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

Reserved on: 6th July, 2018

Pronounced on: 10th July, 2018

+ W.P.(C) 2598/2003

PRAMOD

..... Petitioner

Through: Mr. M. Dutta, Advocate

versus

CEMENT CORPORATION OF INDIA (CCI)

.... Respondent

Through Mr. Arun Birbal, Advocate

CORAM:

HON'BLE MR. JUSTICE C.HARI SHANKAR

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JUDGMENT

C. HARI SHANKAR, J.

1. Disciplinary proceedings, initiated against the petitioner Pramod, by the respondent-Corporation *vide* Memorandum dated 10th February, 1997 (hereinafter referred to as “the charge-sheet”) culminated inexorably, in the passing of an order, dated 29th July, 1997, removing the petitioner from service. Appeal and review, thereagainst, having failed to yield any favourable outcome, the petitioner is before this Court, by means of the present writ petition.

2. The petitioner, who was working as PS/Steno in the office of the respondent-Cement Corporation of India was, admittedly, on earned leave from 24th July, 1996 to 3rd August, 1996, owing to his brother’s hospitalization. According to the petitioner, he met with an

accident, incapacitating him from joining duty on 3rd August, 1996. *Vide* telegram dated 14th August, 1996, the petitioner applied for extension of his leave till 31st August, 1996, in support of which he submitted a certificate of Dr. Sunita Bountra, MBBS, certifying that he was under her treatment “for accidental injury Rt leg with irritable bowel syndrome from 1.8.96.”, for which she advised him complete bed rest from 3rd August, 1996 to 31st August, 1996. The respondent rejected the petitioner’s application, *vide* telegram dated 16th August, 1996, which informed him he was being marked absent from duty.

3. *Vide* a second telegram dated 28th August, 1996, the respondent directed the petitioner to report for duty, again reiterating that he was being marked absent, for the days when he did not so report.

4. The petitioner applied, *vide* letter dated 2nd September, 1996, for extension of leave till 15th September, 1996. With the said application, he annexed two more certificates, from Dr. S. Bountra, advising him rest for a period of 15 days from 1st September, 1996 and, thereafter, for another 15 days from 16th September, 1996. The respondent replied, *vide* letter dated 27th September, 1996, returning the copy of the Medical Certificate annexed by the petitioner and directing him to report for duty immediately, failing which action, as per the Conduct Rules of the respondent-Corporation, was threatened.

5. According to the petitioner, he was next examined by one Dr. R. Kumar, MD who issued the following certificates, on his letter head:

“Dr. KUMAR’S MEDICAL CENTRE

3, CENTRAL MARKET, LODI COLONY
NEW DELHI-110003

Dr. Kumar R. Dr. V. Kumar Dr.S.K. Sethi Dr. Praful Durani Dr.(Mrs.) R. Amarnath
MD. M.B.B.S M.B.B.S DLO M.B.B.S. M.B.B.S.
Regd. No.1251 Regd. No.3805 Regd. No. 15076 Regd. No.2837 Regd.No.26974

Certified that Mr.Pramod Verma, whose signature is given below is under my treatment for Lumbago (AC) due to IBS and is hereby advised complete bed-rest for a period of about a fortnight which in my opinion is too necessary for his recovery.

Sd/-
Pramod Verma
15/10/96

Sd/-
1/10/96

This is in continuation of the above treatment of Mr.Pramod Verma, who is hereby advised further bed rest for a period of about 2 weeks more since he is on the way of recovery.

Sd/-
15/10/96”

6. On the basis of the aforementioned certificate of Dr. R. Kumar, the petitioner again applied, *vide* letter dated 1st October, 1996, for extension of leave upto 15th October, 1996. The request of the petitioner was rejected by the respondent, *vide* letter dated 15th October, 1996, informing him that leave, as sought by him, was not sanctioned and directing him to report for duty immediately, failing which disciplinary action would be initiated against him.

7. The petitioner did not join duty; instead, he again applied on 16th October, 1996, for extension of the leave granted to him till 20th October, 1996.

8. Mr. Dutta, learned counsel for the petitioner, submitted that, even thereafter, the condition of his client did not improve, in support whereof he has drawn my attention to a prescription, dated 6th November, 1996, of Dr. Deepak Chaudhary, Orthopaedic Surgeon, Safdarjung Hospital, which again advised the petitioner “rest for three weeks”.

9. It would thus be seen that none of the petitioner’s applications for leave on medical grounds, was allowed by the respondent; nevertheless, the petitioner continued to remain absent from duty, submitting periodical leave applications accompanied by medical certificates. On each occasion, he applied for “extension of leave” which, strictly speaking, was a malapropism, as leave was never granted in the first place.

