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Court : Kerala

Decided On : Jan-10-2012

Judge : K. Surendra Mohan

Appeal No. : WPC No. 31652 of 2011 (F)

Appellant : S. Gangadharan

Respondent : Group Commandant Cisd Group and Others

Judgement :

1. The petitioner, when he was working as a Constable at the Cochin Shipyard Wing under the command of the first respondent sustained injuries while on duty. On 7.2.2010, when the petitioner was put on duty at the gate of shipyard, he fell on the ground and sustained multiple fracture of his leg. The petitioner had to be under prolonged treatment for the injuries and had to undergo surgery also. The petitioner sought for the sanction of Special Disability Leave instead of medical leave. However, by Ext.P8, his request has been rejected. The petitioner has filed this writ petition challenging Ext.P8.

2. Advocate P Sanjay who appears for the respondents has filed a statement. According to the counsel, the petitioner had sustained a fall to his own negligence. While he was on duty at the gate of the shipyard, his duty was to constantly patrol and to frisk the persons who enter through the gate. Though he was expected to discharge his duties, diligently, due to his own negligence he fell on the ground.

His loaded rifle also fell on the ground. Since such carelessness could have resulted in serious calamities, the petitioner's conduct was taken serious note of. It is, therefore, contended that the denial of Special Disability Leave to the petitioner is in the circumstances justified and proper.

3. I have heard Sri B N Shivashanker who appears for the petitioner as well as Sri P Sanjay who appears for the respondents. I have also considered the rival contentions anxiously.

4. According to the counsel for the petitioner, Rule 44(1) of the Central Civil Services (Leave) Rules, 1972 (Rules for short) provides for the grant of Special Disability Leave even in cases where the injury is self inflicted. Therefore, there are no grounds to deny the said benefit to the petitioner. According to the petitioner, the injury sustained by him was accidental. However, the above statement is disputed by the counsel for the respondents. According to the counsel, the injury was caused due to the negligence of the petitioner. Since neither Rule 44 nor 45 deals with the injuries sustained due to negligence, it is contended that the petitioner's case does not come either within Rule 44 or Rule 45 of the Rules. Therefore, it is contended that rejection of the request of the petitioner by Ext.P8 is proper.

5. Rule 44(1) of the Rules reads as follows:

“Special disability leave for injury intentionally inflicted.- (1) “The authority competent to grant leave may grant special disability leave to a Government servant (whether permanent or temporary) who is disabled by injury intentionally inflicted or caused in, or in consequence of due performances of his official duties or in Consequence of his official position.”

Rule 45(1) of the Rules reads as follows:

“45. Special disability leave for accidental injury.- (1) The provisions of Rule 44 shall apply also to a Government servant whether permanent or temporary, who is disabled by injury accidentally incurred in, or in consequence of, the due performance of his official duties or in consequence of his official position, or by

illness incurred in the performance of any particular duty, which has the effect of increasing his liability to illness or injury beyond the ordinary risk attaching to the civil post which he holds.”

6. A reading of the above provisions show that they deal with two different situations. While Rule 44(1) entitles an employee who has sustained injuries to claim Special Disability Leave, even in cases where an injury is intentionally inflicted, Rule 45(1) entitles an employee to claim Special Disability Leave for accidental injury. The fact that accidents can be caused by negligence also cannot be lost sight of. Rule 45(1) does not disentitle a person from claiming Special Disability Leave for the reason that an accident was caused due to his own negligence. In the absence of any such provision disentitling a person from claiming disability leave where an accident is caused due to his own negligence, it cannot be held that an employee is not entitled to Special Disability Leave where such an accident is caused due to his negligence. The intention of the Rule making authority to grant such Special Disability Leave to persons who have suffered injuries in incidents caused even intentionally by the employee is clear from Rule 44(1) extracted above. In view of the fact that the benefit of Special Disability Leave is made available to injuries inflicted by the employee intentionally, there is absolutely no justification for disallowing such Special Disability Leave in cases where an accident is caused due to negligence of the employee. It is beyond dispute that negligence is not intentional, but caused only due to carelessness which is lesser in degree to intentional infliction of injuries. Since the Rules entitle an employee for such Special Disability Leave both in cases where an injury has been intentionally inflicted and also in cases where an injury has been caused in an accident, there is no justification for denying the said benefit, characterizing the injury as having arisen due to negligence of the employee.

7. For the above reasons, Ext.P8 is unsustainable. Ext.P8 is therefore set aside.

8. This writ petition is accordingly allowed as follows:

1) Ext.P8 is quashed.

2) The respondents are directed to pass appropriate orders on the application for Special Disability Leave submitted by the petitioner, in the light of the observations made above, within one month from the date of receipt of a copy of this judgment.

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