

**IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH.**

CWP No.11417 of 2010

Date of decision: July 1 , 2015

Bal Krishan

...Petitioner

Versus

State of Punjab and others

...Respondents

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

Present: Mr. Ashosk Sharma Nabhewala, Advocate
for the petitioner.

Mr. Roopam Aggarwal, DAG, Punjab

Mr. Kapil Kakkar, Advocate
for respondents No.2 and 3.

None for respondents No.4 and 5.

AMOL RATTAN SINGH, J.

1. The petitioner, who retired as a Junior Engineer from the Punjab State Electricity Board (now known as Punjab State Power Corporation Limited)-respondent No.2 (hereinafter to be referred to as “the Board”), has challenged the order dated 15.09.2005 (Annexure P-32), issued by the Deputy Secretary, Establishment, in concurrence with the Engineer-in-Chief, Distribution (West) Bathinda, as also the order dated 16.11.2009 (Annexure P-35) again actually issued by the Deputy Secretary, Establishment-II, Punjab State Electricity Board but stated to be “with the concurrence of the competent authority”.

By the first order, the petitioner was held to be “at fault for the charges levelled against him” and thereafter his period of absence from duty, from 26.09.1987 till 16.04.2002, was sanctioned as leave of the kind due.

Thus, the period from 26.09.1987 to 30.05.1988 was treated as 248 days of earned leave with full salary, from 31.05.1988 to 13.08.1989, as 440 days of leave with half his pay and from 14.08.1989 to 16.04.2002, i.e. 4629 days as leave without pay. The order also states that other than the period of 4629 days that has been treated to be leave without pay, the other periods, i.e. the period of earned leave with full salary and leave with half pay, would be counted for grant of annual grade increments.

This order having been appealed against to the competent authority, the order of the Engineer-in-Chief was largely maintained but the period that was treated to be leave without pay by the Engineer-in-Chief, was reduced till 18.09.2000, i.e. the period for which the petitioner is to be treated to have been on leave without pay, was given by the appellate authority, in effect, to be from 14.08.1989 to 18.09.2000 and the period from 19.09.2000 to 16.04.2002 was ordered to be treated as “compulsory waiting period” by the appellate authority.

2. The background and the facts leading up to the passing of the order, as given in the petition, are that the petitioner, who had joined the respondent-Board as an Assistant Lineman at Chandigarh on 19.03.1965, was promoted to the post of Junior Engineer (Grade-2) w.e.f 21.09.1987. In the meanwhile, upon re-organization of the State of Punjab into the States of Punjab, Haryana, Himachal Pradesh and the Union Territory of

Chandigarh, on 01.11.1966, the erstwhile Punjab State Electricity Board is stated to have been dissolved on 02.05.1967, after which new Boards were constituted in the States of Punjab and Haryana, whereas in the Union Territory of Chandigarh and the then Union Territory of Himachal Pradesh, the functions of the erstwhile Board, came to be vested in the Electricity Departments of the Union Territories.

The petitioner continued working in Chandigarh with the Electricity Department and eventually, he along with a large number of employees of the Punjab State Electricity Board, working in the Union Territory, Chandigarh, sought to be absorbed in the Union Territory, Chandigarh itself. Since their demand was not acceded to, they eventually filed three Original Applications before the Central Administrative Tribunal, Chandigarh (hereinafter to be referred to as “the Tribunal”), bearing O.A. Nos.580-CH of 1986, 300-CH of 1988 and 471-CH of 1988. Of these, O.A. No.300-CH of 1988 was filed by the petitioner, O.A. No.580-CH of 1986 was filed by the Electricity Employees Union and the third by another employee.

In the present petition, the petitioner has stated that since he was an office bearer of the Union, he was “arbitrarily transferred” by the respondent-Board, on 25.09.1987, from Chandigarh to the Ferozepur Circle, where he was posted to the Abohar Division, vide order dated 20.11.1987. As stated in the petition, the petitioner submitted his joining report to the concerned authority on 01.10.1987 in the Ferozepur Circle and thereafter on 15.01.1988 at the Abohar Division. However, it is alleged that because of the fact that there was no post of Junior Engineer available at the Division level, the Executive Engineer, Abohar and the