10. Rule VII of the Leave Rules applicable to the respondent-Corporation read thus:

“VII. MODALITIES FOR SANCTION OF LEAVE ON MEDICAL GROUNDS

1. Leave on medical grounds whether Commuted. Half Pay Leave. Earned Leave for employees working in the Units in CDA/IDA pay scales will be sanctioned for their period of illness at their headquarters only on the certificate of Company Medical Officer.

2. Leave on medical grounds to employees working at Corporate Office will be sanctioned for a period upto 15 days on the basis of a certificate of authorized Medical Attendants as defined in the Medical Attendance Rules. However, *for employees working at Zonal Office, Regional Office and*

Dumps, leave on medical grounds will be sanctioned upto 90 days on the certificate of authorized medical attendant.

3. Leave on medical grounds to employees working at Corporate office and Units for their sickness for a period of more than 15 days and upto 90 days will be sanctioned only after the certification of Company Medical Officer. The employees suffering from ailment will, therefore, compulsorily be required to consult the Company Medical Officer for determination of their period of sickness.

4. Extension of leave on medical grounds to the employees working at Corporate office/Units/Zonal offices/Regional Offices proceeding on leave outside headquarters upto a period of 90 days will be sanctioned on the certificate of authorized Medical Attendant. However, sanction of leave on medical grounds beyond the period of 90 days will be only on the recommendation of Medical Board constituted by the Corporation.

5. Leave on medical grounds beyond the period of 90 days will be sanctioned to employees working at Units Corporate Office, Zonal Offices and Regional Offices only on the recommendations of Medical Board constituted by the Corporation.”

(Emphasis supplied)

11. “Authorised medical attendant”, was defined, in clause (f) of Rule 4 of the CCI Employees’ (Medical Attendance) Rules, 1969 (hereinafter referred to as “the Medical Attendant Rules”) thus:

“f) “authorized Medical Attendant” means a Registered Medical Practitioner qualified in Allopathy/Homeopathy/Ayurvedic/Unani Systems of medicine *of the choice of the employee* as specified below:-

(i) **NON SPECIALIST:** Non-specialist doctor will mean Graduate/Vaid/Licentiate in Allopathy/Homeopathy/Ayurvedic/Unani systems of medicine.

(ii) **SPECIALIST:** Specialist doctor will mean a post-graduate in Allopathy system of medicine or a

Medical Practitioner as defined in (i) above with more than 13 years' practice.

(iii) Employee drawing pay of Rs. 800/- p.m. and above can receive treatment either from the non-specialist or specialist doctor.

Clarification

For Wage Board employees the 'pay' shall mean the pay prior to revision of Wage Board scales from 1.1.82, until it is revised appropriately for this purpose.

(iv) Other employees may receive treatment from the non-specialist doctor. If the case is serious or of emergent nature, such employees may, however, take treatment from a specialist doctor provided the non-specialist doctor certifies in writing that in view of the seriousness or special nature of the disease, the medical attendance by the specialist doctor is necessary."

(Emphasis supplied)

12. The petitioner was posted at the Mumbai Zonal office of the respondent, as is recorded in the very first paragraph of the charge-sheet. As such, Rule VII (3) and (4) of the Leave Rules would apply to him.

13. I may observe, here, that, though extracts of the aforementioned Rules were submitted, across the bar, by Mr. Dutta, learned counsel for the petitioner, Mr. Birbal, appearing for the respondent, did not, fairly, dispute their validity.

14. In accordance with Rule VII (4) of the Leave Rules (*supra*), as the petitioner had already remained absent from duty for 90 days, a

Medical Board was constituted by the respondent, to examine the case of the petitioner. The report of the Medical Board, consisting of two Doctors and the Deputy Manager (Medical) of the respondent-Corporation read thus:

“A Medical Board comprising of following members was constituted to examine Mr. Pramod an employee of Cement Corporation of India.

1. Dr. P. K. Gupta, MBBS, MD (MED)
2. Dr. A.K. Goel, MBBS, MS (Orth)
3. Dr. O.P. Soni, MBBS, Dy. Manager (Medical), CCI

The members examined Mr. Pramod at his residence on 6th of November 1996 at 3.30 P.M. Mr. Pramod was present at his residence and cooperated with medical examination. He complained of having backache since more than one year due to which he is unable to work or sit for longer time. He also complained of suffering from irritable bowel syndrome due to which he has to go to toilet 4 to 6 times per day. There was no other complaint. He had suffered from tuberculosis in past for which he took full treatment in the past. He could not show any prescriptions of treatment taken for these ailments except two prescriptions slips one of which dated 6th November was given by Orthopedics OPD of Safdarjung Hospital. He did not know of the treatment taken for these ailments.

The examination did not reveal any abnormality in any of the systems of Mr. Pramod. He had no anaemia, lymphadenopathy, jaundice, oedema feet. His blood pressure was 120/80 mm of mercury and his pulse rate 78/mt regular and good volume. He had no fever. His systamic examination also did not reveal any abnormality. Abdomen was soft with no organ enlargement detected. There was no tenderness present anywhere in abdomen. Thorough examination of his back also did not show any area of tenderness or abnormality. All joints were normal with normal movements.

