest by 30.5.1991, but the petitioner did not do so.

7. Along with the charge-sheet relied upon document, being signals dated 31.10.1991, 12.11.1991, 19.12.1991 and 8.2.1992 were listed as the documents intended to be used to substantiate the charge. List of 4 witness, Constable Gayasuddin, HC Ram Lal, SM R.S.Toor and SI Daya Shankar were notified as the persons who were intended to be examined at the inquiry.

8. At the first date of hearing, being 18.4.1992, the petitioner was put 6 questions and needless to state the same pertained to his acknowledging having received the charge- sheet, having understood the same, that he was in a competent state of mind to defend himself, that he required no defence assistant, that he had no objection to the Inquiry officer conducting the inquiry and lastly, that he pleaded guilty or not guilty to the charge.

9. Needless to state the petitioner acknowledged having received the charge memo, the annexures therewith and that he understood the charges and that he had no objection to the Inquiry Officer holding the inquiry and that he was mentally fit to face the inquiry and did not require any defence assistance. Petitioner denied the charges.

10. Thereafter the 4 prosecution witnesses were examined, and relevant would it be to note that they proved the listed documents and deposed petitioner having proceeded on deputation for a period of 3 years to DAP which period came to an end on 13.5.1991 requiring petitioner to be repatriated as also the order issued by the concerned office of the Delhi Armed Police notifying petitioner of his being repatriated and requiring to join the 73rd Battalion, CRPF on 30.5.1991. The witnesses also proved with reference to the 2 signals dated 31.10.1991 and 12.11.1991 that the Commandant 73rd Battalion, CRPF intimated to the petitioner that the petitioner should get himself examined at the Base Hospital, Jharoda Kalan and that the petitioner got himself medically examined at the Base Hospital on 6.2.1992 where he was declared medically fit and was opined as not suffering from viral hepatitis, the sickness claimed by the petitioner, and that in spite thereof the petitioner did not join duties.

11. The record produced shows that on 18.6.1992 the petitioner was directed to produce defence evidence by 2.7.1992 and that the petitioner did not do so. On

3.7.1992 the petitioner stated that he had no witnesses to examine but was tendering the medical documents pertaining to his having received treatment at DDU Hospital.

12. It is thus apparent that the averments made by the petitioner in para 10 that he was not allowed to lead defence evidence and was not permitted to produce defence witnesses is wrong.

13. There are typographical errors of dates in the paragraphs. Neither was defence evidence closed on 8.4.1992 nor on 8.4.1993. Neither was the petitioner directed to produce defence witnesses on 3.4.1992 nor on 3.4.1993.

14. Deviating a little, we must put on record our anguish in the callous manner in which virtually 9 out of 10 writ petitions, pertaining to Constables of Central Para Military Forces are being filed by the counsel. The petitions are full of typographical errors pertaining to dates and incorrect assertions are being made. This has delayed the adjudicatory process to such an extent that currently we are still grappling with writ petitions filed in the year 1998.

15. The drafting of the instant petition is a classic example of not applying mind to the documents supplied by the client and callously dictating writ petitions to stenographers and without even checking the grammatical and typographical errors the same being filed.

16. Having noted the facts as above, with reference to the record, suffice would it be to state that the record of the inquiry shows that full opportunity was granted to the petitioner to produce defence evidence and the petitioner did not do so of his own.

17. Turning to the reply filed by the respondents and in respect whereof we find the pleadings of facts made good with reference to the departmental inquiry, petitioner's application informing the Commandant of the 3rd Battalion, DAP of petitioner's sickness was for the first time received by the Delhi Armed Police somewhere around November 1991 and was immediately sent to the Commandant of the 73 rd Battalion, CRPF inasmuch as the petitioner stood

relieved upon completion of 3 years' service on deputation with Delhi Armed Police so that he could join his parent department. By this time action had already been initiated to issue warrants and produce the petitioner before the Commandant of 73 rd Battalion, CRPF inasmuch as the petitioner was declared a deserter. On 9.12.1991 Deputy Commissioner of Police, 3rd Battalion DAP forwarded petitioner's second application seeking leave with copy of the forwarding letter to the petitioner, clearly indicating therein that the 3rd Battalion DAP had no concern with petitioner's request for leave.