Superintending Engineer, Ferozepur, deliberately did not give the posting orders to the petitioner in the Sub-Division, resulting in the petitioner actually being positioned nowhere. According to him, he also gave another joining report on 24.03.1988 at the Abhohar Division and yet again, at the same place, on 10.08.1988 and thereafter on 19.09.2000. Copies of all these joining reports have been annexed with the petition, to which the respondents, in their reply, have stated that none of these was accepted, as the petitioner had not furnished the “account rendering certificate” required from his last place of posting, showing his last pay drawn there and giving clearance that no recovery is to be effected from him. The petitioner, on the other hand, has annexed a copy of the last pay drawn certificate issued by the Executive Engineer, Electricity, OP-I, U.T., Chandigarh, dated 09.11.1987, showing that there was no recovery pending against the petitioner and also giving therein the break-up of pay drawn by him.

Factually, it is admitted on both sides, that effectively, the petitioner never worked either at the Headquarters of Ferozepur Circle, nor at the Division, or anywhere in the jurisdiction of the place of his posting, after he was relieved from duty from the Union Territory, on 25.09.1987.

3. On 16.05.1988, the learned Tribunal passed an order, rejecting the prayer made for interim relief, by the petitioner, in O.A. No.300-CH of 1988, seeking that he be continued to be posted at Chandigarh. The Tribunal found that since he had already been relieved on 25.09.1987, it would not be appropriate to grant him the interim relief prayed for. While rejecting the prayer for interim relief, the following

order was passed by the Tribunal:-

“...In the circumstances we think just and proper that the petitioner shall be allowed leave of the kind due and admissible to him for the period he has not actually worked and reported for duty to his parent department, i.e. Punjab State Electricity Board subject to the final decision of this case.

Therefore, we direct the respondents to grant leave to the petitioner of the kind due and admissible to him under the Rules till the case is finally disposed of or he reports on duty.”

Thus, by its order dated 16.05.1988, the Tribunal directed the respondents, i.e. the Electricity Board, to grant leave to the petitioner of the kind due and admissible to him till the final disposal of the main case, i.e. O.A. No.300-CH of 1988, or till he reports on duty.

Therefore, it is obvious that the Tribunal was seized of the fact that either the petitioner had not actually joined his new place of posting, or if a formal joining letter had been submitted by him, he was not actually working there. It is important to notice that this order has not been referred to or even mentioned anywhere in the petition, but has been specifically relied upon by the respondent-Board in its written statement to the petition and a copy of the said order has been annexed thereto.

It is also necessary to notice that the order of the Tribunal dated 16.05.1988, as regards rejection of the prayer for interim relief and as regards the directions issued therein, attained finality, either not having been challenged, or if any challenge was brought, the same has not been brought to the notice of this Court by either side, including in the replication filed by the petitioner and as such, obviously any such challenge, if brought, was without success.

Eventually, all three O.As. filed before the Tribunal were dismissed on 17.07.1999, by a detailed judgment annexed as Annexure

P-1 with the petition and thereafter the SLP/Civil Appeal filed by the petitioner before the hon'ble Supreme Court, was also dismissed by a detailed judgment on 29.08.2000 (Annexure P-2 with the petition).

4. After the petitioners' claim to be absorbed in the cadre of the Electricity Department of the Union Territory, Chandigarh, was dismissed, he eventually again sought to join duty at the Abohar Division on 19.09.2000, vide a joining report of the same date, a copy of which has been annexed as Annexure P-8 with the petition but has been specifically denied to have been received by the respondents, in their written statement. Thereafter, the petitioner is stated to have made various representations to the Director, Personnel (T) of the respondent-Board at Patiala, on 09.10.2000, 20.12.2000, 26.12.2000 and 23.04.2001, which are admitted by the respondents, though it is refuted that there was any dereliction by the Superintending Engineer concerned, in not allowing the petitioner to join duty, as that was because the petitioner had not submitted an account rendering certificate from the U.T., Chandigarh. Therefore, without the certificate, he could not have been allowed to join duty, as per the respondents. It has been further stated that the petitioner should actually have approached the Superintending Engineer himself, rather than the Director, Personnel, thus bypassing the proper channel.