In the circumstances, the board is of the opinion that Mr. Pramod is fit for duty presently. If he has any back pain it

can be effectively treated with medicines while on duty. He has been advised to undertake an X-ray of his spine so as to further evaluate his backache. He has been asked to submit this to Dr. Soni latest by 8.11.1996. Existence of irritable bowel syndrome and backache cannot be denied. These diseases are known to cause significant disability amounting to absence from duty. In the present case no effort has been done to control these diseases. There has been no consultation with any specialist during the period of three months. No X-ray or other pathological tests are done to confirm the diagnosis. All these points towards non-seriousness of these symptoms.

Sd/-
Dr. P.K.Gupta,

Sd/-
Dr. A.K.Goel

Sd/-
Dr. O.P.Soni”

(Emphasis supplied)

15. A reading of the concluding para of the above extracted report of the Medical Board discloses a pronounced degree of ambivalence. It is first opined that petitioner was “fit for duty presently” and that, “if he had any back pain, it (could) be effectively treated with medicines while on duty”. It is next noted that the petitioner was advised to have an X-ray of his spine taken, so that his backache could be further evaluated. The very next sentence states that existence of “irritable bowel syndrome and back ache *could not be denied*”, and also acknowledges that these diseases “*were known to cause significant disability, amounting to absence from duty*”. (One presumes that what was intended to be conveyed was that the “significant disability” resulting from these diseases could result in the sufferer being disabled from attending duty.) The paragraph next notes that “*no effort had been done to control these diseases*” and that there had been no consultation with any specialist during the period of three months. This observation, too, would imply acknowledgment of the fact that he

did, in fact, suffer from the said diseases. Even so, the next sentence states that, “no x-ray or other pathological tests” had been done “to confirm the diagnosis”. In conclusion, the report opines that “all these point towards non-seriousness of these symptoms”. How this conclusion harmonizes with the earlier observation, in the very same paragraph, that the existence of irritable bowel syndrome and backache could not be denied, and that these ailments were known to cause severe disability “amounting to absence from duty”, evades comprehension.

16. Without meaning any disrespect to the learned medical professionals who issued the aforementioned report, it cannot but be observed that no clear-cut opinion is deducible therefrom. The report does, however, expressly state that the existence of irritable bowel syndrome and backache, in the case of the petitioner, *could not be denied*, and that these diseases “*were known to cause significant disability, amounting to absence from duty*”. A holistic reading of the report would, therefore, seem to indicate that the petitioner, was, in fact, suffering from the said ailments, which could have disabled him from attending to his duties.

17. The Medical Board having been constituted by the respondent, in accordance with the Leave Rules applicable to it, the benefit of the said report, as also of any ambivalence therein, must necessarily enure in favour of the petitioner.

18. I am, therefore, inclined to accept the petitioner's stand that he was, in fact, suffering from ailments which disabled him from attending to his daily duties. His requests for leave, to which reference has already made hereinabove, have, therefore, to be regarded as bonafide and justified. The respondent, too, was periodically rejecting the requests, of the petitioner, for leave, without giving any reasons for such rejection. This is, to say the least, unfortunate, especially in view of Rule VII (2) of the Leave Rules, which ordains that "*for employees working at Zonal Office, Regional Office and Dumps, leave on medical grounds will be sanctioned upto 90 days on the certificate of authorized medical attendant*". At no stage did the respondent question the genuineness or validity of the certificates submitted by the petitioner in support of his applications for leave. Neither did the respondent, at any stage, require the petitioner to have himself examined by any other doctor. Given the fact that the existence, of the aforementioned ailments of "irritable bowel syndrome" and lumbago, in the case of the petitioner, stands impliedly acknowledged by the Medical Board, and the fact that these diseases were admittedly debilitating in nature, it cannot be said that the petitioner was willfully or unjustifiably absenting himself from duty.

19. I may observe, here, that the Medical Board having been constituted by the respondent, in accordance with its own Leave Rules, the respondent is necessarily bound by the report of the Medical Board. I may also note, here, that a valiant effort was made, by Mr. Birbal, to interpret the words "cannot be denied", in the concluding paragraph of the report, as meaning "is impossible to

determine”, but this Court is unaware of any etymological support for such an interpretation.

20. On 26th November, 1996, the respondent issued to the petitioner the charge-sheet, already referred to in para 1 (*supra*), proposing to hold an inquiry, against the petitioner, under Rule 30 of the Cement Corporation of India Conduct Disciplinary and Appeal rules (hereinafter referred as “CCI CDA Rules”), alleging that he was guilty of misconduct, and seeking his response thereto. The statement of Imputations of Misconduct, which constituted Annexure II to the charge-sheet, read thus:

“Shri Pramod, P.S.-I while posted at Bombay Zonal Office proceeded on Earned Leave from 24.7.96 to 3.8.96 for visiting Delhi on the grounds of his brother’s hospitalization. Sh. Pramod vide his telegram dated 14.8.96 informed Zonal Manager, Mumbai that he met with an accident and requested for extension of leave upto 30.8.96. Vide telegram dated 16.8.96, he was communicated that the leave has not been granted and he was being marked absent from duty.

