



2026:DHC:4247-DB



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

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Date of Decision: 12.05.2026

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W.P.(C) 778/2026

DR H S DHARAMSHAKTU

.....Petitioner

Through: Mr. Ram Naresh Yadav and
Mr. Sarvesh Kumar Yadav,
Advs.

versus

UNION OF INDIA & ORS.

.....Respondents

Through: Mr. Neeraj, SPC along with Mr.
Ravi Mittal, GP, Mr.
Soumyadip Chakraborty, Adv.
and Mr. Sandeep Choudhary
DC and Mr. Devendra Singh,
DC.

CORAM:

HON'BLE MR. JUSTICE ANIL KSHETARPAL

HON'BLE MR. JUSTICE AMIT MAHAJAN

J U D G M E N T (O R A L)

ANIL KSHETARPAL, J.:

1. By way of the present Petition, the Petitioner seeks issuance of a writ in the nature of Certiorari for quashing of orders dated 06.12.2004, 29.03.2023, and 18.11.2024 passed by the Respondent-Indo Tibetan Border Police Force ['ITBP'], whereby the period from 19.12.1995 to 08.09.1999 has been treated as "*dies-non*" for all purposes including pensionary benefits, and for consequential directions for regularization of the said period as study leave/leave kind due/leave without pay and for counting the service rendered by the petitioner under the U.P. Government during the period



01.07.1998 to 06.09.1999 as qualifying service under Rule 27 of the CCS (Pension) Rules, 1972.

FACTUAL MATRIX

2. In order to appreciate the controversy involved in the present Petition, the relevant facts, in brief, are required to be noticed.

3. The Petitioner was appointed as a Medical Officer in the ITBP on 29.11.1995 and joined service on 04.12.1995. It is not in dispute that within a short span of approximately fifteen (15) days, i.e., on 19.12.1995, the Petitioner tendered his resignation and proceeded to pursue post-graduate medical studies without waiting for acceptance of the said resignation or completion of formal exit from service.

4. During the period from 1995 to 1998, the Petitioner pursued post-graduate medical education, and thereafter joined service under the Government of Uttar Pradesh as Medical Officer from 01.07.1998 to 06.09.1999 as a Medical Officer.

5. Since the Petitioner's resignation had not been formally accepted, the Respondents initiated proceedings and, pursuant to a Court of Inquiry, the Petitioner was declared an absconder *vide* order dated 24.09.1998.

6. The Petitioner subsequently rejoined ITBP on 09.09.1999, whereafter disciplinary proceedings were initiated and culminated in certain administrative consequences. The entire period from 19.12.1995 to 08.09.1999 was treated as "*dies non*" by order dated 06.12.2004, which also imposed a penalty of reprimand against the



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Petitioner. The Petitioner's representation against the said decision was rejected on 21.12.2004.

7. Aggrieved therefrom, the Petitioner challenged the said action belatedly by filing SWP No. 1332/2007 before the High Court of Jammu & Kashmir and Ladakh. The said writ petition was disposed of on 07.07.2022, with a direction to the Respondents to consider the Petitioner's claim for regularisation of the disputed period in terms of Rule 27 of the CCS (Pension) Rules, 1972.

8. Pursuant thereto, the Respondents reconsidered the matter and rejected the claim of the Petitioner *vide* the Impugned Order dated 29.03.2023, which was thereafter reaffirmed by Order dated 18.11.2024, holding that the claim for regularisation of the period as leave or qualifying service was not tenable under the extant rules.

9. The order dated 18.11.2024 records that the Petitioner's appeal against the earlier rejection was considered and rejected on the following broad grounds:

- i. The case had already been decided under Rule 27 of CCS (Pension) Rules *vide* order dated 29.03.2023;
- ii. No new facts or evidence were produced in the appeal;
- iii. It was confirmed that the Petitioner had simultaneously held employment under ITBP and the Government of Uttar Pradesh during part of the disputed period;
- iv. The unauthorized absence from 19.12.1995 to 08.09.1999 was



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treated as serious misconduct;

v. Accordingly, there was no justification to alter the earlier decision treating the entire period as “*dies-non*”.

