

SUPREME COURT OF INDIA

Balram Sharma

Vs.

Union of India

C.A.no.1693 of 2009

(V.S.Sirpurkar and H.L.Dattu JJ.)

17.03.2009

ORDER

1. Leave granted.

2. This appeal has been filed at the instance of Mr.Balram Sharma, the appellant herein who was working with the respondent-Corporation and he was employed under the Sports Quota since he was the cricketer of repute. He joined at Baroda and was thereafter posted at New Delhi. It is pointed out that he represented the respondent-Corporation in various All India Cricket Tournaments till March, 1999 and his performance was outstanding insofar as the game is concerned. By Order dt.16.03.1998, the appellant was transferred from Delhi to NRBC Jammu.

3. His case is that on account of serious illness of his mother who was mentally retarded and continued to in a critical condition, he could not go. He further pleaded that as he is a category I sport person, he could not have been shifted from Delhi to Jammu. The appellant was permitted to rejoin duty at New Delhi on 21.12.1998. However, after about fifteen months, an order was passed on 16.06.1999 that the transfer order of the appellant was deferred till 15.11.1999 subject to the condition that the deferment would result in delayed consideration of his promotion for the equivalent period of time/promotion year. It seems that some other orders were passed. The appellant represented to the respondent that he could not report on account of his mother's ill-health and that the transfer order should be kept in abeyance. In the meantime, his mother passed away on 15.07.2000.

4. The appellant was served with a Memorandum dt.29.07.2000 stating that since he has not reported for duty at NRBC, Jammu after availing usual joining time after 01.12.1999, therefore, he was being treated as unauthorisedly absent from his duty with effect from 01.12.1999. The respondent wanted to invoke provisions of Rule 14(5) of *ONGC Leave Rules, 1995* read with Rule 14(2) and 14(4) of the said Rules. He was also directed to give his explanation about his absence.

5. The appellant replied to the show cause notice dated 29.07.2002 issued by the respondent-Corporation and informed them about the death of his mother and requested for reconsideration of the matter on the humanitarian ground. His letter seems to have been considered by the Director (Personnel) however, he did not agree with the same. But no show cause notice invoking Rule 14(5) issued after rejection of the representation on 14.08.2000 was issued. Ultimately, an order dt.08.11.2000 was issued by which it was held that the appellant was deemed to have resigned from his appointment with effect from 29.02.2000 (AN) though the appellant was sanctioned extraordinary leave for the period of 01.12.1999 to 28.02.2000.

6. The said order was served on the appellant only after 15.11.2000. The appellant earlier had reported for duty to DGM (Exploration), NRBC, Jammu. However, he was not allowed to join the duty. The appellant then wrote to the Director (Personnel), ONGC that his joining report was not accepted. A fresh representation was made but the same was not considered favourably.

7. Ultimately, the appellant filed a Writ Petition before the High Court challenging the order directing his deemed resignation. The petition was dismissed by the learned Single Judge. The Letters Patent Appeal was also dismissed and that his how the appellant came before us. Realising the fact that the appellant is an active player of good standard and is also categorised as an active player and is included in category I, we were of the opinion that the respondent-Corporation would do well in considering the representation of the appellant favourably. This was only in order to save the appellant who represented the respondent-Corporation in various All India Cricket Tournaments and had won many awards. We, therefore, suggested to Mr.K.P.Pathak, learned ASG appearing on behalf of the respondent that taking into consideration the outstanding performance of the appellant in the field of sports and further considering the policy of the State to encourage the sports whether it would be possible for the respondent-Corporation to re-consider the decision.

8. Fortunately, learned ASG appearing on behalf of the respondent informs us that the respondent-Corporation has re-considered the decision and has decided to take the appellant back in service from the date he was deemed to have resigned from his post. Learned ASG further made it explicit that no back wages would be payable to the appellant and he will have to undertake to comply with the further directions, if any, passed by the respondent-Corporation.

9. Learned counsel for the appellant informs us that the appellant is prepared to give undertaking to the respondent-Corporation that he would faithfully comply with all the directions which would be hitherto issued to him. The appellant would further not be entitled to any back wages whatsoever during the period that he has not served and he would start from where his services were deemed to have been terminated.

10. However, learned ASG makes it explicit that this should not be treated as a precedent so that it should not inculcate the feeling of indiscipline in other employees and this should be

treated as a special case. We accordingly hold that this should be treated as a special case and it should not be deemed as a precedent.

11. With this observation, the appeal is disposed of. No costs.

12. We appreciate the initiative taken by the respondent-Corporation in the interest of sport.