



2025:DHC:1315-DB



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

*Reserved on: 26 November 2024
Pronounced on: 28 February 2025*

+ W.P.(C) 1546/2020 & CM APPL. 5387/2020

LALIT KUMAR

.....Petitioner

Through: Ms. Anu Bagai, Ms. Aakriti
Bhandari, Mr. Shoumik Chowdary, Adv.
alongwith petitioner in person.

versus

UNION OF INDIA AND ORS.

.....Respondents

Through: Mr. Sushil Kumar Pandey, SPC
with Ms. Neha Yadav, Adv.
Ms. Shika Sapra and Mr. Dhruv Sharma,
Adv.

CORAM:

HON'BLE MR. JUSTICE C. HARI SHANKAR

HON'BLE MR. JUSTICE ANOOP KUMAR MENDIRATTA

JUDGMENT

28.02.2025

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C. HARI SHANKAR, J.

1. Disciplinary proceedings, instituted against the petitioner by chargesheet dated 10 June 2011, issued under Rule 14(1)¹ of the

¹ **14. Procedure for imposing major penalties –**

(1) No order imposing any of the penalties specified in clauses (v) to (ix) of Rule 11 shall be made except after an inquiry held, as far as may be, in the manner provided in this rule and rule 15, or in the manner provided by the Public Servants (Inquiries) Act, 1850 (37 of 1850), where such inquiry is held under that Act.

(2) Whenever the disciplinary authority is of the opinion that there are grounds for inquiring into the truth of any imputation of misconduct or misbehaviour against a Government servant, it may itself inquire into, or appoint under this rule or under the provisions of the Public Servants (Inquiries) Act, 1850, as the case may be, an authority to inquire into the truth thereof.

Explanation – Where the disciplinary authority itself holds the inquiry, any reference in sub-rule (7) to sub-rule (20) and in sub-rule (22) to the inquiring authority shall be construed as a reference to



Central Civil Services (Classification, Control & Appeal) Rules, 1965², resulted in an inquiry and culminated in an order, dated 4 May 2012, passed by the Disciplinary Authority³, removing the petitioner from service. Having failed to obtain relief in appeal, or revision, the petitioner approached the Central Administrative Tribunal⁴ by way of OA/100/2315/2014⁵, which stands dismissed by the Tribunal *vide* judgment dated 16 July 2019. Aggrieved thereby, the petitioner has approached this Court under Article 226 of the Constitution of India.

2. We have heard Ms. Anu Bagai for the petitioner and Mr. Sushil Kumar Pandey, learned Senior Panel Counsel for the Respondent-Union of India.

Facts

3. The charges against the petitioner, who was working as an Assistant Central Intelligence Officer⁶ in the Intelligence Bureau⁷,

the disciplinary authority.

(3) Where it is proposed to hold an inquiry against a Government servant under this rule and rule 15, the disciplinary authority shall draw up or cause to be drawn up-

(i) the substance of the imputations of misconduct or misbehaviour into definite and distinct articles of charge;

(ii) a statement of the imputations of misconduct or misbehaviour in support of each article of charge, which shall contain –

(a) a statement of all relevant facts including any admission or confession made by the Government servant;

(b) a list of documents by which, and a list of witnesses by whom, the articles of charge are proposed to be sustained.

(4) The disciplinary authority shall deliver or cause to be delivered to the Government servant a copy of the articles of charge, the statement of the imputations of misconduct or misbehaviour and a list of documents and witnesses by which each article of charges is proposed to be sustained and shall require the Government servant to submit, within such time as may be specified, a written statement of his defence and to state whether he desires to be heard in person.

² "the CCS (CCA) Rules" hereinafter

³ "DA" hereinafter

⁴ "the Tribunal" hereinafter

⁵ **Lalit Kumar v UOI & others**

⁶ "ACIO"

⁷ "IB"



were all pertaining to alleged unauthorised absence from duty. The Articles of Charge, in the chargesheet dated 10 June 2011, issued to the petitioner and from which the present proceedings emanate, read thus:

“Article I

That, Shri Lalit Kumar while functioning as ACIO-II/Exe at Gadhiroli unit (under SIB, Nagpur) was granted 05 days E/L w.e.f.21.02.2011 to 25.02.2011 (with prefix and suffix) vide SIB Nagpur Office Order No.56/2011 dated 17.02.2011. He was to join his duty on 28.02.2011 (A/N), but he failed to report for duty at Gadchiroli and extended his leave without any intimation to the office. He was absenting himself from duty on grounds of his personal and paternal health problems and disobeying the official order and instruction to join duty with immediate effect.