5. On 04.05.2001, the petitioner submitted an "arrival report" to the Superintending Engineer, Muktsar Circle (D.S.), i.e. successor to the Ferozepur Circle, as regards Abhojar Division. But, allegedly, again he was not allowed to join duty, despite orders dated 31.01.2000, stated to have been passed by the competent authority in the Board, directing the Superintending Engineer that the petitioners' place of

posting was at the Abhohar Division. Though the order dated 31.01.2000 has not been annexed with the petition, the order itself has not been denied by the respondents; however, the same reason has been reiterated, that since the petitioner had not given his account rendering certificate, he could not have been allowed to join duty. The same story continued with representations being given to various authorities on 07.05.2001, 11.05.2001, 15.06.2001, 20.06.2001, 24.06.2001, 04.07.2001 and 06.07.2001.

These representations/joining reports/arrival reports have all been admitted by the respondents, with again the same reasoning given, for not allowing the petitioner to join his duty.

6. On 19.07.2001, the Senior Executive Engineer (Abohar Division), Muktsar, issued a letter to the petitioner giving therein the reasons as to why he was not allowed to join duty and requesting him to produce the “relieving chit/account rendering certificate from the previous circle” so that he may be allowed to join duty.

As per the petitioner, since there was no practice in Chandigarh to issue an account rendering certificate other than the last drawn pay certificate showing that there was no recovery due from him, he again simply went and requested that he may be allowed to join duty on 27.07.2001 and thereafter again represented on 07.08.2001, after which the Executive Engineer (Operation Division), Abohar, wrote to the Executive Engineer, Sector-17, U.T., Chandigarh, on 08.08.2001, asking for the account rendering certificate, to which the latter replied on 07.03.2002, giving the factual position and further stating that nothing was outstanding against the petitioner in the Union Territory, Chandigarh.

In the meanwhile, the petitioner thereafter again sent his representation on 25.12.2001, to the Senior Executive Engineer, Muktsar, stating that other than the no due certificate issued by the SDO concerned from Chandigarh, on 25.09.1987, no other certificate would be forthcoming from the U.T., Chandigarh. However, the petitioner is still stated to have been not allowed to join duty, leading to his filing a civil suit in Patiala, on 01/02.04.2002, for declaration and permanent injunction. Though, the details of what was originally prayed for in the civil suit have not been given, either in the petition or in the reply, the respondents have annexed a copy of the amended plaint filed by the petitioner in the year 2007, challenging the same orders as have been impugned in the present petition, since, by that time, the first of the orders impugned in the present petition, had been passed on 15.09.2005.

In the meanwhile, on 09.04.2002, the Executive Engineer (Operation Division), Muktsar, issued orders permitting the petitioner to join duty at Sub-Division Lakheywali, where he joined on 17.04.2002.

7. After he joined duty, eventually, the petitioner was issued a charge-sheet on 25.09.2002, by the Chief Engineer (West), Bathinda, making out the following charges against him:-

“He (Bal Krishan J.E.-II) when he was working in duty Admn. Chandigarh (Chief Engineer Duty Electricity Wing) his transferred order was issued by the Chief Engineer A&T, PSEB, Patiala vide office No.299 dated 15.09.1987 to Ferozepur Circle and SE Ferozepur Circle posted him to Abohar Division vide his office order No.279/87 dated 20.11.1987. And it was mentioned in the said posting order that employee should bring account rendering certificate from his previous station of posting.

He (Bal Krishan JE-II) in compliance of above posting order and was relieved on 25.09.1987 A.N. From Electricity Operation Division No.1, U.T., Chandigarh, but in compliance of order he did not bother of

these instructions/orders and remained absent from duty.

He (Bal Krishan JE-II) put an application OA No.300 CH/1988 in Central Admn Tribunal Chandigarh (CAT), the decision of CAT on dated 17.07.1995 was against him but he did not join his duty. He (Bal Krishan JE-II) filed a civil appeal No.10705 of 1995 in the Supreme Court of India and his appeal was dismissed on dated 29.08.2000 by the Supreme Court. He did not report for duty one pretext or the other. After that S.E. Operation Circle Muktsar issued a posting order vide his office order No.157 dated 25.05.2001. He (Bal Kisan JE-II) was posted at Muktsar Division by modified his office order from Abohar to Muktsar and conditions mentioned in the Ferozepur Circle office order No.279 dated 20.11.1987 as it is.