Again vide telegram dated 28.8.96, he was intimated to report for duty and for the period of absence he was being marked absent. Sh.Pramod vide his letter dated 2.9.96 requested Zonal Manager, Mumbai for extension of leave upto 15.9.96 enclosing therewith a medical certificate advising rest from 3.8.96 to 31.8.96.

Sh.Pramod vide his FAX dated 26.9.96 again requested Zonal Manager for further extension of his leave upto 30.9.96. Further, the Zonal Office vide its letter dated 27.9.96 returned the fax copy of the medical certificate with the direction to report for duty immediately failing which action will be initiated as per the Conduct Rules of the Corporation.

Sh.Pramod instead of complying with the repeated directions given by his higher authority, requested vide his letter dated 1.10.96 for further extension of leave upto

15.10.96 enclosing a photo copy of the medical certificate in support of his request. He was immediately informed by the Zonal Office vide its letter dated 15.10.96 that the leave was not sanctioned to him with the direction to report for duty immediately failing which disciplinary action will be initiated.

Sh.Pramod in utter disobedience of the direction of the higher authority continued to remain absent.

In terms of Rule VII-4 of CCI Leave Rules, any leave on medical grounds for more than 90 days is to be considered based on the report of the Medical Board. Since the absence of Sh.Pramod on alleged medical grounds exceeded 90 days and Sh.Pramod was staying in Delhi, a Medical Board was constituted for medical examination of Sh.Pramod consisting of following :-

1. Dr.P.K. Gupta, MD-Physician
2. Dr.A.K. Goel, MS-Orthopadic Surgeon
3. Dr.O.P. Soni, Dy.Manager (Medical)

Accordingly, Sh.Pramod was communicated vide letter No.PDE/8149/P/82/404 dated 4.11.1996 in regard to his medical examination at his residence on 6.11.96 at 3.30 PM.

The Medical Board visited the residence of Sh.Pramod at 27, Himvarsha Apartments, 103, I P Extension, Delhi-92 on 6.11.96 at 3.30 PM. Sh.Pramod was available at his residence and the doctor members of the Medical Board examined him thoroughly. He was also directed to undertake an X-ray of his spine and to submit the same to Dr.OP Soni, Dy.Manager (Medical) latest by 8.11.96 which Sh.Pramod failed to submit.

The Medical Board in its report concluded that though Sh.Pramod complained of having backache and suffering from irritable bowel syndrome but he could not show any prescription of treatment taken for these ailments except two prescription slips one of which dated 6.11.96 was given by Orthopedics OPD of Safdarjung Hospital. He could not also explain the treatment taken for these ailments. The systematic examination also did not reveal any abnormality. It has also been opined that in the present case no effort has been done to control these diseases. There has been no consultation with

any specialist during the period of 3 months. No x-ray or other pathological tests were conducted to confirm the diagnosis. Thus, it has been concluded by the Medical Board that Sh.Pramod is fit for duty.

Based on the report of the Medical Board, the Zonal Manager, Mumbai vide its letter dated 12.11.96 sent under registered post and UPC to Sh.Pramod at 27, Himvarsha Apartments, 103, I P Extension, Delhi-92 informed that keeping in view of the fact that Medical Board declared him fit for duty, he should report for duty latest by 18.11.96. Sh.Pramod, however, in defiance of the instructions, has not reported for duty so far, thereby his absence from duty from 4.8.96 till date is unauthorized.

The above acts on the part of Sh.Pramod, PS-I amounts to willful absence from duty without leave. It also amounts to wilful insubordination of lawful and reasonable orders of higher authorities. His entire conduct is also subversive of good behavior or of the discipline of the Corporation.”

21. Annexure III to the charge-sheet enlisted, as the documents, on the basis of which, alone, the charges against the petitioner were proposed to be sustained, the representations, dated 1st January, 1997 and 12th January, 1997, of the petitioner, and the CCI CDA Rules.

22. *Vide* communication dated 17th February, 1997, the respondent intimated the petitioner that Mr. K R Pillai had been appointed as Inquiry Officer (I/O) to inquire into the aforementioned allegations against him, and directing him to be present, for a preliminary inquiry in that regard, on 28th February, 1997. The second para, of the said communication, permitted the petitioner to engage a defence assistant, who could be “any other employee of the Corporation or government servant working or retired” who was not a legal practitioner, and

required the petitioner to intimate the name of the defence assistant chosen by him, with address and particulars, at the earliest.