2. By the above act, Shri Lalit Kumar, ACIO-II/G has been absenting unauthorisedly, wilfully disobeying the authority and acting in a manner which is unbecoming of a Government servant in violating of Rule 3 (1) (i), (ii) and (iii) of CCS (Conduct) Rules, 1964.

Article II

It has also come to notice that Shri Lalit Kumar has been habitually absenting unauthorisedly. He joined SIB, Nagpur on 24.02.2010. Thereafter, he absented himself unauthorisedly from duty w.e.f. 04.05.2010 to 27.05.2010/21.06.2010 to 25.07.2010/ and 29.07.2010 to 13.08.2010. During this period of unauthorized absence, he was sent telegrams, several times, directing him to join his duties. However, he did not pay heed to the official orders and joined later as per his convenience. His acts were thus of insubordination, by not following the official orders.

2. Thus, Shri Lalit Kumar, ACIO-II/G failed to maintain the discipline, showed insubordination and acted in a manner which is unbecoming of a Government servant in contravention to Rule 3(1)(i), (ii) and (iii) of CCS (Conduct) Rules, 1964.

Article III

That the IB Hqrs., New Delhi had nominated Shri Lalit Kumar for Basic Mountaineering Course at SGMI, Gangtok from 29.09.2010 to 26.10.2010. After completion of his training, he proceeded for his home town without permission or intimation to



Head of Office. He did not join duty at Gadchiroli, the place of his posing, and absented unauthorisedly from Oct.27, 2010 to Nov. 11, 2010. Through this act, he exhibited utter negligence to duty and disregard to the discipline and acted in an arbitrary manner, which is unbecoming of a member of Government Service.

2. The above act of Shri Lalit Kumar is unbecoming of a Government servant and thereby violating Rule 3(1)(i), (ii) and (iii) of CCS (Conduct) Rules, 1964.

Article IV

That, Shri Lalit Kumar while functioning as ACIO-II/Exe at Gadhiroli (under SIB, Nagpur) applied for 90 days EOL w.e.f.29.07.2010 to 26.10.2010, which was not considered due to official exigencies. In spite of this, he left office and headquarters on 28.07.2010 (A/N) without permission of Head of Office and later joined on 13.08.2010 (A/N) at his own convenience. He neglected the duties and official instructions and orders and committed the act of insubordination.

2. He again applied for 90 days EOL w.e.f.17.08.2010 to 12.11.2010 on 14.08.2010 and proceeded on leave on 16.08.2010 (A/N) even when his leave was not sanctioned without any prior permission of the competent authority. His request was turned down by the sanctioning authority.

3. By the above act Shri Lalit Kumar wilfully neglected instructions of SIB, Nagpur, failed to maintain discipline and devotion to duty, resorted to insubordination and acted in a manner unbecoming of a Government servant violating Rule 3(1)(i), (ii) and (iii) of CCS (Conduct) Rule, 1964.

Article V

Shri Lalit Kumar, ACIO-II/G, Gadchiroli joined SIB, Nagpur on 24.02.2010 and posted to Gadchiroli against Aheri unit (under SIB, Nagpur) on 01.04.2010. After joining at Gadchiroli unit, many times he disappeared from the place of duties with/without permission of higher authority and failed to take interest in his duties. *Vide* Memo No.7/PF(Nag)2010 (4)-4317-22 dated 24.09.2010 he was warned to change his behavior and take interest in his work. However, he failed to comply on both counts.

2. By the above act, Shri Lalit Kumar wilfully neglected instruction and orders of the authority and thereby failed to maintain discipline and devotion to duty and also acted in a manner unbecoming of a Government Servant and violated Rule 3(1)(i),



(ii) and (iii) of CCS (Conduct) Rule, 1964.”

