

Before G. C. Mital, J.

HUKAM CHAND JINDAL,—Petitioner.

versus

LIFE INSURANCE CORPORATION OF INDIA AND OTHERS,—
Respondents.

Civil Writ Petition No. 1631 of 1979

February 23, 1988.

Life Insurance Corporation of India (Staff) Regulations, 1960—Regulations 30 and 39(1)—Regulation debarring absence without prior permission—Employee remaining absent without permission—Such absence continuously for more than 90 days—Effect of such absence—Removal of petitioner from service—Validity of such removal.

Held, that Regulation 30(1) of Life Insurance Corporation of India (Staff) Regulations, 1960 provides that an employee shall not absent himself without having obtained the permission of the competent authority nor shall remain absent in the case of sickness or get the leave extended without submitting the medical certificate. The Regulation provides that casual leave for a short period may be availed of without prior sanction, but in this case these facts do not exist. The petitioner had been sending false telegrams and letters based on untrue and false facts. Regulation 39(4) (iii) has rightly been applied by the competent authority, which provision is in public interest, public good and a matter of public policy. Therefore, non-observance of Regulation 39(2) of the Regulations or the principles of natural justice do not vitiate the impugned order.

(Para 8)

Held, further that the petitioner is supposed to know the Regulation that in case he remains absent from duty for more than 90 days, it would be deemed that he has abandoned his post and without enquiry he could be removed. That is what has been done in this case and hence the orders are not bad on the ground of being cryptic or non-speaking.

(Para 9)

Petition under article 226 of the Constitution of India praying that this writ petition may kindly be accepted, records of the case called for and the petitioner given the following relief :—

- (a) A writ in the nature of Certiorari issued quashing the impugned order of removal from service of the petitioner Annexure 'P-22';
- (b) A writ in the nature of mandamus be issued directing the respondents that the petitioner continues to be the Development Officer of the Corporation;

- (c) *any other Writ, Order or Direction deemed appropriate in the matter may kindly be issued;*
- (d) *production of original/certified copies dispensed with;*
- (e) *issuance of advance notices of motion to the respondents dispensed with and*
- (f) *costs of the petition be awarded in favour of the petitioner and against the respondents.*

S. C. Sibal, Advocate, *for the Petitioner.*

Ashok Bhan, Sr. Advocate with B. R. Mahajan, Advocate, *for the Respondent.*

JUDGMENT

Gokal Chand Mital, J.

Hukam Chand Jindal (hereinafter referred to as 'the petitioner'), was appointed as a Development Officer in the Life Insurance Corporation of India, on 17th March, 1962 and was posted at Malerkotla (Punjab), the place to which he belongs. *Vide* order dated 26th November, 1975, he was transferred to Mandi (Himachal Pradesh). At the transferred place, he joined on 26th December, 1975.

(2) The petitioner applied for six days' casual leave from 19th May, 1976 to 24th May, 1976 on the ground of his wife's illness, which was sanctioned to him. He did not report for duty and on 27th May, 1976, a telegram sent by the petitioner from Malerkotla was received saying "Sick extend leave up to third". The Branch Manager, Mandi advised the petitioner both by telegram and letter to send the Medical Certificate. Again on 3rd June, 1976 a telegram to the following effect was sent to the petitioner.

"Medical certificate from Civil Surgeon not received (.)
absence unauthorised."

A letter to the same effect followed the telegram. For want of receipt of reply or the Medical certificate, the petitioner was treated on extraordinary leave without pay from 25th May, 1976, a copy

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of which was sent to the petitioner under registered cover. He was also told that disciplinary action will be taken against him.

(3) The Branch Manager, Mandi, reported the matter to the Divisional Manager, Chandigarh. The Chandigarh authorities sought the opinion of the Mandi authorities, and,—*vide* letters Annexures R4 and R5, he furnished the detailed information. A telegram, dated 31st July, 1976 was received from the petitioner to the following effect :—

“Daughter ill extend leave up to 15th July — JINDAL.”

In view of the foregoing facts and the conduct of the petitioner, the Mandi authorities were of the opinion that there was no sense in entertaining the telegram and recommended disciplinary action under the Staff Regulations (for short ‘Regulations’), and,—*vide* Annexure R6, the Chandigarh authorities directed the Mandi authorities to consider the absence of the petitioner as an unauthorised one from 25th May, 1976 to 19th August, 1976, and accordingly to inform the petitioner and to take consequent action. In the meantime a telegram dated 17th August, 1976 was received from the petitioner to the following effect :

“Fell down from stair extend leave up to 31st August — Jindal Malerkotla”.