23. The petitioner responded, to the aforementioned communication, on 12th March, 1997, proposing the name of Mr. Surya Prakash, SE (C), SG, Rtd., to defend his case.

24. *Vide* order sheet dated 14th March, 1997, the I/O observed, *inter alia*, as under:

“It is noted that as per normal practice for preliminary inquiry *it is not necessary to have a defence assistant*. The request of Mr. Pramod PS, Gr.I to engage the services of Mr. Surya Prakash SE(C) (Retd.) from Delhi has been considered. *As the defence assistant is not from head-quarter station of the employee, his request has not been accepted. Mr. Pramod is directed to nominate his assisting Government Servant from his head-quarter station or from the place the inquiry is held, i.e., Mumbai.* Mr. Pramod’s request for conducting inquiry at Delhi is also not accepted as his head-quarter is Mumbai by virtue of his posting at CCI Mumbai Zonal Office, where documents and witnesses are readily available.

It is also clarified that *for preliminary inquiry, the assistance of defence assistant is not considered necessary*. Accordingly, Mr. Pramod is directed to attend the same as per notice to be issued failing which inquiry will be conducted ex-parte. However, assistance of defence assistant may be availed once the regular inquiry is conducted. Accordingly, separate letter is being issued to Mr. Pramod.”

(Emphasis supplied)

25. Be it noted, *vide* subsequent telegram dated 5th April, 1997, the I/O directed the petitioner to read the words “preliminary inquiry”, as contained in his afore-quoted order sheet dated 14th March, 1997, as “preliminary hearing”.

26. By a subsequent communication dated 5th April, 1997, the I/O permitted the petitioner to avail the services of Mr. Surya Prakash as defence assistant, but rejected his request for release of TA/DA to him for the said purpose.

27. The petitioner has specifically averred, in para 26 of his WP, that there was no rule mandating that the defence assistant had to be from Headquarters. He has also annexed, as Annexure P-21 to the writ petition, an order sanctioning TA/DA in the case of another employee, for his defence assistant to travel to the place of inquiry. The corresponding paragraph of the counter affidavit of the respondent contains no rebuttal thereto.

28. *Vide* letters dated 17th March, 1997 and 3rd April, 1997, the petitioner was again requested, by the IO, to engage a defence assistant from Mumbai, rather than Delhi.

29. The inquiry proceedings culminated in Inquiry Report dated 6th June, 1997, of the I/O, which observed that neither the petitioner, nor his defence assistant, was present, on any of the dates fixed for inquiry, and that no effort was made, by either of them, to submit their list of witnesses or inspect the documents in the case. The Management closed its case on 1st May, 1997, whereafter the Presenting Officer of the Management submitted his written brief on 9th May, 1997. No written brief was submitted by the petitioner, or by his defence assistant. The I/O, ultimately, on an analysis of all the evidence available, including the report of the Medical Board, held

that the petitioner had been willfully and continuously absenting himself from duty, even after the Medical Board found him fit to resume duty. As such, it was opined that the charge leveled against the petitioners stood fully proved.

30. The aforementioned Inquiry Report, dated 6th June, 1997, of the I/O was forwarded to the petitioner by the disciplinary authority, in response where to the petitioner wrote, on 4th July, 1997, to the disciplinary authority, essentially protesting against non grant of TA/DA to his defence assistant, so that he could travel from New Delhi to Bombay. That apart, the petitioner expressed his serious objection to the manner in which the I/O had willfully ignored the medical condition of the petitioner, which, according to him, was “deteriorating day by day”. No other substantial submission, in response to the findings of the I/O, was contained in the said communication, dated 4th January, 1997, from the petitioner to the disciplinary authority.

31. *Vide* order dated 29th July, 1997 (impugned herein), the disciplinary authority, based on the findings of the I/O as contained in his Inquiry Report dated 6th June, 1997, concurred, therewith, that the charge against the petitioner stood fully proved. The disciplinary authority further held that in view of the nature of the charge against him, the petitioner deserved to be removed from service and, accordingly, imposed, on him, the said punishment.

32. The petitioner appealed against the said decision of the disciplinary authority to the Director (Marketing) in the respondent–Corporation, *vide* communication dated 27th August, 1997. However, the said appeal was also rejected by the Director (Marketing) *vide* order dated 4th/5th February, 1997, merely opining that there was no justification to interfere with the order of the disciplinary authority. The petitioner appealed, further, to the Chairman-cum-Managing Director of the respondent–Corporation; however, the said appeal, too, was rejected, *vide* communication dated 24th January, 2000, which opined, correctly, that there was no provision for a second appeal, in the Rules applicable to the respondent.

33. The petitioner is, therefore, before this Court in the present writ proceedings, seeking quashing of the order dated 29th July, 1997, passed by the disciplinary authority and, consequently, reinstatement in service with back wages and other benefits

34. I have heard detailed submissions, advanced before me by Mr. M. Dutta, learned counsel for the petitioner and opposed by Mr. Arun Birbal, learned counsel for the respondent.

