

GAHC010203902016



THE GAUhati HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/2790/2016

JIBON JYOTI BORAH
S/O- DURGESWAR BORAH, R/O- PUB SURUJ NAGAR PATH, H/NO. 64,
ODALBAKRA, P.O.- KAHILIPARA, GHY- 19, DIST.- KAMRUP M, ASSAM.

VERSUS

THE PRESIDING OFFICER and 4 ORS
CGIT -CUM- LABOUR COURT, KENDRIYA SHRAM SADAN, 2ND FLOOR,
R.K. MISSION ROAD, BIRUBARI, GHY- 16.

2:VIVEKANANDA KENDRA NRL HOSPITAL
REP. BY ITS SECY.
NRL TOWNSHIP
P.O.- NRL
NUMALIGARH
DIST.- GOLAGHAT
ASSAM- 785699.

3:THE SECRETARY
VIVEKANANDA KENDRA NRL HOSPITAL
NRL TOWNSHIP
P.O.- NRP
NUMALIGARH
DIST.- GOLAGHAT
ASSAM- 785699.

4:BHARAT BARUA
IAS RETD.
ENQUIRY OFFICER
VIVEKANANDA KENDRA NRL HOSPITAL
R/O- "BARUA'S INN"
A.T. ROAD

TARAJAN
DIST.- JORHAT
ASSAM- 785001.

5:THE MEDICAL SUPERINTENDENT
VIVEKANANDA KENDRA NRL HOSPITAL
NRL TOWNSHIP
P.O.- NRP
NUMALIGARH
DIST.- GOLAGHAT
ASSAM- 785699

Advocate for the Petitioner : MR.D SARMAH

Advocate for the Respondent : C.G.C.

BEFORE

HON'BLE MR JUSTICE ARUN DEV CHOUDHURY

For the Petitioner	: Mr. S Chamaria, Advocate
For the Respondents	: Mr. S C Keyal, Standing Counsel
Date of Hearing	: 25.06.2024
Date of Judgment	: 25.07.2024

JUDGMENT AND ORDER(CAV)

Heard Mr. S Chamaria, learned counsel for the petitioner. Also heard Mr. SC Keyal, learned standing counsel for the respondents.

2. By way of the present petition, the petitioner employee had challenged the award dated 14.11.2014 passed in Reference Case No. 07/2012 by the Central Government Industrial Tribunal cum Labour Court, Guwahati, Assam (hereinafter referred to as the Tribunal), whereby the learned Tribunal declined to interfere with the punishment of discharge from service dated 11.08.2009 imposed upon the petitioner pursuant by the respondent management pursuant to a departmental proceeding.
3. The background facts leading to filing of the present petition can be summarised as follows:
 - I. The petitioner was appointed as a Laboratory Technician at Vivekananda Kendra NRL Hospital, Numaligarh (hereafter referred to as the Hospital). The service of the petitioner

was confirmed/ regularised on 22.08.2000.

- II. On 16.05.2009, a memorandum of charge was served upon the petitioner, whereby it was informed that the management had proposed to hold an enquiry against the petitioner. A substance of imputation of misconduct, in respect of which the enquiry was proposed, was also annexed as annexure 1.
- III. Three charges were framed in the article of charges, which are quoted hereinbelow:
 - (i) That on 28.03.2009 when Ambulance Driver Sri Pramod Dutta went to your residence at 11 p.m. with Call Book sent to you by GDMO on duty for some urgent investigations of a patient admitted in causality, you refused to attend the call despite being on “call duty on 28.03.2009”, which speaks of your negligence to your work and duty.
 - (ii) Not only did you decline to attend the duty, you also failed to give any intimation to the Doctor on duty, or your Head of the Department and Hospital Administrative Officer which clearly reflects your utter lack of responsibility and negligence and your disrespect to a noble profession that too in a Hospital founded on the philosophy of Swami Vivekananda based on noble moto to serve afflicted patient coming to the Hospital for treatment under emergent physical condition.
 - (iii) It is also brought to your notice that you have been warned previously for similar lapses and derelictions, copies of which are enclosed at exhibits H, I, J, K, L, M, N, which will be taken into consideration when deciding your case.
- IV. Thereafter, the petitioner submitted his reply on 25.05.2009. The stand taken by the petitioner in his reply can be summarised as follows:
 - (i) The petitioner was physically not well on that day and was suffering from acute headache. Understanding the severity of call, he had apprised the facts to the driver with a request to intimate the same to the GDMO, NRL hospital to call alternative. He denied that he was negligent, rather he took a stand that he could not attend the duty for the reason of his illness.
 - (ii) He also contended that on earlier consecutive dates with effect from 23rd