He (Bal Krishan JE-II) was asked to join his duty vide SE Muktsar vide Regd. Letter No.13867 dated 20.07.2001. The Senior Executive Engineer Operation Division Muktsar issued Regd. Letter No.13247 dated 20.07.2001. The Senior Executive Engineer Operation Muktsar issued a Regd. Letter No.9541 dated 19.07.2001 Endst. No.10417 dated 08.08.2001 report for duty after getting a rendering certificate from previous station of posting. He did not join his duty one pretext or the other. He (Sh. Bal Krishan JE-II) attended his duty on 17.04.2002. He, is, therefore, guilty for absence of duty from 26.09.1987 to 15.04.2002.

He (Bal Krishan JE-110 for above reasons/lapses/irregularities for disciplinary action as per PSEB employees punishment and appeal regulation 1971. You are liable for punishment.”

In a nutshell, the petitioner was charged with being absent from duty from 26.09.1987 to 15.04.2002.

8. As per the petitioner, no list of documents was ever supplied to him as were being relied upon by the respondents, nor was any list of witnesses provided to him, as laid down in Regulation 8(3)(i) of the Employees Punishment and Appeal Regulations, 1971 (in short “the Regulations”) issued by the respondent-Board. Therefore, he represented for the same on 17.10.2002 and then again on 22.04.2003, to enable him to “file a effective reply to the chargesheet”.

Allegedly, the said documents were never supplied to him and in the meanwhile, the petitioner retired from service on reaching the age of superannuation on 31.05.2003, after which, he is stated to have made yet another representation for the documents on 29.12.2003. Though these representations are admitted by the respondents, however, it is contended that, firstly, the documents asked for by the petitioner were already in his possession and, consequently, no statement of witnesses was required, for him to file a reply to the chargesheet.

Be that as it may, the impugned order dated 15.09.2005 came to be passed, without holding any enquiry against the petitioner.

9. The bone of contention, thus, is that whereas the petitioner considers it to be an order of punishment, the respondents have stated that since the period of absence of the petitioner has been treated to be leave of the kind due to him, no order of punishment, under the Regulations, has been imposed; and as such, no enquiry was needed, the matter having been actually treated sympathetically in favour of the petitioner.

As already noticed earlier, in appeal, while the substantive part of the order was upheld as regards most of the period of the leave of the kind due to the petitioner, however, the appellate authority decided to treat the period from 19.09.2000 to 16.04.2002 to be a “compulsory waiting period”, rather than a period of absence. The significance of these dates is that, the judgment of the Supreme Court, dismissing the appeal filed by the petitioner and his co-employees, seeking absorption in the U.T., Chandigarh, was stated to have been delivered on 19.09.2000 (as per the order of the appellate authority) and the petitioner actually joined duty on

17.04.2002.

Thus, this period of one year, 6 months and 28 days, is the period when the petitioner, according to the respondents, should have been allowed to immediately join, upon his first representation having been made for joining (Annexure P-8), after the Supreme Court judgment. (Factually, the order of the appellate authority, Annexure P-35, wrongly gives the date of the Supreme Court judgment as 19.09.2000, whereas that is actually the date that the joining report of the petitioner was submitted to the Abohar Division, after the judgement, which is dated 29.08.2000).

10. The Union Territory, Chandigarh (respondents No.4 and 5), have also filed a reply, giving the date of the petitioner being relieved from duty, as 25.09.1987 and clarifying the fact that no formal account rendering certificate is issued by the Department of Electricity.

It has also been stated that no stay order was ever passed by any Court against the petitioners' repatriation or his relieving order and as such, the petitioner actually remained absent from duty from 26.09.1987 to 16.04.2002. In other words, as regards the main charge against the petitioner, the Union Territory is in agreement with the respondent-Board.

11. In the replication filed by the petitioner, to the reply filed by the respondent-Board, other than reiterating what has been stated in the petition, it has been stated that the present writ petition was filed after an application was moved in the civil suit filed at Patiala, seeking to withdraw the said suit, though the order allowing such withdrawal was passed by the civil court on 10.02.2011, i.e. after the present petition had been filed.

12. Addressing arguments, Mr. Ashok Sharma Nabhewala, learned counsel appearing for the petitioner, first drew attention to the impugned order of the appellate authority, wherein the authority had noticed the contention of the petitioner in his appeal, that for the period that the petitioner allegedly remained absent from duty, he was neither directed to join duty at Abohar, nor were his services suspended, nor was any other administrative action taken against him, till the issuance of the chargesheet on 25.09.2002. The appellate Authority had specifically sought comments as to why no disciplinary action was initiated for a period of 16 years. Comments had also been sought by the appellate authority as to why the original applications filed before the Tribunal were not contested by the Board.