4. Thus,

(i) Article I alleged that the petitioner, who had been granted 5 days Earned Leave from 21 February 2011 to 25 February 2011, by Office Order dated 17 February 2011, and who was, therefore, required to rejoin duty on 28 February 2011, extended his leave without intimation,

(ii) Article II alleged that the petitioner was unauthorisedly absent from duty

(a) from 4 May 2010 to 27 May 2010,

(b) from 21 June 2010 to 25 July 2010 and

(c) from 29 July 2010 to 13 August 2010,

and was also guilty of insubordination as, during these periods of absence, several telegrams were sent to the petitioner, directing him to join duty,

(iii) Article III alleged that, after completing his Basic Mountaineering Course, for which he had been nominated by the IB Headquarters for the period 29 September 2010 to 26 October 2010, he proceeded to his hometown without permission or intimation to the Head of Office and remained absent from duty, without authorisation, from 27 October 2010 to 11 November 2010,



(iv) Article IV alleged that, despite not having been granted Extra Ordinary Leave⁸ of 90 days, as sought by him from 29 July 2010 to 26 October 2010, owing to official exigencies, the petitioner left office on 28 July 2010 without permission and rejoined on 13 August 2010 and, similarly, despite 90 days EOL, as sought by him from 17 August 2010 to 12 November 2010 not having been sanctioned, proceeded on leave without prior permission, and

(v) Article V alleged that, while posted at Gadchiroli, he disappeared from his place of duty on many occasions without permission, and also failed to take interest, for which he was warned, but failed to improve.

5. As already noted, the IO found the charges against the petitioner to be proved and, accepting the said findings, the DA removed the petitioner from service. The Tribunal, whom the petitioner approached after failing to obtain any relief in appeal and revision, observed and held as under:

“11. The applicant tried to attack the very findings on the Articles of Charge. The Articles contained in the charge memo have already been extracted above. A perusal of Article – I discloses that the applicant was sanctioned leave for a period of five days between 21.02.2011 and 25.02.2011. He did not join duty on expiry thereof. Even according to the applicant, he reported for duty only on 24.06.2011. In other words, he remained absent unauthorizedly for a period of four months. It has already been mentioned that the posting of the applicant was at a very sensitive place. Except stating that he was not feeling well and was taking treatment at his native place, he did not make any efforts to get the

⁸ EOL



leave sanctioned. There was not even a communication and the applicant was also not available to be communicated.

12. It appears that on coming to know that the applicant is residing at his native place Roorkee, the respondents got the matter verified at that place. The DCIO, SIB, Roorkee submitted a report stating that the applicant was healthy as on 8.06.2011. It was also mentioned that the applicant was busy in preparing for Civil Services Exam and he may join duty after the exams are over. It was only after conclusion of the civil examinations that the applicant reported for duty. He has no regard for truth or discipline. If this is the attitude of the applicant, who was appointed against a sensitive post, one can easily understand the plight of the organization.

13. In the 2nd Article, as many as three spells of unauthorized absence are mentioned. In his explanation, the applicant stated that he was sanctioned leave by the competent authority on 29.12.2010. However, in the course of the departmental inquiry, he did not place that letter before the IO. Added to that, the applicant did not mention anything about the same in his comments on the report of the IO. He cannot raise the plea at this stage.

14. In the 3rd Article, it is mentioned that the applicant had gone for Mountaineering Course from 29.09.2010 to 26.10.2010 and after undergoing that training, neither he reported to the Head Office nor did he join at Gadchiroli. He remained absent from 27.10.2010 to 11.11.2010. The applicant did not dispute this.

15. What is more serious about the applicant is reflected in the charge contained in Article IV. Though on two occasions, he applied for 90 days EOL each and was denied the same, he chose to remain absent. The 5th charge is almost in the form of administering warning and issuance of memos requiring him to be prompt on duties.

16. From the discussion undertaken above, it becomes clear that the applicant remained absent unauthorizedly for months together ever since he joined duties. It appears that his first priority was to appear in Civil Services Examinations, for better opportunities and on that account, he remained absent for months together. The so-called ground of illness is the lame excuse.

17. In his effort to justify the absence, the applicant misrepresented and stated wrong facts. A person of such nature does not fit at all, into the requirements of a sensitive post like the ACIO. The applicant, who is young and at the threshold of his career, was required to be disciplined and truthful. Instead, he lied



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at every stage and did not maintain discipline. He defeated the very purpose of his being appointed and exposed the department to several inconveniences and hardships.

