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**IN THE HIGH COURT OF DELHI AT NEW DELHI**

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**Judgment reserved on: 14.05.2026****Judgment delivered on: 04.06.2026**

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LPA 363/2026

ASHOK KUMAR

.....Appellant

Through: Mr. Milind P Singh, Mr. Jitender  
Kumar and Mr. Deepanshu Tyagi,  
Advocates.

versus

INDIAN INSTITUTE OF TECHNOLOGY, DELHI THROUGH ITS  
DIRECTOR

.....Respondent

Through: Mr. T. Singhdev, Mr. Tanishq  
Srivastava, Mr. Abhijit Chakravarty,  
Ms. Anum Hussain, Mr. Sourabh  
Kumar and Mr. Bhanu Gulati,  
Advocates.**CORAM:****HON'BLE THE CHIEF JUSTICE****HON'BLE MR. JUSTICE TEJAS KARIA****J U D G M E N T****DEVENDRA KUMAR UPADHYAYA, C.J.**

1. This intra-Court appeal arises out of an order dated 26.02.2026, passed by the learned Single Judge whereby W.P.(C) 4161/2019 filed by the appellant, challenging the order of compulsory retirement by way of punishment passed against the appellant, has been dismissed.



2. Heard learned counsel for the parties and perused the records available before us on this intra-Court appeal.
3. Before advertng to the competing submissions made by learned counsel for the parties, we may note certain facts which are essential for appropriate resolution of the issue which has arisen for our consideration in this appeal.
4. The appellant was appointed as Group 'D' Helper in the establishment of the respondent – Indian Institute of Technology (hereinafter referred to as 'IIT') on 27.11.1992 whereupon he was confirmed on the said post on 05.05.2003. The appellant is said to have been unauthorisedly absent from duty between 28.09.2015 to 26.02.2016 i.e. for a period of about five months. The respondent constituted an inquiry committee *vide* Office Memorandum dated 15.02.2016 to examine the appellant's unauthorised absence for the said period. In the proceedings initiated *vide* Office Memorandum dated 15.02.2016, the appellant submitted an explanation stating therein that he had not been performing his duties for the reason that he was away to attend to his wife who was suffering from some mental disorder. The appellant also sought consideration of this period of absence on humanitarian grounds.
5. The competent authority, on considering the report of the inquiry committee constituted *vide* Office Memorandum dated 15.02.2016 and the explanation submitted by the appellant, issued a memorandum dated 02.06.2016, recording the period of absence from 28.09.2015 to 26.02.2016 as *dies non* for all purposes except for pensionary benefits.



6. Thereafter, a fresh charge sheet dated 16.08.2016 was issued against the appellant by the respondent initiating an inquiry under Statute 13(9) of the Statutes of IIT, Delhi on the allegations of unauthorised absence for the same period i.e. 28.09.2015 to 26.02.2016. The said memorandum of charge dated 16.08.2016 contained imputation of charges. In the imputation of charges, reference was also made, apart from a reference to unauthorised leave between 28.09.2015 to 26.02.2016, to all the previous instances of unauthorised leave which were either regularised or finalised after issuing warnings to the appellant. It was also stated in the charge-memo that despite such warnings, the appellant continued to remain unauthorisedly absent from duty without prior sanction of leave. The departmental proceedings in terms of Statute 13(9) of the Statutes were conducted and after giving opportunity to the appellant to submit his explanation and allowing him to participate in the disciplinary proceedings, an inquiry report was submitted on 19.09.2017. The disciplinary authority i.e. Director of the IIT, Delhi issued a memorandum to the appellant dated 09.11.2017, enclosing therewith a copy of the inquiry report and a summary of unauthorised leave record, proposed penalty of compulsory retirement and also invited representation from the appellant against the inquiry report. The disciplinary authority, thereafter, on perusal of the inquiry report and other relevant documents, including the representation made by the appellant against the inquiry report, took the final decision of imposing penalty of compulsory retirement *vide* order dated 18.01.2018.