Learned counsel pointed out that despite asking for such comments, the decision in the impugned order is wholly lacking consideration on this issue and, in fact, even the comments received by the appellate authority, if any, have not been discussed at all in the impugned order.

Thus, Mr. Sharma submitted, that when, admittedly, the Board had neither contested the application before the Tribunal, nor had it ever initiated disciplinary proceedings against the petitioner in 16 years, it was obvious that the Board was, therefore, in agreement with the stand of the petitioner and his co-employees, that they deserve to be absorbed in the U.T., Chandigarh and, consequently, no disciplinary proceedings were initiated against them. Hence, the respondents were precluded from initiating such proceedings after 16 years, that too after the petitioner had joined duty in the year 2002.

13. Mr. Sharma, next pointed to the fact that the petitioner had actually joined duty on 01.10.1987, i.e. immediately upon being relieved from U.T., Chandigarh, which fact has not been specifically denied by the respondents. Thereafter, it was not the petitioners' fault that he was not actually assigned any duty, simply on the reasoning that he had not produced the account rendering certificate from the U.T., Chandigarh, which in any case he could not have done, the U.T. Chandigarh not having any such procedure.

He next reiterated that no enquiry having been held, the impugned order, though in the garb of a non-punishment order, is factually a punishment order, because the petitioner has been denied the benefits that would accrue to him, if he is considered to be on duty ever since his initial date of joining at Ferozepur/Muktsar, i.e. 01.10.1987.

14. He further submitted that, in fact, since the petitioner had joined on 01.10.1987 but was not assigned any duty, the entire period from 26.09.1987 till the date that he was allowed to join duty on 17.10.2002, would have to be treated as a "compulsory waiting period", in the same manner that the appellate authority had treated the period from 19.09.2000 to 16.04.2002 as a compulsory waiting period. As such, according to learned counsel, there could be no "splitting up" of the period from 26.09.1987 to 18.09.2000 and 19.09.2000 to 16.04.2002.

In this regard, learned counsel relied upon a judgment of a coordinate Bench, rendered in RSA No.2616 of 1988, decided on 16.05.2007, titled as Surinder Singh Vs. State of Punjab and others (2007) 3 SCT-288. It was observed in that case as follows:-

“...Meaning thereby that, his period of absence for two years is sanctioned as *leave* without pay at the time of passing of the impugned

order on 24.09.1984. I see no difference in granting *leave* without pay and treating the period of absence as *leave* without pay. The distinction, which is sought to be drawn by the learned Additional Advocate General, is not possible. Upon granting of leave without pay there can be no break in service, inasmuch as the period of absence is treated a period on leave. Therefore, the granting of leave, of whatever nature it may be, tantamounts to considering the absence as justified or at any rate to condonation and regularisation of the absence. I am of this opinion that after such regularisation and condonation, no disciplinary action lies.”

Learned counsel further reiterated that in the petitioners' case this would be especially so, in view of the fact that the respondent-Board, in its reply, has specifically admitted that the petitioner “occasionally had given the joining report without the account rendering certificate”.

Mr. Sharma next referred to a judgment of the Supreme Court in *State of Punjab Vs. Bakshish Singh* (1998) 8 SCC-222, to submit that once the period of absence has been regularized, the petitioner cannot be punished on a charge of misconduct as no such misconduct survived. In the said judgment, it was held as under:-

“11. Applying the above principles to the instant case, it will be noticed that the trial Court recorded a categorical finding of fact that a proper opportunity of hearing was not afforded to the respondent in the departmental proceedings and that his allegation that his signatures on certain papers during those proceedings were obtained under duress, was not controverted as the State of Punjab had lead no evidence in defence. The trial Court also recorded a finding that unauthorized absence from duty having been regularized by treating the period of absence as leave without pay, the charge of misconduct did not survive. It was with this finding that the suit was decreed. The lower appellate Court confirmed the finding that since the period of unauthorised absence from duty was regularised, the charge did not survive but it did not say a word about the finding relating to the opportunity of hearing in the departmental proceedings. Since those findings were not specifically set aside and the lower appellate Court was silent about them, the same shall be treated to have been affirmed. In the face of these findings, it was not open to the lower appellate Court to remand the case of the punishing authority for

passing a fresh order of punishment. The High Court, before which the second appeal was filed by the State of Punjab, did not advert itself to this inconsistency as it dismissed the appeal summarily, which indirectly reflects that it allowed an inconsistent judgment to pass through its scrutiny.”