18. We do not find any merit in the OA. It is, therefore, dismissed. There shall be no order as to costs.”

Submissions

6. Ms. Bagai submits that leave for all the periods, during which the petitioner is alleged to have remained absent without authorisation stands granted and regularized by Office Order No. 514/2010 dated 29 December 2010, which read:

“Office Order No.514/2010 dated 29.12.2010

In partial modification of Office Order No.510/2010 dated 24.12.2010, Shri Lalit Kumar, ACIO-II/Gadchiroli is granted following kind of leave:-

1. 23 days EOL from 04.05.2010 to 26.05.2010 (With Medical Certificate)
 2. 40 days EOL from 14.06.2010 to 23.07.2010
 3. 15 days EOL from 29.07.2010 to 12.08.2010
 4. 22 days EOL from 27.10.2010 to 17.11.2010 (With Medical Certificate)
2. Certified that Shri Lalit Kumar would have continued to officiate in his rank/post but for leave as mentioned against his name.

Sd/-
Joint Deputy Director/E”

7/PF(NAG)/2010 (4)- 7449-52
Subsidiary Intelligence Bureau
MHA, Govt. of India

Nagpur, the : 29-Dec-2010

1. The Office Order Book.



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1. The Accounts Br. SIB Nagpur (His pay for the period from June 2010 which to be withheld may be released).
4. Shri Lalit Kumar, ACIO-II/G, Gadchiroli.
5. The SA/SB, SIB Nagpur.

Assistant Director/E”

7. With reference to the individual Articles of Charge against him, M. Bagai submits as under :

(i) Re: Article I

(a) It was incorrect to allege that the petitioner had left duty without intimation to his office. She has referred in this context to the following communication dated 26 February 2011, addressed by the petitioner to the Joint Deputy Director, SIB- Nagpur:

“To,
The Joint Deputy Director
SIB Nagpur

Sub: For information in respect of present problems of applicant.

Sir,

It is humbly requested that despite of being extremely unwilling, due to deterioration in health condition and due to some extremely unavoidable domestic reasons (by getting fad-up with not getting desired and appropriate solution of the problems of applicant, family members of applicant continuously putting pressure on him for submitting instant resignation from his present job) extremely pressing need for his leave extension has arrived for applicant for which applicant is very humbly



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praying for pardon.

And also in respect of the above this fact is also pertinent to be mentioned that for suitable & appropriate solution of his problems, applicant wants to try to seek some alternative way out of that by going to IB Headquarter (New Delhi), by putting the matter before the concerned higher officers.

Therefore, it is humble request from respected sir that applicant may please be granted grace by permitting him in respect of the above. It would be your extreme grace.

Thanking you

Dated 26.02.2011
obedient

yours

Place -Roorkee (Haridwar)
SD/-

26.02.2011(Lalit Kumar)

ACIO/G”

She points out that there is no finding by the Tribunal with respect to this communication.

(b) After rejoining on 24 June 2011, the petitioner was, by the following communication dated 29 July 2011, directed to report to the Government Medical College, Nagpur on 8 September 2011 for his medical examination.

“Most Immdt.

Fax Msg. No.883

Date:

From: Cremo Nagpur (SO/A&E)



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To: Cremo Gadchiroli (ACIO)

File No.18/DE(Nag)/2011(3)-
29.7.2011

Date:

Please refer to your letter dated 28.06.2011 regarding medical examination of Shri Lalit Kumar by Medical Board at Govt. Medical College and Hospital, Nagpur.

2. Medical College, Nagpur has given the date of September 08, 2011 (0900 Hrs) for the Medical Examination of Shri Lalit Kumar. He is required to bring one passport size photograph, office identity card and one envelop affixed Rs.25 Postal Stamp.
3. Shri Lalit Kumar may please be informed about the same.

Sd/-
Section Officer/A&E”

Consequent to the medical examination, the Medical Board Nagpur had, vide their opinion dated 3 October 2011 opined that he was fit for duty and that “leave taken can be given”.

(ii) Re: Article II

- (a) This Article of Charge alleged the petitioner to have remained absent from duty without authorization for the periods 4 May 2010 to 27 May 2010, 21 June 2010 to 25 July 2010 and 29 July 2010 to 13 August 2010.