35. Mr. Dutta initially drew my attention to the fact that the respondent had proceeded in violation of the principles of natural justice, by reneging on its decision to allow, to the petitioner, representation by a defence assistant.

36. While it is true that this submission is incorrect, as the said decision, as noted hereinabove, was subsequently withdrawn, and the request of the petitioner for being permitted the services of Mr. Surya Prakash, as his defence assistant, acceded to, I am convinced that the respondent has been less than fair to the petitioner in this regard. No rule or regulation, applicable to the respondent, requiring a charged officer to engage a defence assistant necessarily either from the Headquarters, or even from the place where the inquiry is being held, has been brought to my notice, and the specific averment in the writ petition, to the effect that no such rule or regulation existed, remains unrebutted. It appears, therefore, that the repeated communications, to the petitioner, by the I/O, rejecting his request for the engagement of Mr. Surya Prakash, as his defence assistant, as he was posted at Delhi, is not based on any requirement of the law. The recital, in the order sheet dated 14th March, 1997, (*supra*), of the I/O, that “for preliminary inquiry, the assistance of defence assistant is not considered necessary” as also no basis in any applicable rule or regulation. Interestingly, the I/O himself *vide* a specific communication dated 5th April, 1997, directed that the words “preliminary inquiry” as contained in the said order sheet dated 14th March, 1997, be read as “preliminary hearing”. If that be so, the observation of the I/O is even more unjustified, as it cannot be said, by any stretch of imagination that, the assistance of the defence assistant during preliminary hearing in the inquiry proceedings, is unnecessary. All the brouhaha raised by the respondent, regarding the petitioner’s request for engagement of Mr. Surya Prakash as his defence assistant was, therefore, apparently wholly unnecessary. Even after the request of the petitioner, for

engagement of Mr. Surya Prakash as his defence assistant, was acceded to, his request for TA/DA to be paid to him, so as to enable him to attend the inquiry proceedings, was refused. The petitioner has, with his writ petition, annexed, as Annexure P-21, a document evidencing payment of TA/DA by the respondent, in the case of the defence assistant engaged by another employee, to contend that the respondent was not justified in refusing to do so in his case. There is no specific answer, to this submission of the petitioner, in the counter affidavit of the respondent.

37. As such, the petitioner was, undoubtedly, unfairly handicapped in effectively not being permitted the assistance of Mr. Surya Prakash as his defence assistant in the inquiry proceedings. However, in view of the order which I propose to pass hereinafter, this aspect of the matter may not be of much significance.

38. On merits, Mr. Dutta's major submission is that the advice of the Medical Board, besides being ambivalent, could not be relied upon, in view of the fact that the Orthopedic Surgeon in Safdarjung Hospital had, on 6th November, 1996, advised the petitioner three weeks' rest. In Mr. Dutta's submission, this certificate was entitled to great weight, being that of a Specialist from the Safdarjung Hospital. He draws my attention to the fact that there were certificates, advising rest, to his client, till 31st January, 1997, and also after August, 1997, though he admits that no certificates, advising him rest between January, 1997 and August, 1997, were available on record.

39. In these circumstances, Mr. Dutta seeks to submit that the decision to remove his client from service was, *ex facie*, unjust and illegal, and deserves to be set aside.

40. Mr. Arun Birbal, learned counsel appearing for the respondent submits, *per contra*, that the petitioner was an incorrigible absentee, who remained absent till June, 1997, despite the fact that none of his requests, for being granted medical leave, was acceded to. He draws attention to the fact that the Medical Board had, in its report, opined that the petitioner was fit to resume duty. Despite this, Mr. Birbal would point out, the petitioner refused to return for duty, continuing, instead, to submit periodical medical certificates. On my pointing out, to him, that the charge-sheet, the conformation whereof resulted in the petitioner's being removed from service, was only regarding his unauthorized absence till 26th November, 1996, and in response to my query, as to whether, in such circumstances, the petitioner's absence from duty, after the said date, could at all be taken note of, Mr. Birbal submits that this Court has to take a holistic view and that it would result in a travesty of justice, if an employee such as the petitioner, who remained absent from duty for almost a year, without any leave being sanctioned, were permitted to be reinstated. Such an employee, in Mr. Birbal's submission, was rightfully eviscerated, by the respondent, from its establishment.

Analysis

41. While there is no doubt that the ultimate effort, of a court of law, is the administration of justice, it is not permissible for courts to

administer justice contrary to the dictates of the law applicable. Justice can only be said to have been meaningfully dispensed when it harmonizes with the rule of law, and the substantive and procedural requirements that flow, and follow, therefrom. Courts cannot, while administering justice, needlessly afford to be swayed by sentiment, or even considerations of what it may be regard as morality.