March, 2009 to 29th March, 2009 he was entrusted 'on call' duty and there are no failure or lapses on his part on those dates.

(iii) He also took a stand that the situation was well managed, which he subsequently confirmed and therefore he did not feel it necessary to contact the higher authority for the same.

- V. Thereafter, on 28.05.2009, the Enquiry Officer started the enquiry proceeding and asked the delinquent to appear before the Enquiry Officer as per scheduled date and time.
- VI. The petitioner participated in the enquiry, filed written statement, cross-examined the management witness and also lead his own evidence.
- VII. After completion of the enquiry, the Enquiry Officer submitted his report on 17.06.2009, wherein the petitioner was found guilty of all the charges.
- VIII. Subsequently, on 11.08.2009, punishment of discharge from service was inflicted upon the petitioner.
- IX. Thereafter, on being approached by the petitioner for reconsideration of the punishment, the matter was referred to the Tribunal.
- X. The reference was registered as Ref. Case No. 07/2012 and the reference is quoted hereinbelow:

“Whether the NRL, VKNRL authority have adopted right step in dismissal Shri Jibon Jyoti Borah, from this services of 11 years standing. If not whether the management could be directed to reinstate Shri Borah with all back wages or from the date of such orders as may be issued by the appropriate authority.”

- XI. The petitioner as well as the management contested the aforesaid reference by filing their written statements. Both sides adduced evidences.
- XII. After completion of the proceeding, the learned Tribunal by award dated 14.11.2014 passed in the Ref. Case No. 07/2012, had declined to interfere with the punishment imposed by the Management and thereby affirmed the punishment.
- XIII. The learned Tribunal concluded that the charges framed against the workman were established and the domestic enquiry held against the workman is neither perverse nor vitiated by any procedural illegality. It was further concluded that the Management had

taken right step imposing proportionate punishment by discharging the workman from his service taking into consideration, previous misconduct of the workman along with the gross-misconduct committed by the workman on 28.03.2009.

4. Assailing the enquiry report, the resultant punishment and the conclusion of the learned Tribunal, Mr. Chamaria, learned counsel for the petitioner argues the followings:
 - I. None of the charges were proved during the enquiry inasmuch as the Enquiry Officer on the basis of personal presumptions and assumptions supported the case of the Management.
 - II. Referring to the article of charges and Rule 14(3)(a), 3(i) and Rule 3(j) of the Industrial Employment (Standing) Orders Central Rules, 1946 (hereafter referred to as standing order, 1946), Mr. Chamaria argues that none of ingredient to constitute a misconduct are proved in the present case.
 - III. Nothing is discernible in the enquiry report as regards ingredients of frequent repetition of any act in term of Rule 14(3) (j) inasmuch as such finding is perverse.
 - IV. As none of the management witnesses had deposed that the delinquent officer committed similar kind of negligence in earlier occasion, the “habitual negligence” as laid down in Rule 14(3)(i) was also not established during the enquiry and therefore such charge was erroneously held to be proved by the enquiry officer.
 - V. It was also not established that there is any wilful subordination committed by the petitioner inasmuch as in term of Rule 14(3)(a), to constitute a misconduct, the insubordination and disobedient must be wilful. In the case in hand, the petitioner had duly explained that his non-attendance to duty was due to his headache and therefore was not wilful.
 - VI. The conclusion of the enquiry officer is also perverse for the reason that the contention raised in the written objection as well as deposition of the two witnesses produced by the petitioner were altogether ignored. The enquiry officer failed to take note the statements of the driver, namely, Sri Pramod Dutta and the statements of Doctors, namely, Dr. Barnali Deori and Dr. Sandipa Chakraborty, who supported the stand of the petitioner that due to physical inability, he could not attend the duty on the particular date.