7. At this juncture itself, it would be relevant to note that the appellant filed W.P. (C) No. 5038/2018 which was permitted to be withdrawn by this



Court with liberty to file a fresh petition. Accordingly, a subsequent writ petition, namely W.P. (C) No.7348/2018 was preferred before this Court challenging the show cause notice/ memorandum dated 09.11.2017 which was disposed of by this Court by means of an order dated 12.10.2018 with the liberty to avail the remedy of statutory appeal against the order of punishment of compulsory retirement dated 18.01.2018. The appellant, challenged the said order of compulsory retirement in a statutory appeal which, too, has been dismissed by the appellate authority i.e. the Board of Governors of IIT, Delhi *vide* its decision dated 08.04.2019. Challenging the order of punishment of compulsory retirement inflicted upon the appellant *vide* order dated 18.01.2018 passed by the disciplinary authority and the decision dated 08.04.2019 dismissing the statutory appeal preferred by the appellant against the order dated 18.01.2018, the appellant instituted the proceedings of the underlying writ petition, namely W.P.(C) 4161/2019 which has been dismissed by the impugned order passed by the learned Single Judge, dated 26.02.2026. It is this order dated 26.02.2026 which has been assailed in the proceedings of the instant Letters Patent Appeal.

8. Coming to the submissions made by learned counsel for the parties, we note that the main plank of argument on behalf of the appellant is that by resorting to inflicting the punishment of compulsory retirement *vide* order dated 18.01.2018 on the charge of unauthorised absence from duty from 28.09.2015 to 26.02.2016, the respondent has subjected the appellant to double punishment (double jeopardy) inasmuch as that for the same period of unauthorised absence, prior to passing of the order of punishment, the competent authority had considered the matter and declared the said period of unauthorised absence as *dies non* and therefore, punishing the appellant



on the same charge of unauthorised absence for the same period with the penalty of compulsory retirement amounts to double punishment for the same charge, which is not sustainable.

9. Certain other arguments have also been raised by the appellant such as that the departmental proceedings which precipitated in passing of the order of punishment of compulsory retirement are vitiated for the reason of non-observance of principles of natural justice inasmuch as that the representation made by the appellant against the proposed penalty was not meaningfully considered and further that the appellate authority has mechanically affirmed the order of punishment without independently considering the grounds raised by the appellant in the statutory appeal.

10. It has also been argued on behalf of the appellant that the appellant has sufficient leave to his credit and that his absence could have been regularised and therefore, the impugned decision of compulsorily retiring the appellant as a measure of penalty is arbitrary and disproportionate and therefore is liable to be set aside.

11. On the other hand, learned counsel for the respondent has opposed the instant appeal and, while defending the impugned order passed by the learned Single Judge, has submitted that so far as the declaration of the period of absence as *dies non vide* office memorandum dated 02.06.2016 is concerned, the said action was administrative treatment of the absence of the appellant for service counting purposes whereas formal disciplinary proceedings were initiated by issuance of the charge sheet dated 16.08.2016 for misconduct. It has also been argued that leave cannot be claimed as a matter of right by an employee which is always subject to sanction by the competent authority and also that leave should, in ordinary circumstances,



be applied and sanctioned before it is availed except in emergencies supported by a satisfactory reason.

12. It has also been argued that unauthorised absence from duty is a serious misconduct which may result in either of the major penalties of reduction to lower service grade or post, or to a lower time scale, or to a lower stage in time scale, or compulsory retirement, or removal from service, or dismissal from service. It has been urged that the penalty imposed against the appellant is not disproportionate considering the misconduct of the appellant who has been on unauthorised leave for the period as mentioned above.

13. Learned counsel for the respondent has also submitted that the appellant has failed to establish any flaw in the disciplinary proceedings which were conducted strictly in accordance with the requirement as mentioned in Statute 13(9) of the Statutes of IIT, Delhi and also that the principles of natural justice were followed inasmuch as that it is not only that the appellant was provided opportunity to participate in the proceedings but also that the inquiry report submitted on conclusion of the inquiry was furnished to him inviting his representation against the same. The submission, thus, is that in absence of there being any flaw in the disciplinary proceedings, the order of penalty of compulsory retirement cannot be said to be flawed in any manner.