42. The submissions advanced by Mr. Arun Birbal are, undoubtedly persuasive and, to a certain extent, justified as well. This Court agrees, with Mr. Birbal, that an employee who remains unauthorizedly absent for almost a year, ought not to be permitted to be taken back in service. Having said that, the decision not to taken such an employee back in service has to follow *a finding* that the employee has, in fact, been on unauthorized absence for such a long period of time. Such a finding, in turn, could be returned, in any system governed by a rule of law, *only after an opportunity is given, to the employee, to explain his absence for the said period*. Due process is the very life breath of democracy. The paramount consideration of due process cannot permit any finding, against a citizen of this country, which could result in civil consequences to her, or him, which is not preceded by grant of adequate and sufficient opportunity to explain the perceived lapse.

43. Applying these principles to the facts of this case, it is apparent that the charge-sheet, dated 26th November, 1996, alleged unauthorized absence, from duty, by the petitioner, till the date of the charge-sheet, and only till that date. The concluding sentence of the charge-sheet reads thus:

“Sh.Pramod, however, in defiance of the instructions, has not reported for duty *so far*, thereby his absence from duty from 4.8.96 *till date* is unauthorized.”

(Emphasis supplied)

44. No charge-sheet was issued, to the petitioner, regarding his absence from duty after 26th November, 1996. Though there may be substance, in the contention of Mr. Birbal, that the continued absence of the petitioner from duty, even after November, 1996, till June, 1997 and, for that matter, even thereafter, was equally unauthorized, this court is unable to return an original finding in this regard, no charge-sheet ever having been issued to the petitioner for the period of his absence from duty after 26th November, 1996. The impugned order, dated 29th July, 1997, is a consequence of the charge-sheet dated 26th November, 1996, and holds the charge, *as contained in the said charge-sheet*, to stand proved. All that has been found to be proved, by the impugned order, is therefore, unauthorized absence of the petitioner till 26th November, 1996.

45. It is clarified, here, that in view of the fact that these proceedings impugned the order dated 27th July, 1997, which is a culmination of the disciplinary proceedings which stood initiated, *vide* charge-sheet dated 26th November, 1996, I am not entering into the question of absence of the petitioner for the period after 26th November, 1996, or any consequence which, in law, the petitioner may have to suffer therefor. I have only considered whether, (i) the finding of the disciplinary authority, that the charge-sheet issued to the

petitioner, stood proved, is justified on facts and in law, and (ii) the removal, of the petitioner from service, on that count, was sustainable.

46. I have already opined, hereinabove, that the report of the Medical Board was ambivalent in nature, and, in fact, acknowledged the fact that the petitioner was suffering from irritable bowel syndrome and backache (in fact, lumbago), which were debilitating in nature, and could result in the employee concerned having to remain absent from duty. That being so, the absence of the petitioner, from duty, cannot be regarded as deliberate, but has to be treated as attributable to his medical condition. No doubt, none of the petitioner's requests for grant of leave were acceded to by the respondent. In no case, however, was any reason provided for rejecting the petitioner's request. Neither has the respondent, at any stage, chosen to question the correctness of the said certificates, by which the petitioner was periodically, advised bed rest. Such an approach, in my view, cannot sustain the scrutiny of law, especially in view of Rule VII(2) of the Leave Rules. In my opinion, if the applicable rule, as in the present case, ordains that medical leave "will be sanctioned upto 90 days on the certificate of an authorized medical attendant," and the employee concerned annexes, with his application for leave, a certificate, by an "authorized medical attendant", advising him to take rest upto 90 days, the employer is not at liberty to reject the request without any reason whatsoever. Any such rejection would be *ex facie* capricious in nature. If at all the employer feels that, despite the employees' request being accompanied by the requisite medical certificate, it does not deserve to be allowed, he is required to

put the employee on notice in this regard, specifically putting, to him, the reason why his request does not merit favourable consideration, and giving him an opportunity to respond thereto. These are the bare modica of due process and fair play, which cannot be sacrificed.

47. Punishment, consequent on disciplinary proceedings, cannot be founded on any allegation, in excess of that contained in the charge-sheet issued to the employee concerned. The wording of the allegation, in the charge-sheet in the present case, makes it apparent that it is restricted to the absence, of the petitioner, from duty, till the date of issuance of the charge-sheet, i.e. 26th November, 1996. Howsoever reprehensible, in the estimation of the respondent, the continued absence of the petitioner, from duty, after 26th November, 1996, may appear, the disciplinary authority, adjudicating the charge-sheet dated 26th November, 1996, would have no jurisdiction to enter into that arena.

48. In that view of the matter, while the petitioner, undisputedly, remained absent from duty, without sanction of leave, such absence being actually attributed to the medical condition from which the petitioner was suffering – which, even as per the report of the Medical Board was disabling in nature – the default, on the part of the petitioner, cannot be regarded as one that justified removing him from service altogether. The respondent is also to blame, to an extent, in failing to have taken stock of the medical condition of the petitioner; as already noted hereinabove, if the respondent felt, at any time, that the petitioner's medical condition was not as serious as he made it due

to be, or that the advice, to him, to remain on bed rest was not justified, the respondent could have subjected the petitioner to a repeat medical examination, or required him to take the opinion of an another doctor, which it did not choose to do.