- VII. It is also contended by Mr. Chamaria that the punishment is disproportionate in nature inasmuch as if the alleged charges are treated to be proved, then also it invites minor punishment and not a major punishment like discharge from service.
- VIII. In support of the aforesaid contention, Mr. Chamaria relies on the decisions of Hon'ble Apex Court in ***Kruhnakant B Parmer vs Union of India*** reported in **2012 (3) SCC 178**, ***Chennai Metropolitan Water Supply and Sewerage Board vs T.T. Murali Babu*** reported in **2014 (2) SCC 574**, ***Bhagawan Lal Arya vs Commissioner of Police*** reported in **2004 (4) SCC 560**, ***Chairman cum Managing Director, Coal India Ltd vs Mukul Kr. Choudhari and Ors.*** reported in **2009 (15) SCC 620** and ***Sharada Omkar Prasad Tiwari and Ors. vs Divisional SUPDT, Central Railways, Nagpur Div.*** reported in **AIR 1960 BOM. 150**.

5. Per contra Mr. SC Keyal, learned counsel for the respondent argues the followings:

- I. The petitioner has no grounds to challenge the award dated 14.11.2014 passed in Ref. Case No. 07/2012 and as such the writ petition is liable to be dismissed.
- II. Mr. Keyal submits that a free and fair domestic enquiry was held, wherein the petitioner was given ample opportunities to defend himself in compliance with the principles of natural justice. The Enquiry Officer conducted the enquiry in a very fair manner and all the three charges were established beyond doubt and as such, the writ petition is liable to be dismissed.
- III. The delinquent admitted that he had verbally informed the Driver about his inability in attending the duty. Although, there are no guidelines framed by the authorities as to the manner of intimation, the petitioner himself has admitted that he had access to a personal phone and intercom service which was provided by the hospital. However, the petitioner did not bother to intimate and respond the emergency situation.
- IV. The petitioner's claim of being unable to fulfil call duty due to illness, specifically citing long term migraine, lacks substance and evidence. The petitioner had failed to provide any medical documentation.
- V. The charges against the petitioner were substantiated and sustained. The punishment cannot be said to be "disproportionate" inasmuch as it was not only proved but also admitted by the petitioner that he had committed such type of negligence and was also

imposed with punishment earlier. Such a person cannot be retained in a service like hospital.

VI. In support, he relies on the decision of Hon'ble Apex Court in *Bharat Forge Company Limited V Uttam Manohar Nakate* reported in (2005) 2 SLR 43 and *Kannam Nageshwara Rao V Rashtriya Ispat Nigam Limited, Visakhapatnam* reported in (2009) LLR 491.

VII. Mr. Keyal further submits that the case of the petitioner was not a case of "no notice", "no hearing" and "no opportunity" nor there is any illegality or irregularity in holding the departmental enquiry. Therefore, such determination made may not be interfered with in exercise of power of judicial review. In support, he relies on the decision of Hon'ble Apex Court in *State Bank of Patiala vs S.K. Sharma* reported in 1996(3) SCC 364.

VIII. There were no averments or objection claiming any prejudice due to the non-appointment of Presiding Officer in course of the enquiry proceedings. That being the position, the petitioner cannot raise such a point at this stage. In support of his argument, he relies on the decision of this Court in *Ajay Kumar Paswan v. Union of India & Ors* reported in 2013 (4) GLT 802.

6. This court has given anxious consideration to the arguments advanced by the learned counsel for the parties, perused the records including the records of the Ref. Case No. 07/2012.