15. Mr. Sharma then pointed to that part of the impugned order dated 15.09.2005, wherein it has been stated, before treating the period of absence as leave of the kind due, as follows:-

“Whereas in the above case keeping in view the comments of the Inch-in-Chief /Distribution (West) Bathinda by the field authorities, have been considered and the official is held at fault for the charges levelled against him.”

He next pointed to the penultimate paragraph of the impugned order, wherein it has been stated that had the petitioner not availed himself of the leave of the kind due, he would have continued on the post of J.E. and the entire period, except the 4629 days that are without pay, would be counted for the annual grade increment.

According to learned counsel, the authority itself having decided to treat the petitioner to be on duty as a Junior Engineer, cannot now decline granting him the benefit of that period for all purposes, including proficiency step-ups, promotion and pension etc.

16. Finally, Mr. Sharma submitted that, firstly, vide the interim order of the learned Tribunal, dated 16.05.1988, the petitioner had been permitted to join duty and he had actually joined it thereafter. Secondly, even while dismissing Original Application 300-CH of 1988, filed by the petitioner, on 17.07.1995, the Tribunal had stated as under:-

“This order, however, does not restrain the respondents, Chandigarh Administration, from exercising its discretion to retain the

applicants on deputation in consultation with the parent department.”

Hence, he submitted that since the petitioner and his co-employees were not precluded from being kept on deputation in the U.T., Chandigarh, the petitioner could also be treated to be on duty with respondents No.4 and 5 (U.T. Chandigarh), throughout the alleged period of absence, from 26.09.1987 till the time that he was actually allowed to join duty on 17.04.2002, and thereafter be granted all consequential benefits claimed, like promotion etc.

17. Per contra, Mr. Kapil Kakkar, learned counsel appearing for respondent No.2 and 3, i.e. the Board (now Corporation), submitted that it was very obvious that the petitioner never wanted to leave Chandigarh and consequently, other than submitting representations and signing joining reports, he never took any active step to ensure that he was actually allowed to join duty till such time that he filed the civil suit in the year 2002.

Thus, from 26.09.1987 till the year 2002, i.e. for about 15 years, including 2 years after the judgment of the Supreme Court dismissing his appeal, the petitioner deliberately avoided joining his place of posting, though he kept up pretences by sending reminders/joining reports every now and then. He further submitted, that in any case, between the period 10.08.1988 and 19.09.2000, i.e. for more than 12 years and one month, the petitioner, even as per his own pleadings in his petition, did not raise a little finger to even attempt to join duty. In this regard, he pointed to Annexures P-7 and P-8, i.e. the joining report dated 10.08.1988 and the one dated 19.09.2000, and pointed to the pleadings in the writ petition, showing the absence of any application/joining

report/representation made during this period of 12 years.

Mr. Kakkar, therefore, submitted that it should have actually been a case where the petitioner should have been dismissed from service after holding a regular enquiry against him. As a matter of fact, by dropping enquiry proceedings and passing an order treating the period of absence of almost 14 years (later reduced to about 12 years by the appellate authority), the Board had hugely favoured the petitioner, resulting in the petitioner drawing his pensionary benefits etc., simply by serving in the last few months before his retirement, after his absence since 1987.

18. As regards the contention of the learned counsel for the petitioner that the impugned orders are actually punishment orders, Mr. Kakkar submitted that treating the period of absence as period of leave of the kind due, cannot be, by any stretch of imagination, or by reference to any provision in the Regulations, seen to be an order of punishment. Hence, the question of continuing with departmental proceedings/enquiry/regular enquiry, once the authority had decided to treat the period as leave of the kind due, did not arise.

Keeping in view the entire circumstances, Mr. Kakkar submitted that the petitioner already having been treated with extreme leniency despite his absence for 15 long years, no further relief should be granted to him and, therefore, the writ petition be dismissed with costs.

19. Having heard counsel for the parties and having gone through the pleadings in detail, two facts are glaringly obvious.