(b) By Office Order No 514/2010 dated 29 December 2010, extracted earlier, the petitioner was sanctioned EOL for this entire period. This document was also filed with the IO, as was recorded in the Daily Order Sheet dated 12 February 2011. As held by the Supreme Court in *State of Punjab v Bakshish Singh*⁹, once leave of any kind was granted for the purpose for which the employee had remained absent from duty, the absence could no longer be recorded as unauthorised.

(c) The petitioner, in his explanation to the DA, had specifically pointed this out. However, the DA did not condescend to apply its mind thereto.

(iii) Re: Article III

(a) This Article of Charge alleged unauthorised absence by the petitioner for the period 27 October 2010 to 11 November 2010.

(b) Leave for this entire period was sanctioned and granted by Office Order No. 514/2010 dated 29 December 2010, which also directed the release of the pay of the petitioner, withheld for the said period.

(iv) Re: Article IV

⁹ (1998) 8 SCC 222



(a) This Article of Charge alleged unauthorised absence, by the petitioner, for the period 28 July 2010 to 13 August 2010 and thereafter from 16 August 2010 to 26 October 2010.

(b) The absence of the period for the period 28 July 2010 to 13 August 2010 stood regularized as EOL *vide* Office Order No. 514/2010 dated 29 December 2010 (*supra*) with a direction to release the withheld pay.

(iv) Re: Article V

(a) In view of the submissions made in respect of Articles I to IV, Ms. Bagai submits that the allegation of having disappeared from duty, after joining at Gadchiroli on 1 April 2010, does not survive against the petitioner.

8. Mr. Pandey, learned SPC, has drawn attention to a noting dated 10 June 2011 by DCIO, Roorkee, following a field enquiry, in which it has been noted that the field enquiry did not confirm the veracity of the ill health of the petitioner and that he was hale and hearty on 8 June 2011. To this, Ms. Bagai replies that the IO as well as the DA erred in placing reliance on the Field Inquiry Report. She submits that this document did not figure in the list of documents relied upon in the chargesheet issued to the petitioner. Moreover, she submits that the basis of the opinion that the petitioner was “hale and hearty” on 8 June



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2011 was not forthcoming, and no prior medical examination of the petitioner had taken place before such an observation was returned.

9. For all these reasons, Ms. Bagai submits that the impugned judgment of the Tribunal cannot sustain.

Analysis

10. Apart from the above, Ms. Bagai also sought to contend that no preliminary enquiry had been conducted before issuing the chargesheet dated 10 June 2011 to the petitioner. This contention cannot merit acceptance as Rule 14 of the CCS (CCA) Rules does not require holding of a preliminary enquiry prior to issuance of a chargesheet. It is open to a Disciplinary Authority to issue a chargesheet without any prior enquiry, or on the basis of an internal enquiry held by it. There is no mandate requiring the Charged Officer to be co-opted in the preliminary or internal inquiry, for the simple reason that no action, to the prejudice of the officer, is taken on the basis of such preliminary or internal inquiry. If any material, worth looking into, emerges from the preliminary inquiry, a formal charge-sheet is issued. Disciplinary proceedings commence with the issuance of the charge-sheet. it is only thereafter that a charged officer acquires a right to representation and audience.

11. Adverting now to the individual Articles of Charge against the petitioner, Article I alleged that the petitioner had extended his leave beyond 28 February 2011, without any intimation to the respondent,



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whereas, in fact the petitioner had written to the respondent on 26 February 2011. This fact has not been noticed by the Tribunal in the impugned judgment.