49. Where medical grounds are cited, by an employee, as justification for his remaining absent from duty, the inquiry officer, as well as the disciplinary authority, are required to examine this aspect of the matter, while contemplating the action, if any, required to be taken against the officer. [Refer *Shri Bhagwan Lal Arya vs Commissioner of Police*, (2004) 4 SCC 560, *Krushnakant B. Parmar vs U.O.I.*, (2012) 3 SCC 178 and *Chennai Metropolitan Water Supply and Sewerage Board vs T. T. Murali Babu*, (2014) 4 SCC 108] Unfortunately, in the present case, I do not find sufficient application, of mind, to the medical condition of the petitioner, either by the I/O or by the disciplinary authority. The I/O has proceeded on the premise that the Report of the Medical Board incriminated the petitioner, and belied his submission of being unfit to join duty whereas, as already noticed by me hereinabove, it may not be possible to interpret the said Report in such a fashion. The punishment order, dated 29th July, 1997, issued by the disciplinary authority, for its part, does not disclose any independent application of mind whatsoever, and merely expresses complete concurrence with the findings of the I/O. No notice, whatsoever, has been taken, of the certificates submitted by the petitioner, periodically, which recommended continued rest, and the correctness whereof was never questioned, by the respondent, directly or indirectly. The import of Rule VII(2) of the

Leave Rules has also not been examined. Neither do I find any conscious application of mind, on the part of the disciplinary authority, regarding the quantum of punishment to be imposed on the petitioner. The decisions of the Supreme Court, cited hereinabove, indicate that, in disciplinary proceedings, against an employee, on the ground of unauthorised absence from duty, where medical grounds are cited for the absence, these grounds are necessarily to be borne in mind while examining the issue of whether any misconduct could, at all, be said to have been committed. Even where the absence is found to be unjustified, removal/dismissal from service cannot automatically be awarded, especially where the absence from service is on medical grounds, and cannot be regarded as “wilful”.

50. In view of the factual and legal position outlined hereinabove, it is obvious that the decision, of the respondent, to remove the petitioner from service, cannot sustain scrutiny. The fact that (i) the charge-sheet was limited to the absence of the petitioner, from duty, till the date of its issuance, i.e. 26th November, 1996, (ii) the petitioner had, in fact, submitted medical certificates, advising him periodical rest, at least till 31st October, 1996, (iii) the respondent had itself given time, to the petitioner, to re-join duty, till 18th November, 1996, read with the ambivalent nature of the Report of the Medical Board, I am of the considered opinion that, apart from the fact that it has been awarded without proper application of mind, the punishment of removal from service was *ex facie* disproportionate to the misconduct, if any, that could be said to have been committed by the petitioner.

51. Consequent upon the above observations and findings, the present writ petition is disposed of, in the following terms:

- (i) The impugned order, dated 29th July, 1997, removing the petitioner from service, is quashed and set aside.
- (ii) The proceedings are remanded to the I/O (who would, needless to say, have to be appointed afresh), for reconsideration, keeping in view the observations and findings returned hereinabove.
- (iii) In view of the law laid down in ***Managing Director, E.C.I.L. vs B. Karunakar, (1993) 4 SCC 727***, the petitioner shall be treated as on suspension from the date of passing of the impugned order, i.e. 29th July, 1997. He shall, consequently, be entitled to subsistence allowance, including arrears thereof, , in accordance with law, from the said date. The said amount shall be disbursed to the petitioner within 4 weeks from the date of receipt, by the respondent, of a certified copy of this judgement.
- (iv) The issue of back-wages, if any, to be paid to the petitioner, would be considered consequent on the *de novo* decision of the disciplinary authority.

50. In order to avoid any delay, it is made clear that the petitioner would be at liberty, if he so desires, to engage the services of a defence assistant, but would not be entitled to any TA/DA in that regard.

51. Needless to state, if the petitioner is aggrieved by any penalty which may be imposed by the respondent, his rights to avail appropriate remedies, in that regard, would stand reserved.

52. Before parting, it is once again reiterated that this judgement adjudicates only on the legality of the order dated 29th July, 1997, and does not consider, directly or indirectly, the justifiability of the absence, from duty, of petitioner after 26th November, 1996, and is not to be read as any expression of opinion in that regard. Any action, if lawfully taken by, or available to, the respondent, against the petitioner, for the said period of absence, would not be affected, in any way, by this judgement.

53. The writ petition stands disposed of accordingly, with no order as to costs.

**C.HARI SHANKAR
(JUDGE)**

JULY 10, 2018
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