The first, that the petitioner did not factually join duty at Abohar, despite having submitted his joining report initially on

01.10.1987. The second that the respondents made no efforts to even initiate disciplinary proceedings against him after he did not join duty, allegedly on the ground that he was not being allowed to so join, without production of an account rendering certificate from the Electricity Department of the Union Territory, Chandigarh. Whereas this could have been a valid excuse for not joining duty even for a few weeks, that excuse would run out its course after a short period of time, because in case such was the reason for the petitioner not being allowed to join duty, the easiest thing for him to do would have been to meet higher level officers in the respondent-Board, explaining the position to them that other than the last pay certificate containing a sentence that nothing was due from the petitioner, the U.T., Chandigarh was not issuing any other certificate. The petitioner, obviously deliberately, chose not to do so, harbouring the hope that he would succeed in the Original Application filed by him before the Tribunal and, therefore, remain posted in Chandigarh, where he admittedly had remained posted for 22 years, i.e. 1965 to 1987, prior to his being posted out w.e.f. 25.09.1987.

The contention that the petitioner kept giving representations to allow him to join even after 01.10.1987, is again without any substance because, though he did fulfill that formality in the form of such representations on 15.01.1988, 24.03.1988 and on 10.08.1988, he made no serious efforts in the form of trying to meet superior officials/officers or, in the alternative, even if that was failing, to approach a Court of law to ensure that he was allowed to join at the place of his posting. That course he adopted only in the year 2002, after having lost his case for absorption in the Union Territory, Chandigarh, up to the Supreme Court.

Further, as already noticed earlier, between 10.08.1988 till 19.09.2000, for more than 12 years, he did not even go through the formality, of filing a representation to allow him to join his place of posting. Nothing further than this need actually be said, by which his intention to never join his place of posting, can be seen.

20. It needs mention again that between the joining reports dated 14.03.1988 and 10.08.1988 (Annexures P-6 and P-7), submitted to the Executive Engineer of the Abohar Division, the order of the Tribunal, dated 16.05.1988, came to be passed, refusing interim stay and directing the respondents to grant leave to the petitioner of the kind due to him, as was admissible under the Rules, “till the case is finally disposed of or he reports for duty”

In the opinion of this Court, the petitioner actually tried to draw advantage from this order by, thereafter, not making any serious attempt to join duty, other than submitting another joining report on 10.08.1988, after which he remained silent for more than 12 years.

The order of the Tribunal allowing him leave of the kind due and admissible, either till the case (O.A. No.300-CH of 1988) was finally disposed of, or till he reported on duty, obviously gave him leeway and shelter to avoid joining duty and though this is not recorded in any order of the respondents, it was possibly because of this that no disciplinary proceedings were initiated against him.

However, that does not absolve the respondents for dereliction in discharging their duty, because when the case before the Tribunal was not reaching a conclusion in the immediate future, a duty was cast upon them to actually seek modification of the said order and

thereafter, if the petitioner still did not join duty, to initiate disciplinary proceedings against him.

Similarly, the petitioner, either by taking shelter of the said order, or for any other reason, not having made any serious effort to join duty, as already discussed in detail, especially for the 12 years between 1988 to 2000, cannot be allowed to take advantage of his absence from duty, on account of any inaction on the part of the respondents, to ensure that he does so join. If anything, it points to collusion between the petitioner and the officers/officials of the respondents-Board, due to which neither was any attempt made to get the order dated 16.05.1988 modified by the Tribunal, or to try and ensure that the petitioner joins duty, failing which he would have to face disciplinary proceedings.

21. Be that as it may, the very fact that the respondent-Board itself decided to initiate disciplinary proceedings, only exactly 15 years after the petitioner was relieved from the duty in U.T., Chandigarh, and not proceed with a regular departmental enquiry and to instead treat the absence period of the petitioner as leave of the kind due, is leniency enough shown to the petitioner, either under the shelter of the order dated 16.05.1988 or otherwise; and, in the opinion of this Court, no further leniency, whatsoever, can be shown to him, after a wilful absence of at least twelve years, if not more, especially on hypertechnical grounds which are also actually non-existent.

22. The contention that the impugned order treating his period of absence as leave of the kind due is a punishment order, is wholly without any foundation, inasmuch as, though obviously it has financial and career implications for the petitioner, it is actually a way out, given to him to

avoid dismissal from service for a prolonged absence for almost 1½ decades.