SUBMISSIONS OF THE PARTIES

10. Learned counsel for the Petitioner submitted that the Respondents failed to properly consider the Petitioner’s case in terms of Rule 27 of the CCS (Pension) Rules despite the directions issued by the High Court of Jammu & Kashmir. It was contended that Rule 27 of the CCS (Pension) Rules is a beneficial provision and empowers the competent authority to commute unauthorized absence into leave so as to preserve qualifying service. It was further submitted that the Petitioner was a young doctor at the relevant time; that he had proceeded for higher medical studies; that no financial loss was caused to the Respondents; and that the Respondents failed to consider the mitigating circumstances. Learned counsel for the Petitioner also sought to contend that similarly situated officers, namely Dr. P.K. Goel and Dr. Pramod Kumar, had allegedly been granted more favourable treatment and, therefore, denial of similar relief to the petitioner violates Article 14 of the Constitution. It was additionally argued that since the Petitioner had already suffered the punishment of “reprimand”, continuation of the ‘*dies non*’ period amounts to double punishment.

11. *Per contra*, the Respondents support the Impugned Orders on the ground that the Petitioner remained unauthorisedly absent from service for nearly four years, without obtaining prior approval or



sanctioned leave, and further engaged in employment outside ITBP during part of the said period, thereby constituting serious misconduct under the applicable service rules. It is submitted that such conduct disentitles the Petitioner from claiming regularisation under Rule 27 of the CCS (Pension) Rules, 1972. With regard to the plea of parity, it is submitted that the cases relied upon by the Petitioner are factually distinguishable and cannot form the basis for invoking Article 14 as the circumstances governing those cases were materially different.

FINDINGS & ANALYSIS

12. This Court has heard the submissions made on behalf of the parties and perused the record. The principal question which arises for consideration in the present Petition is whether the Respondents acted illegally or arbitrarily in refusing to regularize the aforesaid period as qualifying service under Rule 27 of the CCS (Pension) Rules.

13. It is an admitted position that during the entire period sought to be regularized, the Petitioner did not render any service to the ITBP.

14. Effect of Non-Acceptance of Resignation- The entire edifice of the Petitioner's case proceeds on the assumption that upon submission of resignation on 19.12.1995, he was justified in absenting himself from service and pursuing other engagements.

15. The said contention is fundamentally misconceived. It is settled law that resignation from Government service becomes effective only upon acceptance by the competent authority. Mere submission of resignation does not sever the jural relationship between employer and



employee.

16. Admittedly, the Petitioner's resignation was never accepted during the period in question. Despite this, the Petitioner neither resumed duty nor obtained any formal permission to remain absent. On the contrary, the Petitioner proceeded to pursue higher studies and thereafter joined another Government service under the U.P. Government while continuing to remain borne on the strength of the ITBP. The aforesaid conduct cannot be lightly brushed aside. The Petitioner consciously remained absent from disciplined force service for nearly four years without authorization.

17. Unauthorized Absence and Rule 27- Rule 27 of the CCS (Pension) Rules no doubt enables the competent authority, in an appropriate case, to commute periods of unauthorized absence into leave. However, the Rule does not create any indefeasible right in favour of an employee to seek automatic regularization of prolonged unauthorized absence. The power under the Rule is discretionary and is required to be exercised on a consideration of the facts and circumstances of each case.

18. In the present case, the Respondents have consistently taken the view that the Petitioner's conduct did not warrant exercise of such discretion. The Petitioner was absent continuously for almost four years. During this period, he did not perform any duty for the Respondents; no leave was ever sanctioned in his favour; he joined another Government service without permission; he was declared absconder; and he rejoined only after initiation of apprehension



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proceedings.

19. In the considered opinion of this Court, the Respondents cannot be faulted for declining to convert such an extended period of unauthorized absence into qualifying service. Acceptance of the Petitioner's submission would effectively amount to directing the Respondents to treat nearly four years of unauthorized absence as regular service despite absence of any sanctioned leave, which would run contrary to the discipline requirements governing a uniformed force.

20. Compliance with the Earlier Order of the Jammu & Kashmir High Court- The contention that the Respondents violated the order dated 07.07.2022 passed by the High Court of Jammu & Kashmir is also without merit. The said order merely directed reconsideration of the Petitioner's case in light of Rule 27 of the CCS (Pension) Rules. The order did not confer any substantive entitlement upon the petitioner nor did it mandate regularization of the period in question. Pursuant thereto, the respondents reconsidered the matter and passed the orders dated 29.03.2023 and 18.11.2024.