12. Apropos Articles II to IV, there is obvious substance in Ms Bagai's contention that the alleged unauthorised absence of the petitioner from 4 May 2010 to 26 May 2010; 14 June 2010 to 23 July 2010; 29 July 2010 to 12 August 2010 and 27 October 2010 to 17 November 2010, covered by Article II to IV of the Article of Charge against the petitioner, stood regularized by Office Order dated 514/2010 dated 29 December 2010. In fact, in *Bakshish Singh*, on which Ms Bagai placed reliance, the Supreme Court disapproved the decision of the High Court to remand the disciplinary proceedings for consideration afresh, after having noticed that the alleged period of unauthorized absence stood regularized as EOL. The relevant passage, from the decision, reads thus:

“4. It will thus be seen that the trial court as also the lower appellate court had both recorded the findings that the period of absence from duty having been regularised and converted into leave without pay, the charge of absence from duty did not survive. Once it was found as a fact that the charge of unauthorised absence from duty did not survive, we fail to understand how the lower appellate court could remand the matter back to the punishing authority for passing a fresh order of punishment. In the fact of these findings, specially the finding of the trial court that proper opportunity of hearing was not given and the signatures of the respondent were obtained under duress during departmental proceedings which have not been set aside by the lower appellate court, we are of the view that there was no occasion to remand the case to the punishing authority merely for passing a fresh order of punishment.”



13. The Tribunal notes, in para 13 of the impugned judgment, that the petitioner did not place the Office Order dated 514/2010 dated 29 December 2010 before the IO. This is an obviously erroneous finding. Ms Bagai has, in this context, referred us to the reply dated 13 July 2011 submitted by the petitioner in response to the chargesheet issued to him, in which it is specifically stated thus :

“Applicant wants to bring this real facts in your cognizance that applicant (charges mentioned in this charge sheet (No.18/DE (Nag)/2011 (3)-3537 dated 10.06.2011) (except charges mentioned in article 1 of schedule 1 and II (both) after submitting his pointwise explanation to you on 29.11.2010 regarding above charges, respected sir by his mercy considering circumstances of that time in regard to above mentioned charges/articles by order No.510/2010 dated 24.12.2010 and order No.514/2010 dated 29.11.2010 (by regularizing above all leave period of applicant) had granted:

- 23 days EOL (from dated 04.05.2010 to 26.05.2010)
- 40 days EOL (from 14.06.2010 to 23.07.2010)
- 15 days EOL (from dated 29.07.2010 to 12.08.2010)
- 22 days EOL (from dated 27.10.2010 to 17.11.2010)

(enclosure 60 order No.510 and 514 are enclosed total 2 pages) for which applicant is grateful to you for whole life.

It is also pertinent to mention here that in regard to above days after sanctioning EOL as above by you (by your mercy), there was no need to include these charges in charge sheet therefore all these charges are again denied to applicant.”

14. When one compares the periods of alleged unauthorised absence mentioned in Articles of Charge II to IV with the periods of leave which stood regularized as EOL by Office Order No. 514/2010, it is seen that the periods from 4 May 2010 to 27 May 2010, 21 June 2010 to 25 July 2010, 29 July 2010 to 13 August 2010, 27 October 2010 to 11 November 2010 and 28 July 2010 to 12 August 2010 have all been regularized as EOL.



15. Quite obviously, therefore, the charge of having remained absent from duty without authorization for these periods, as levelled against the petitioner, cannot survive. Applying *Bakshish Singh*, the Court has necessarily to set aside the charge-sheet itself, to the extent of these allegations. Allegations II and III would, therefore, stand entirely set aside.

16. Article IV, however, further alleges that, after having applied for 90 days EOL with effect from 17 August 2010 to 12 November 2010, and the petitioner proceeded on leave on 16 August 2010 without leave, as sought, having been sanctioned. The Article is silent, however, as to the period for which the petitioner remained on leave after 16 August 2010. Daily Order Sheet No. 15 dated 10 February 2012, however, indicates that the petitioner remained AWOL¹⁰ till 18 November 2010.

17. The petitioner has not provided any explanation for this period of absence except to state that he was unwell.

18. We do not find that the Tribunal has, in the impugned judgment, adverted to these facts in sufficient detail. Though there is a perfunctory finding that the “so called ground of illness is a lame excuse”, there is no specific allusion by the Tribunal to the medical certificates which have been placed on record, and which were on record before the Tribunal as well. This may be because the Tribunal failed to take any stock of Office Order No. 514/2010 dated 29

¹⁰ A common acronym for “Absent Without Official Leave”



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December 2010, on the clearly erroneous assumption that the Office Order had not been cited by the petitioner before the IO. As we have already noted, the petitioner, in his reply dated 13 July 2011, submitted by way of response to the charge-sheet issued to him, not only referred to the said Office Order, but also appended, with the reply, a copy thereof.