7. From the arguments advanced by the learned counsel for the petitioner, it is clear that the writ petitioner has contended that the findings of facts arrived at by the enquiry officer as well as the learned Tribunal are erroneous, there were no evidence to arrive at such a conclusion inasmuch as the settled principle of law as regards unauthorised absence is that such absence must be wilful, which is not in a case in the present litigation. On the other hand, it is the case of the respondents that the conclusions arrived at by the Tribunal and by the enquiry officer is based on evidence and such concurrent finding of fact cannot be interfered in exercise of the certiorari jurisdiction.

8. In the aforesaid backdrop of argument, let this court first record the settled proposition of law in this regards as laid down by the Hon'ble Apex Court in different decisions:

I. In granting a writ of certiorari, the High Court does not exercise the power of an

appellate tribunal and it does not review and reweight the evidence and should exercise its power when the order assailed is without jurisdiction. It can also interfere with such an order in exercise of certiorari jurisdiction, when it is palpably erroneous.

- II. A writ of certiorari is issued against an order of tribunal, when it has acted without or in excess of jurisdiction.
- III. A tribunal though may be competent to enter upon an enquiry, however, while making such an enquiry, if it acts in flagrant disregard of the rules of procedure or where no procedure is prescribed and it violates the principles of natural justice, a writ of certiorari may be available.
- IV. An error in decision is also amenable to a writ of certiorari, when it is manifestly erroneous apparent on the face of the proceeding, passed in clear ignorance or disregard of provision of law.
- V. Generally, findings of facts reached by inferior court of tribunal even if they are erroneous should not be interfered in exercise of writ of certiorari, subject to the condition that such decision is perverse.
- VI. A perverse decision is a decision i.e. entirely against the weight of evidence or contrary to a settled proposition of law. A decision shall also be perverse which has been passed in derogation of established rules of procedure. Thus a decision would be perverse if it is based on no evidence or on evidence which was unreliable and no reasonable person would depend on it. 'No evidence' does not mean only a total dearth of evidence, it extends to any case where the evidence taken as a whole is not reasonably capable of supporting the findings or in other words no tribunal could reasonably reach that conclusion on that evidence.
- VII. When finding of fact is perverse and when the same is not based on legal evidence, the High court exercising of power under Article 226 of the Constitution of India can enter into the question of fact decided by the labour court or Tribunal. (**References: *TC Basappa Vs. T Nagappa and Another* reported in *AIR 1954 SC 440*, *Dharangadhara Chemical Works Ltd. v State of Saurashtra* reported in *AIR 1957 SC 264*, *Syed Yakoob vs K.S. Radhakrishnan & Ors* reported in *AIR 1964 SC 477*, *Indian Overseas Bank v. I.O.B. Staff Canteen Workers' Union and Another* reported in *AIR 2000 SC 1508*,**

Associate Builders Vs. Delhi Development Authority reported in (2015) 3 SCC 49)

9. The enquiry officer made the following conclusions:
 - I. In the cross-examination, the petitioner admitted that a call duty register is sent to a doctor, nurse and other hospital staffs as and when an emergency patient is brought to the hospital for treatment. It is established from the evidence that despite being informed to attend the emergency duty on 28.03.2009, that too when ambulance was sent with driver to pick him up from his residence with the call duty register, the petitioner did not come to hospital on the plea of having suffered from headache, veracity of which could not be established due to absence any tangible evidence. The Ext. 6 and Ext. 7 (A)(B)(C) (D) (E) & (F) clearly establishes that the delinquent over stayed his leave for three days on earlier occasion without intimating to the hospital and he not only admitted but also by Ext. 7 (D) assured the management that such incident will not happen in future and accordingly, by Ext. 7(C) said three days of absence of duty was treated from absence of duty and as break of service with loss of pay and allowance.
 - II. It is also established that he was found involved in a case of unruly behaviour towards the Secretary of the hospital, however, on the written undertaking (Ext. 8) submitted by the delinquent official not to repeat similar mistake and on assurance of good conduct, no action was taken against him.
10. The learned Tribunal while deciding the matter relied upon the evidences led by both the parties and their written statements. After thoroughly discussing the material available on record and the document exhibited by the parties, the learned Tribunal made the following conclusions:
 - I. It is established that the employee admitted the factum of his suspension on 22.12.2003 for his earlier misconduct and he admitted such order (Ext. A).
 - II. He also admitted Ext. B, the show cause reply filed by him and Ext. C by which management took a lenient view and reinstated him in service.
 - III. Again similar situation arose in terms of Ext. E whereby a show cause notice was issued and reply was filed by Ext. F.
 - IV. And accordingly, by Ext. H, management imposed punishment of break of service of loss of pay and allowance for his absence by their Ext. J.