18. The petitioner has given no explanation as to why in spite of being informed on 19.12.1991 by the Deputy Commissioner of Police 3rd Battalion DAP that he was sending his application for leave to a wrong department the petitioner not take corrective action.

19. Be that as it may, the record shows that when the petitioner was first directed to appear before the Base Hospital, CRPF he did not do so and only when a reminder was sent to him did he appear before the Base Hospital on 6.2.1992, where he was opined to be fully fit.

20. The plea by the petitioner that he was not given any fitness certificate by the doctor at Base Hospital CRPF is a ruse. Petitioner has not explained why did he not write a letter to the Chief Medical Officer to supply him with the medical examination report pertaining to his medical examination on 6.2.1992.

21. The petitioner knew that he was on deputation with the DAP for a period of 3 years. He knew that 3 years' deputation would be coming to an end on 13.5.1991. The order repatriating the petitioner from the Delhi Armed Police makes it plain clear that the petitioner was informed that he had to report to the Commandant of the 73rd Battalion, CRPF by 30.5.1991.

22. The petitioner knew fully well that whatever codal formalities were required to be completed by him to obtain a 'No Dues Certificate', he had to do so between 13.5.1991 and 30.5.1991.

23. Pertaining to the medical documents obtained by the petitioner from DDU Hospital, as an Out Patient Department, we note that the first document is the OPD ticket dated 31.5.1991 prescribing some medicines to the petitioner and requiring him to undergo pathological examination. The next is a consultative prescription dated 28.6.1991 which refers to the fact that the petitioner had a history of excessive alcohol intake.

24. Now, the petitioner first reported to DDU Hospital, if the documents produced by him are genuine, on 31.5.1991. The petitioner has to explain what was he doing from 13.5.1991 till 30.5.1991?

25. The petitioner has explained nothing.

26. If the petitioner could be visiting DDU Hospital, as claimed by him till April 1993 we see no reason why could he not go to the Commandant of the 73 rd Battalion, CRPF which was stationed at Delhi and submit an application seeking leave. We see no reason why the petitioner would go to DDU Hospital and not to the CRPF Hospital Jharoda Kalan.

27. It is in this context it assumes importance that the petitioner did not lead any defence evidence. The petitioner did not summon any doctor or any record from DDU Hospital and there is a possibility that the petitioner managed to fabricate the so-called medical record pertaining to DDU Hospital and filed photocopy thereof during inquiry.

28. The totality of the circumstances emanating from the facts noted hereinabove would evidence that the petitioner knew that he was on deputation to the Delhi Armed Police for a period of 3 years. He knew that the deputation came to an end on 13.5.1991. On said date an order repatriating him to CRPF was issued requiring petitioner to report to the Commandant of the 73rd Battalion, CRPF latest by 30.5.1991. Petitioner was given sufficient time to obtain the 'No Dues Certificate' and a formal discharge order, which he did not obtain and only after the date 30.5.1991 was over did the petitioner start claiming his being sick. Even if the petitioner was sick, he ought to have known that the sickness had to be reported to the Commandant 73rd Battalion, CRPF. The petitioner did not do so out of

innocence. Prima facie he had a trick up his sleeve. Sitting in his house, he thought that it would be better to create confusion by sending applications to the DAP, an organization which had nothing to do with the petitioner. Petitioner claims to be suffering from viral hepatitis and claims to be visiting DDU Hospital. Why not the CRPF Hospital at Jharoda Kalan? No answer.

29. It is apparent that the petitioner has contrived to create a situation favourable to him thereby enabling him to sit happily in the house and report for duty at his leisure and pleasure. But has been caught in the web spun by him.

30. We concur with the reasoning of the Inquiry Officer that the petitioner's claim of being sick is not supported by cogent material and appears to be a ruse. We concur with the finding that the petitioner has deliberately remained absent without a sufficient cause and this attracts the penalty which has been inflicted upon the petitioner. We would highlight that there is a propensity, noted by this Court, of Government employees shirking their duties to an extent that they do not even report to work for months together and then claim innocence on all kinds of funny excuses.

31. The nation suffers when those who have to do public service become lazy or are found wanting in probity and commitment to duty. The petitioner must suffer for his smartness and for which we dismiss the writ petition but refrain from imposing costs as the petitioner is without a job.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com