Due to the continuous unauthorised absence of the petitioner from 25th May, 1976 onwards,—*vide* letter dated 4th November, 1976 (Annexure P-3), charge-sheet Annexure P4 was served on the petitioner. Reply, Annexure P5, is alleged to have been sent but was never received by the Branch Manager, Mandi.

4. On the basis of the data available with the Divisional Manager, LIC, Chandigarh, that the petitioner was absent from duty for more than 90 days, by order dated 5th January 1977, Annexure P 22, after considering the circumstances of the case, he came to the conclusion that the petitioner had abandoned his post under Regulation 39(4) (iii) of the Life Insurance Corporation of India (Staff) Regulations, 1960 (for short ‘the Regulations’), and as a result ordered his removal from the service of the Corporation under Regulation 39(1) of the aforesaid Regulations with immediate

effect. Intimation about the aforesaid order was sent by registered AD post to the petitioner on 5th January, 1977, which is Annexure R 16. On the asking of the Court, the original registered letter was shown to the Court. A look at the original registered letter, which was returned by the postal authorities with the note 'refused' showed that it was presented to the petitioner on 8th, 10th, 11th, 12th and 13th and ultimately on 14th January, 1977, he refused to take it when it was returned to the issuing authorities. In view of the order dated 5th January, 1977 the departmental proceedings were dropped,—*vide* order Annexure R19. Against the order of removal, the petitioner filed appeal in March, 1978, Annexure P17, before the Zonal Manager, which was rejected,—*vide* order dated 18th August, 1978 Annexure P 18. Thereafter, the petitioner submitted memorial dated 15th November, 1978, to the Chairman, Life Insurance Corporation of India, Bombay, which was rejected,—*vide* order Annexure P25. It is thereafter that petition under Article 226 of the Constitution of India was filed in this Court, to challenge the orders.

(5) The counsel for the petitioner has argued that Regulation 39(2) of the Regulations provides for a hearing before taking action of removal from service and in this case although departmental proceedings were started, these were dropped in between. Consequently, the order of removal dated 5th January, 1977 is liable to be struck down. Reliance was placed on *Jai Shanker vs. State of Rajasthan*, (1) in support of the argument. It is also the argument that order is cryptic and non-speaking and so are the appellate order and the order rejecting the memorial.

(6) After hearing the learned counsel for the parties and on consideration of the matter, I am of the opinion that there is no merit in any of the arguments raised in this case on behalf of the petitioner. If Regulations, which came up for consideration in *Jai Shanker's case* (supra), had been similar to the regulations in this case and the decision of the Supreme Court in *Union of India vs. Tulsiram Patel*, (2) had not been rendered, probably, the petitioner could succeed on the basis of *Jai Shanker's case* (supra).

(1) A.I.R. 1966 S.C. 492

(2) A.I.R. 1985 S.C. 1416.

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7. Regulation 39 of the Regulations is involved in this writ petition, which deserves to be reproduced for facility of reference :

“39(1) Without prejudice to the provisions of other regulations (any one or more of) the following penalties for good and sufficient reasons, and as hereinafter provided, be imposed by the disciplinary authorities specified in schedule I on an employee who commits breach of regulations of the Corporation, or who displays negligence, inefficiency or indolence or who knowingly does anything detrimental to the interest of the Corporation, or conflicting with the instructions or who commits a breach of discipline, or is guilty of any other act prejudicial to good conduct:—

- (a) censure ;
- (b) withholding of one or more increments either permanently or for a specified period ;
- (c) recovery from pay or such other amount as may be due to him of the whole or part of any pecuniary loss caused to the Corporation by negligence or breach of orders ;
- (d) reduction to a lower service, or post, or to a lower time-scale, or to a lower stage in a time-scale ;
- (e) compulsory retirement ;
- (f) removal from service which shall not be a disqualification for future employment ;
- (g) dismissal.

39(2) No order imposing on an employee any of the penalties specified in clauses (b) to (g) of Sub-Regulation (1) supra, shall be passed by the disciplinary authority specified in schedule I without the charge or charges being communicated to him in writing and without his having been given a reasonable opportunity of defending himself against such charge or charges and of showing cause against the action proposed to be taken against him.”

39(3) The disciplinary authority empowered to impose any of the penalties (b), (c), (d), (e), (f) or (g) may itself enquire into such of the charges as are not admitted, or if it considers it necessary so to do, appoint a board of enquiry or an enquiry officer for the purpose."

39(4) Notwithstanding anything contained in sub-Regulation (1) and (2) above:—

- (i) where a penalty is imposed on an employee on the grounds of conduct which had led to a conviction on a criminal charge ; or
- (ii) where the authority concerned is satisfied for reasons to be recorded in writing, that it is not reasonably practicable to follow the procedure prescribed in this regulation ; or
- (iii) where an employee has abandoned his post, disciplinary authority may consider the circumstances of the case and pass such orders thereon as it deems fit.