- V. The learned Tribunal after taking due note of the evidence and the cross-examination of the workman, concluded that the workman admitted that there is a rule in the hospital that all medical staffs are allowed one week call duty when they can stay at their own quarter/ residence but they are to attend the hospital on call in case of emergency.
- VI. The learned Tribunal after considering the evidence and material more particularly the reply of the petitioner and his oral evidence concluded that it is an admitted position that on 28.03.2009, the petitioner was on call duty, an ambulance was sent along with a driver for attending an emergency call. However, the petitioner refused to attend the duty and informed the driver to inform the Doctor that he is not feeling well.
- VII. It is also concluded that though he made an explanation that he was having migraine and was treated in International Hospital, Guwahati in the month of March, 2009 but he did not take any leave during that period. Relying on the evidence of the medical superintendent of the hospital, the learned Tribunal concluded that on 28.03.2009, a serious patient was admitted in the hospital, when the petitioner was on 'call duty' and was asked to attend the hospital, however the workman refused to come to the hospital to attend the emergency call and sent back the ambulance.
- VIII. The learned Tribunal further concluded that it is not a case of no notice, no hearing or no opportunity, nor there was any apparent illegality or irregularity in holding the departmental enquiry. The workman himself made his statement in chief without being suggested any question by the enquiry officer. However, the enquiry officer cross-examined the workman on the basis of the charge-sheet as well as the documents produced by the management. Further, there is no whisper as to the allegation of prejudice due to non-appointment of presiding officer in course of enquiry proceeding. The workman also was given sufficient opportunity to adduce his evidence. He was also given sufficient scope to cross-examine the management witness. The workman participated in the enquiry proceeding without any complaint. The workman had put his signature on every page of the enquiry proceeding. The finding of the enquiry officer and the copies of the enquiry proceeding was duly furnished to the workman by disciplinary authority, after accepting finding of the enquiry officer and proposed to impose punishment against the workman. The workman was also permitted to submit representation for consideration before the disciplinary authority.

- IX. The learned Tribunal further concluded that the workman has failed to establish his plea that he could not attend the call duty on 28.03.2009 on medical ground.
- X. The workman also failed to explain cause of his inability to comply with the order of his superior on 28.03.2009 whereas in his evidence he categorically admitted that on the following date i.e. on 29.03.2009 he attended his duty.
- XI. It was also established that workman committed misconduct of similar lapse and dereliction of duty previously on different occasions, which was brought to the notice of the workman, in the memorandum of charges framed against the workman by the management.
- XII. The Ext. A, B, C, E, I, K & L proved the charge of misconduct against the petitioner. Thus the learned Tribunal has concluded that there is no sufficient ground for not attending the call duty.
11. In the aforesaid backdrop, material and evidence now this court is to consider the arguments of the learned counsel for the parties.
12. It is true that in the enquiry report there was no specific finding that the absence of the petitioner was wilful or that there is wilful subordination. However, the enquiry officer on the basis of material available on record including the evidence of the management witnesses and the document relied upon, held that the petitioner was on unauthorised leave and did not comply with the order of the superior authority. It was also recorded that the petitioner failed to substantiate the reason of non attendance. It is established from the evidence that despite being informed to attend the emergency duty on 28.03.2009 that too when ambulance was sent with driver with the call duty register, the petitioner did not come to hospital on the plea of having suffered from headache, veracity of which could not be established due to absence of any tangible evidence.
13. The learned Tribunal, as discussed hereinabove, on the basis of Ext. A,B,C,E,I,K and L as well as on the basis of the other evidence including the pleaded case of the petitioner concluded that the absence of the petitioner was wilful and he failed to substantiate his illness and he had committed misconduct inasmuch as it was also held that the petitioner committed similar lapse previously on different occasions which was also incorporated in the memorandum of charge.
14. In the given facts of the present case more particularly the availability of the evidence as