Undoubtedly, the impugned order dated 15.09.2005 suffers from the vice of holding, before treating the petitioners' absence period as period spent on leave of the kind due, him to be at fault in respect of the charges levelled against him. Correctly, even though 'fault' of not joining duty for 15/12 years is very much that of the petitioner, however, once having decided to treat his period of absence as leave of the kind due, the order should, perhaps, have been worded better by stating that the petitioner was being treated with leniency and the chargesheet was being dropped by treating his absence as period of the leave of the kind due.

Yet, in the opinion of this Court, the four lines that constitute the fourth paragraph of the impugned order, stating that after keeping the comments of the Engineer-in-Chief in view, the official was held at fault for the charges levelled against him, does not detract from the fact that actually no punishment was imposed on the petitioner, not even a minor punishment, and he was let off very lightly by treating the long period of his absence as leave of the kind due to him.

Therefore, at best, that clause of the impugned order, should be treated to have been expunged.

23. It also needs notice that the petitioner chose not to file a reply to the chargesheet ever since it was issued to him, on 25.09.2002, till the time of his retirement on 31.05.2003. The reason for non-filing of the reply has been given by the petitioner to be that no documents, or statement of witnesses, in respect of the charges, were supplied to him,

despite his asking for the same time and again.

Whereas this may otherwise have been a valid reason for directing that disciplinary proceedings be continued from the point of the chargesheet, after supplying the relevant documents to the petitioner, however, in the present case with actually no punishment order having been passed against him, there is no occasion for this Court to direct the same.

24. Even if the matter is examined from the point of view (and the fact) that the order of the Central Administrative Tribunal, dated 16.05.1988, was never challenged or modified, obviously that order would, by virtue of its very wording, continue to enure till the time that the petitioner actually joined duty, with the intervening period being treated as leave of the kind due to him. That is exactly what has been done by the respondents. Hence, with the order of the Tribunal also continuing to sustain, till the time that the petitioner joined duty, in fact, I do not see what other order could have been passed by the respondents, (after they chose not to seek any modification of the order), except to treat the intervening period of 15 years as leave of the kind due to him, strictly as per the directions given by the Tribunal in the said order dated 16.05.1988.

However, to repeat and emphasize again, the respondents are obviously as guilty as the petitioner, by even not trying to make him join duty, if necessary by seeking a modification of the said order of the Tribunal.

The petitioner undoubtedly became serious in trying to join duty w.e.f 09.10.2000, after he lost the litigation to be absorbed in the

U.T. Chandigarh, up to the Supreme Court on 29.08.2000. Even then, actually, in the opinion of this Court, he acted seriously to ensure his joining, by filing a civil suit, only in the year 2002, i.e. about a year and half to two years after he submitted his joining report on 19.09.2000.

Be that as it may, since the respondent-Board itself has decided to treat the period from 19.09.2000 till the date that the petitioner actually joined duty, on 17.04.2002, as a compulsory waiting period, and has actually paid him all arrears and benefits of the said period, nothing further is being said in regard thereto.

25. The contention of Mr. Sharma, learned counsel for the petitioner, that this period cannot be dichotomized from the period from 26.09.1987 to 08.09.2000, is wholly without basis, for the reasons already given in detail, i.e. that since 1988 to 2000, the petitioner was simply taking advantage of the situation and making no attempt to actually join duty, whereas after he lost his case in the Supreme Court, he made representations on 09.10.2000, 20.10.2000 and 26.12.2000 etc., to try and join duty; and even though he actually went to Court seeking that he be actually allowed to so join only in the year 2002, the respondent-Board has still given him the benefit of two years absence for that period also, from 09.10.2000 onwards. Hence, the two periods, from 26.09.1987 to 08.09.2000 and 09.10.2000 to 16.04.2002, cannot be equated with each other for any other benefit whatsoever, other than what has already been given to the petitioner by the respondent-Board, itself.

26. In view of the above, I find no reason to grant the petitioner any more benefit of his absence for about 15 years, other than as has already been granted by the respondents vide the impugned order.

The petition is, consequently, dismissed.

27. Since the petitioner has tried to take advantage of his own wrong and in the opinion of this Court, filed a wholly frivolous petition, after having being treated with such such lenience by the Respondents, he is saddled with costs of Rs.10,000/-, to be deposited with the High Court Legal Services Committee.

The amount is specifically not being ordered to be paid to the respondents, in view of the fact that they also did not raise a little finger to try and ensure that he joined his duty, for almost 1 ½ decades.

July 1 , 2015
dinesh/vcgrg

(Amol Rattan Singh)
Judge