19. The punishment of removal from service was awarded to the petitioner on the premise that all Articles of Charge against the petitioner stood proved. In view of our finding in the present judgment, it is clear that Articles I to IV of the Articles of Charge, in fact, are unsustainable. Article I alleges that the petitioner had proceeded on leave beyond 28 February 2011 without informing the respondent whereas, in fact, the petitioner had informed the respondent, in writing, on 27 February 2011 itself. In so far as the allegation of unauthorized absence from service is concerned, all periods of unauthorised absence included in the Articles II to IV, except the absence from 16 August 2010 to 26 October 2010, stood regularized as EOL by Office Order No. 514/2010 dated 29 December 2010. Applying *Bakshish Singh*, a quietus has to be lent to the allegation of unauthorized absence from duty, insofar as the periods covered by the said Office Order is concerned.

20. The only allegation that remains against the petitioner, therefore, is of unauthorised absence for the period 16 August 2010 till 26 October 2010.



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21. Unauthorized absence, in every case, would not justify removal from service. In a case of habitual, or wilful, unauthorized absence without leave being sanctioned, severance of the employer-employee relationship may well be justified. In other cases, however, the employer would have to examine whether there was justification for the employee remaining absent and, if so, the period for which such justification was available, and modify its decision accordingly.

22. In the ultimate eventuate, in our considered opinion, this matter would require to be remanded for a fresh consideration.

23. We, accordingly, remand the matter to the Disciplinary Authority to reconsider the aspect of the punishment to be awarded to the petitioner, if any. In taking the said decision, the Disciplinary Authority shall bear the observations contained in this judgment in mind.

24. In other words, the remit of the Disciplinary Authority shall be limited to considering Article IV of the Articles of Charge, specifically with respect to the allegation of unauthorised absence for the period from 16 August 2010 to 26 October 2010. It shall be open to the petitioner to advance any contention that he deems fit, to contest the charge of unauthorised absence for the said period as contained in Article IV of the Articles of Charge. The Disciplinary Authority would be required to consider the explanation advanced by the petitioner with the attention it deserves. In case the petitioner relies on any medical certificate with respect to his absence for the aforesaid



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period, those documents would also be considered by the Disciplinary Authority.

25. As we have found that the entire period of alleged unauthorised absence held against the petitioner stands regularized except for the aforesaid period from 16 August 2010 to 26 October 2010, we expect that the Disciplinary Authority would keep this factor in mind while deciding the appeal. The Disciplinary Authority would, in other words, also have to consider whether, for unauthorised absence from duty for the aforesaid period, the petitioner deserves to be awarded a punishment as extreme as removal from service. We, however, clarify that we are not, in any way, intending to influence the decision of the Disciplinary Authority which, we are sanguine, would be judicious.

26. In the event that the Disciplinary Authority decides to reduce the punishment awarded to the petitioner, reinstatement would naturally follow. In that event, the petitioner would be reinstated in service with effect from the date of his removal and would suffer the reduced penalty. This shall, however, needless to say, be subject to the rights available with the petitioner to challenge the decision of the Disciplinary Authority in accordance with law. In the event of such reinstatement, and subject to the order that the Disciplinary, or Appellate Authority (in case the matter is carried further in appeal), may pass, the petitioner would be entitled to consequential benefits from the date of his removal by way of seniority and notional fixation of pay, if they apply, but would not be entitled to any back wages.



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27. Given the time that has elapsed since the passing of the removal of service, we direct the Disciplinary Authority to afford an opportunity of hearing to the petitioner, for which purpose, the petitioner would appear before the Disciplinary Authority on 14 March 2025. We direct the Disciplinary Authority to pass a final order in the disciplinary proceedings within 2 weeks thereof, under intimation to the petitioner.

28. Needless to say, the rights of the petitioner to challenge such order, should he be aggrieved thereby, would stand reserved.

Conclusion

29. Accordingly, the impugned judgment of the Tribunal stands quashed and set aside and the writ petition stands disposed of in the aforesaid terms, albeit with no orders as to costs.

C. HARI SHANKAR, J.

ANOOP KUMAR MENDIRATTA, J.

FEBRUARY 28, 2025

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Click here to check corrigendum, if any