regards the failure on the part of the petitioner to satisfy that his absence and insubordination was not wilful, this court in exercise of its writ jurisdiction cannot held that decision taken by the authorities as well as Tribunal were in clear ignorance or disregard of settled propositions of the law enunciated by the Hon'ble Apex Court in ***Kruhnakant B Parmer (supra)***.

15. An wilful act is an act having or showing a stubborn and determined intention to do as once regardless of consequences. Both the enquiry officer and Tribunal, in the case in hand concluded that there is no reason for the petitioner not to attend his duty even after he being aware of the fact that he was called due to the emergency nature of the incident inasmuch as when a person is on call duty he is called only on emergency situation. The misconduct in terms of the Rule 14 (3) of the Rules, 1946 a wilful disobedience comes within the fold of misconduct including habitual negligence or neglect of work. In the case in hand, on the basis of material and as discussed hereinabove both the authorities i.e. the enquiry officer and the Tribunal had concluded that there was no reason for the petitioner to disobey the order of superior to attend the hospital for emergency duty and that from the exhibits it was established that the petitioner was also un-authorisely absent on earlier occasions for which he was also imposed certain punishment. That being the position, this court cannot also held the decision impugned are erroneous decisions or that it had been passed in ignorance of law.
16. This court, after perusal of the records and determination made by the Tribunal, which are recorded hereinabove, is of the unhesitant opinion that the determinations made by the Tribunal as well as by the enquiry officer are based on evidence on record and said evidence, taken as a whole is reasonably capable of supporting the findings.
17. This court is of further opinion that there are available evidences on the basis which the impugned conclusion has been made and there is no perversity in coming into such a conclusion. The evidence available on record cannot also be said to be "not legal evidence".
18. The petitioner was given due opportunity to cross-examine the witnesses, both in the enquiry proceeding and before the Tribunal, which the petitioner had availed. However, the learned counsel for the petitioner could not show any instance perversity except contending that the absence of the petitioner on the given date was not wilful rather he was compelled not to attend the call duty due to his illness. However, this court in exercise of its writ jurisdiction cannot dweal into correctness of such factual aspect, more particularly, when the enquiry officer as well as the learned Tribunal concurrently rejected such contention on the basis of evidence

available on record. Therefore, the contention raised by Mr. Chamaria in this regards stands rejected.