21. Merely because the competent authority, upon reconsideration, arrived at the same conclusion would not render the decision illegal. A direction to "consider" cannot be construed as a direction to "grant".

22. Plea of Bona Fides and Higher Studies- The submission that the Petitioner pursued post-graduate medical studies *bona fide* and that the same ultimately benefited public service also does not persuade this Court to interfere. However laudable the objective of higher



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education may be, a Government servant, particularly one serving in a disciplined force, cannot absent himself from duty for years together without sanction of leave and thereafter seek retrospective regularization as a matter of right.

23. The Petitioner admittedly neither sought nor obtained study leave under the applicable rules. The plea that the Petitioner was not aware of the service conditions is equally untenable. Ignorance of service rules cannot justify prolonged unauthorized absence from service, particularly by a Government medical officer.

24. Service under the U.P. Government- The Petitioner has heavily relied upon communications exchanged by the Respondents with the U.P. authorities concerning acceptance of his resignation from the U.P. Government. In the view of this Court, the said correspondence does not advance the Petitioner's case.

25. At best, the correspondence exchanged with the U.P. authorities reflects administrative steps taken after the Petitioner rejoined service. The same cannot be construed as approval or ratification of the Petitioner's unauthorized absence or his joining another Government service without permission. In fact, the admitted position that the Petitioner joined another Government service during continuance of his service relationship with the ITBP further aggravates the misconduct.

26. Plea of Parity- The Petitioner has sought parity with two other officers, namely Dr. P.K. Goel and Dr. Pramod Kumar. However, except making a bald assertion, no material particulars have been



placed on record demonstrating that the facts and circumstances governing the said officers were identical in all material respects.

27. In claims of parity under Article 14, it is not sufficient to merely cite names of other employees; the burden lies upon the claimant to establish complete identity of facts, circumstances, and governing service conditions. In the present case, there is no material to show, *inter alia*, the duration and nature of absence of the said officers, whether they too had proceeded to join any other Government service during subsistence of their employment, whether they were similarly declared absconders, or whether disciplinary proceedings of comparable nature were initiated against them. These factors are not peripheral, but go to the root of comparability in service jurisprudence.

28. In absence of foundational facts establishing complete parity in all material particulars, the Petitioner cannot invoke Article 14. It is well settled that Article 14 does not envisage negative equality nor does it permit courts to direct extension of an illegality or a mistaken benefit in favour of another employee as a matter of right.

29. Plea of Double Jeopardy- The contention that treatment of the period as '*dies non*' amounts to double punishment also deserves rejection. The concept of '*dies non*' essentially relates to non-counting of a period during which no duty was performed and no lawful leave stood sanctioned. The order treating the period as '*dies non*' is primarily a service consequence flowing from unauthorized absence and cannot be equated with a second punishment in the strict sense.



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30. Merely because the Petitioner was also visited with the penalty of reprimand would not preclude the Respondents from determining the manner in which the period of absence is to be regulated in service records.

31. Proportionality- This Court is likewise unable to accept the submission that the impugned action is disproportionate so as to warrant interference. The Petitioner remained absent from a disciplined force for nearly four years without authorization. During the said period, he admittedly rendered service elsewhere without permission. In such circumstances, the decision not to count the period as qualifying service cannot be said to be arbitrary or outrageously disproportionate warranting interference in exercise of writ jurisdiction.

32. Challenge to the Order Dated 06.12.2004 and Reprimand- The Petitioner has also sought to challenge the order dated 06.12.2004 and the punishment of reprimand. The said challenge is *ex facie* belated.

33. The order dated 06.12.2004 attained finality long ago. The Petitioner did not assail the said order immediately and approached the High Court of Jammu & Kashmir only in the year 2007, and in fact even in those proceedings, the Petitioner had confined his grievance substantially to regularization of the '*dies non*' period. The present attempt to reopen the issue of reprimand after more than two decades cannot be permitted.



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CONCLUSION

34. In view of the foregoing discussion, this Court is of the considered view that the Impugned Orders do not suffer from non-application of mind or perversity. The Respondents have complied with the directions of the earlier writ Court and have taken a plausible view within the ambit of Rule 27 of the CCS (Pension) Rules.

35. Accordingly, the present Petition is dismissed.

ANIL KSHETARPAL, J.

AMIT MAHAJAN, J.

MAY 12, 2026
s.godara/pal