Explanation 1:—For the purpose of this regulation an employee shall be deemed to have abandoned his post if he absents himself from duty without leave or overstays his leave for a continuous period of ninety days without any intimation therefor in writing.

Explanation 2:—All communications under this regulation and copies of orders passed thereunder may be delivered personally to the employee if he is attending office ; otherwise they shall be sent by registered post to the address noted in the service record. Where such communications or copies of orders cannot be served on him personally or by registered post, copies thereof shall be affixed on the notice board of the office in which the employee is employed and on such affixing such communications and orders shall be deemed to have been properly served on him."

Regulation in *Jai Shanker's case* (supra) was to the following effect :—

"13. An individual who absents himself without permission or who remains absent without permission for one month

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or longer after the end of his leave should be considered to have sacrificed his appointment and may only be reinstated with the sanction of the competent authority.

Note:—The submission of an application for extension of leave already granted does not entitle an individual to absent himself without permission.”

In *Jai Shanker's case* (supra), it was specifically noticed that Article 311 of the Constitution of India does not apply to the case whereas in the present case, although Article 311 of the Constitution does not apply, the provisions of Regulation 39 are some what akin to the provisions of Article 311 of the Constitution of India, and the provisions of Article 311 of the Constitution of India came up for consideration in *Tulsiram's case* (supra). In Article 311 of the Constitution of India, the proviso provides that clause of giving a reasonable opportunity to show cause, as provided by Article 311(2), shall not apply in certain circumstances enumerated in proviso (a) to (c). Here Regulation 39(4) (i) is similar to proviso (a) and the relevant sub-regulation is (iii), which is different from the remaining two provisos of Article 311 of the Constitution of India. Sub-clause (iii) of Regulation 39(4) empowers the competent authority to declare that an employee has abandoned his post and to pass order, which the circumstances of the case may deserve and the explanation (i) provides that an employee shall be deemed to have abandoned his post if he absented himself from duty without leave or overstayed his leave for a continuous period of 90 days without an intimation thereof in writing. Explanation (2) provides that all communications under this Regulation and copies of the orders passed thereunder may be delivered personally or sent by registered post.

(8) In this case, the petitioner remained absent from duty from 25th May, 1976 till 5th January, 1977 when the order was passed. The competent authority took notice of the latest absence for more than 90 days and passed the order of removal without giving an opportunity of hearing. On the peculiar facts of this case, I am of the considered view that the petitioner did not want to serve at Mandi and for that reason overstayed his leave without intimation and permission, on one pretext or the other, which was not supported by a medical evidence. For all the period of leave on the ground of illness, he did not submit any medical certificate/certificates. He proceeded on casual leave because of wife's illness.

Then he pretended that he was un-well, which was followed by the illness of the daughter and then he alleged that he fell down and had pain in the back. The grounds of appeal show that he took up further stand that his other relations were unwell. To avoid over-stay without a reason, there are specific guidelines in the Regulations for the employees. Regulation 30(1) provides that an employee shall not absent himself without having obtained the permission of the competent authority nor shall remain absent in the case of sickness or get the leave extended without submitting the medical certificate. The Regulation provides that casual leave for a short period may be availed of without prior sanction, but in this case these facts do not exist. As noticed earlier, a reading of appeal Annexure P17 shows that various new causes for absence were mentioned. The impression left in the mind of the Court is that the petitioner wanted to stay at Malerkotla and did not want to serve at Mandi, and, therefore, in May, 1976 he took casual leave for coming to Malerkotla and thereafter did not join duty till January, 1977, nor he showed his inclination to join in March, 1978, when he filed appeal. For that reason he kept on sending false telegrams and letters basing on untrue and false facts. Therefore, I am of the opinion that in terms of the decision in *Tulsiram's case* (supra), Regulation 39(4) (iii) has rightly been applied by the competent authority, which provision is as much in public interest, for public good and a matter of public policy as laid down in para 61 of the reported judgment in *Tulsiram's case* (supra), while interpreting the proviso to clause (2) of Article 311 of the Constitution of India. Accordingly, non-observance of Regulation 39(2) of the Regulations or the principles of natural justice do not vitiate the impugned order.

9. For a matter like the one in dispute, hardly a detailed order had to be passed. The petitioner knew that he was absent from duty since 25th May, 1976 without permission. He is supposed to know the regulation that in case he remains absent from duty for more than 90 days, it would be deemed that he has abandoned his post and without enquiry he could be removed. That is what has been done in this case and hence the orders are not bad on the ground of being cryptic or non-speaking.

10. For the reasons recorded above, the writ petition is devoid of merit and is dismissed leaving the parties to bear their own costs.

S.C.K.