14. In respect of the decision of the appellate authority dated 08.04.2019 whereby the statutory appeal of the appellant preferred by him against the order of punishment was dismissed, it has been argued on behalf of the respondent that the appellate authority has considered the entire matter and has affirmed the decision of the disciplinary authority and, therefore, the



same also does not require any interference. He has submitted that, thus, the impugned order passed by the learned Single Judge does not warrant any interference by this Court in this appeal and the appeal is liable to be dismissed.

15. We have given our thoughtful consideration to the respective submissions made by learned counsel for the parties. We have also perused the records available before us on this intra-court appeal.

16. As already noticed above, the sheet anchor of arguments of the appellant is that by subjecting the appellant to disciplinary proceedings initiated *vide* charge memorandum dated 16.08.2016, the appellant has been subjected to double punishment for the reason that the period of unauthorised absence from 28.09.2015 to 26.02.2016 was already declared *dies non* by the respondent *vide* order/memo dated 02.06.2016. The submission is that once for the same period of unauthorised absence, the period was declared to be treated as *dies non*, the disciplinary proceedings for misconduct could not have been instituted against the appellant *vide* charge memo dated 16.08.2016. In these background facts, it has been argued on behalf of the appellant that the order of punishment of compulsory retirement amounts to double punishment for the same charge and, therefore, the learned Single Judge has erred in not appreciating the aforesaid legal aspect of the matter and, therefore, the impugned order passed by the learned Single Judge of this Court is liable to be set aside.

17. The concept of declaration of a period as *dies non* in service jurisprudence connotes that for the period an employee remains on leave, he shall not be entitled to pay on the principle of 'No Work No Pay' for the said period. We may also note that what all was done by the competent



authority of the respondent by issuing the memorandum dated 16.08.2016 was that the period w.e.f. 28.09.2015 to 26.02.2016 during which the appellant remained unauthorisedly absent from duty was declared to be treated as *dies non* for all purposes except pensionary benefits.

18. In our opinion, if the appellant was found to be unauthorisedly absent during the same period it was necessary for the respondent to have passed some consequential order as to how the period of absence should be accounted for and dealt with in service records. It is also observed that if the unauthorised absence remains unaccounted in service records, it will result in break in service which will affect the seniority, pension and pay etc. of the employee concerned. However, if some consequential order is passed by the authority concerned as to how the period of unauthorised absence is to be treated, unless the said period is regularised, the employee concerned may still be subject to disciplinary proceedings. We are also of the opinion that *vide* office memorandum dated 02.06.2016 the period of unauthorised absence was declared to be treated as *dies non*, that would only mean that the appellant would not be entitled to pay for this period, however, declaration of the period of absence as *dies non* would not automatically result in regularisation of the period of absence.

19. Unless and until the period of absence is regularised by grant of any kind of leave which may be available to the credit of the employee, merely by declaring the period of unauthorised absence as *dies non* will not result in regularisation of the period of unauthorised absence. The declaration of period of absence as *dies non* in the instant case was done so as to make the service record of the appellant straight. The only consequence of declaration of period of absence as *dies non* is that the employee in such a



situation will not entitled to pay on the doctrine of 'Equal Pay for Equal Work'.

20. In the aforesaid view of the matter, it is difficult to observe that the office memorandum dated 02.06.2016 declaring the period of absence from duty of the appellant as *dies non* had resulted in any kind of punishment for the unauthorised absence.

21. As a matter of fact, declaration of period of unauthorised absence as *dies non* which disentitles the employee to claim any pay for such period has not been defined to be a punishment in the Statutes of IIT, Delhi. The penalties prescribed in Statute 13(9) of the Statute of IIT, Delhi are as under:

*"The following penalties may, for good and sufficient reasons, and as hereinafter provided, be imposed on any member of the staff :*

- (i) Censure;*
- (ii) withholding of increments or promotion;*
- (iii) recovery from the whole or part of any pecuniary loss caused to the Institute by negligence or breach of orders;*
- (iv) reduction to lower service, grade or post or to a lower time-scale or to a lower stage in a time-scale;*
- (v) compulsory retirement;*
- (vi) removal from service which shall not be a disqualification for future employment under the Institute.*
- (vii) dismissal from service which shall ordinarily be a disqualification for future employment in the Institute."*