19. Similar is the situation so far relating to habitual negligence inasmuch as the Tribunal in its determination on the basis of Ext. A, Ext. B, Ext. C Ext. E, Ext. F, Ext. H and Ext. J concluded that the petitioner was earlier suspended, was issued show cause notices twice and was imposed punishment of break of service of loss of pay and allowance for such un-authorised absence. Therefore, it also cannot be said that the impugned decision was based on no evidence.
20. As regards the other contentions of Mr. Chamaria that there was no presenting officer and the enquiry officer himself had cross-examined the witnesses, was also dealt by the learned Tribunal. In this regard, the Tribunal concluded that there is no whisper as regards any prejudice that has been caused to the petitioner due to non-appointment of presenting officer in the course of enquiry proceeding. It was also concluded that the petitioner was given sufficient scope to cross-examine the management witnesses and the petitioner participated in the enquiry proceeding without any complaint. On the basis of the records, the learned Tribunal concluded that the workman had put his signature on every page of the enquiry proceeding and the copies of the enquiry proceeding were duly furnished to the workman. This court is also of the opinion that the petitioner has not raised any plea of prejudice during enquiry proceeding and during participation in the enquiry nor he has been able to show any prejudice that has been caused to him for non-appointment of presenting officer in the case and the records also reveals that during the course of enquiry, the petitioner has not raised such objection rather, he duly participated in the enquiry proceeding, cross-examined the witnesses. Therefore, the finding of the learned tribunal cannot be faulted with. Therefore, such contention of the learned counsel also stands rejected.
21. Thus, this court is of the view that the impugned determinations had been made and the factual findings had been recorded on considering relevant evidence and there are sufficient materials to arrive at such a conclusion.
22. Now coming to the point of disproportionality of the punishment, it is by now well settled that in exercise of power of judicial review interfering with the punishment of dismissal on the ground that it was disproportionate, the punishment should not be merely disproportionate but should be shockingly disproportionate (reference Union of India vs R.K. Sharma reported in 2001 9 SCC 592).

23. Law is equally well settled that the disciplinary authority and/ or the appellate authority, being fact findings authorities have exclusive power to consider the evidence with a view to maintain discipline. They are invested with the discretion to impose appropriate punishment keeping in view the magnitude or gravity of the misconduct. The High Court or Tribunal, as the case may be, while exercising the power of judicial review, cannot normally substitute its own conclusion on penalty and impose some other penalty. If punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of the High Court/ Tribunal, it can appropriately mould the relief, either directing the disciplinary / appellate authority to reconsider the penalty imposed, or to shorten the litigation, it may itself, in exceptional and rare cases, imposed appropriate punishment with cogent reason in support thereof (*reference BC Chaturvedi vs Union of India reported in AIR 1996 SC 484*). In the case of *Bhagatram vs State of Himachal Pradesh and Ors* reported in *AIR 1983 SC 454*, it has been held that if any penalty is imposed disproportionate to the gravity of the misconduct same would be violative of Article 14 of the Constitution of India.
24. Therefore, the fundamental determination that is required to be made in this regard is whether the penalty imposed is proportionate to the gravity of the misconduct and whether such penalty imposed shocks the consigs of the court. Though the petitioner has explained the circumstances in which he could not attend the on call duty in an emergency situation, however, he could not substantiate such explanation by any material particular inasmuch as he attended the duty on the next date and even did not bother to inform the doctor In-charge nor he intimated the doctor In-charge on the relevant day when he was called though there were telephones available in his house. The admitted fact also remains that the petitioner was earlier punished for similar kind of unauthorised absence once and in another situation the petitioner was not punished. Therefore, the incident on the basis of which the proceeding was initiated was the third occasion of absence from duty. This court cannot ignore the fact that the petitioner was a laboratory technician in a hospital and he was on emergency duty on call. On call duty employee is to attend the hospital only on emergency situation inasmuch as during such duty he was allowed to stay at his home. Therefore, the unauthorised absence coupled with the facts that the petitioner did not choose to inform his superior authorities regarding his illness in the considered opinion of this court the employer is within its jurisdiction to take a call to dismiss the petitioner from service in the given facts of the case and thus this court does not think that such punishment is a shockingly a disproportionate punishment. Accordingly, in view of the

aforesaid this court is not inclined to interfere with the punishment imposed on the ground of the same being shockingly disproportionate.

25. This court is also of the unhesitant view that the tribunal had acted within its jurisdiction. Neither there was any irregular exercise or non-exercise or illegal assumption of jurisdiction and the decision arrived at was based on legal evidence.
26. In the aforesaid backdrop, this court is of the view that no illegality has been committed and the petitioner has also failed to make out any case of manifest injustice, if the award is allowed to stand. In view of the reason and discussion made hereinabove, this court finds no merit in this case. Accordingly, same stands dismissed.
27. Registry to return back the case record of Ref Case No. 07/2012.

JUDGE

Comparing Assistant