22. A perusal of the afore-quoted extract of Statute 13(9) of the Statutes of IIT, Delhi reveals that treating the period of unauthorised absence as *dies non* which results in non-payment of salary or pay for such period, has not been described or defined as a punishment or penalty which culminates on conclusion of disciplinary proceedings. Accordingly, in this view of the matter, we are unable to subscribe to the arguments made by learned counsel for the appellant that by inflicting the punishment of compulsory retirement



upon the appellant by order of the disciplinary authority dated 18.01.2018, the appellant has been subjected to double punishment. For the reasons given above, once we have held that the Office Memorandum dated 02.06.2016 declaring the period of unauthorised absence of the appellant as *dies non* does not amount to inflicting any penalty, we are of the considered opinion that the appellant in this case has not been punished twice for the same charge.

23. Furthermore, we may refer to certain observations made by Hon'ble Supreme Court in the case of *State of Punjab v. Dr. P.L. Singla*, (2008) 8 SCC 469, wherein it has been observed that it is necessary to pass some order as to how the period of absence should be accounted for and dealt with in service record and further that an order directing how the period of absence should be accounted is an accounting and administrative procedure.

24. The Hon'ble Supreme Court in *Dr. P.L. Singla*, (supra) has also laid down that an employee who remains unauthorisedly absent may apply for condonation of absence and seek grant of leave for that period and further that if the employer is satisfied that there was sufficient cause for unauthorised absence, he may condone the act of indiscipline and sanction leave post facto. The Hon'ble Supreme Court further observed that if leave is sanctioned and the unauthorised absence is condoned, it will not be open to the employer to initiate disciplinary proceedings for misconduct unless the employer had reserved the right to take disciplinary action while sanctioning the leave. Such observation can be viewed in paragraph 12 of the judgment in *Dr. P.L. Singla*, (supra), which is extracted hereunder:

*“12. An employee who remains unauthorisedly absent for some period (or who overstays the period of leave), on reporting back to duty, may*



*apply for condonation of the absence by offering an explanation for such unauthorised absence and seek grant of leave for that period. If the employer is satisfied that there was sufficient cause or justification for the unauthorised absence (or the overstay after expiry of leave), the employer may condone the act of indiscipline and sanction leave post facto. If leave is so sanctioned and the unauthorised absence is condoned, it will not be open to the employer to thereafter initiate disciplinary proceedings in regard to the said misconduct unless it had, while sanctioning leave, reserved the right to take disciplinary action in regard to the act of indiscipline.”*

25. Thus, as per the law laid down in **Dr. P.L. Singla**, (supra), the employer is precluded from initiating any disciplinary proceedings in respect of misconduct where the employee is found to be unauthorisedly absent from duty only in a case where leave is sanctioned or regularised. Declaration of period of absence from duty as *dies non* does not, in our opinion, amount to condoning the misconduct of unauthorised absence and further it also does not amount to sanctioning the leave.

26. In the facts of the instant case, it was, thus, always open to the respondent to have initiated the disciplinary proceedings for misconduct of unauthorised absence from duty against the appellant even after declaration of the period of leave as *dies non*.

27. As far as the other submission made by learned counsel for the appellant that the disciplinary proceedings were conducted in violation of principles of natural justice, we may only observe that there is nothing on record which establishes any flaw in the disciplinary proceedings conducted against the appellant. The appellant was provided adequate opportunity of participation in the disciplinary proceedings and he was also given opportunity to make representation against the inquiry report and the proposed order of penalty and, therefore, to conclude that disciplinary



proceedings were conducted in violation of principles of justice, will be against the record.

28. For the reasons aforesaid, we find ourselves in complete agreement with the order dated 26.02.2026 passed by the learned Single Judge. Resultantly, the appeal is dismissed.

29. However, we direct that the respondent shall release the retirement benefits, if any, to which the appellant may be entitled to, at the earliest, say, within a period of two months.

30. There shall be no order as to costs.

**(DEVENDRA KUMAR UPADHYAYA)**  
**CHIEF JUSTICE**

**(TEJAS KARIA)**  
**JUDGE**

**JUNE 04, 2026**  
*N.Khanna*