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

Reserved on: 06.09.2019

Pronounced on: 05.11.2019

+ W.P.(C) 13901/2018

ANJU BALA

..... Petitioner

Through Mr.A.K. Bhardwaj, Adv. with
Ms.Jagriti Singh, Adv.

versus

GAIL (INDIA) LIMITED AND ORS. Respondents

Through Mr.V.K. Garg, Sr. Adv. with
Ms.Noopur Dubey & Mr.Amit
Kumar, Advs.

CORAM:

HON'BLE MR. JUSTICE SURESH KUMAR KAIT

J U D G M E N T

1. Vide the present petition, the petitioner seeks direction thereby to quash and set aside the impugned memorandum No.CO/HR/Disc./D-142/2016 dated 02.08.2016, inquiry report dated 28.03.2017, orders dated 31.05.2017, 23.08.2017, 11.04.2018 and 06.12.2018.
2. Further seeks direction thereby directing the respondents to re-instate the petitioner back in service with all consequential benefits.

3. Brief facts of the case are that the petitioner joined the respondent company as Management Trainee (E-1) w.e.f. 01.06.2002. She got promotions as Senior Officer in E-2 Grade, Dy. Manager in E-3 Grade and Manager in E-4 Grade w.e.f. 31.05.2003, 01.04.2008 and 01.04.2014 respectively. She was granted child care leave for the period from 16.03.2015 to 12.02.2017. But she joined the duty w.e.f. 12.02.2016. She again applied for Child Care Leave for the period from 25.04.2016 to 25.10.2016 as the daughter of the petitioner was suffering from Psoriasis and Bronchitis and was in need of emergent care, attention and treatment. Accordingly, the leave was sanctioned to the petitioner unconditionally. But as in view of strained relation of the petitioner with her ex-husband and being single mother having no support from any corner, she was receiving threats from dreaded criminals. Thus, was left with no alternate, but to explore the possibility and option for treatment of her daughter at some safe place/location. Since, the employer of the petitioner, particularly the respondent No.4 was also involved with those who were exploiting the petitioner and were sharing all information about her with them, she was looking for the option for treatment of her daughter in foreign country also. In the fray, she sought appointment with the best dermatologist at St. Teresa

Hospital. The copy of mail dated 03.06.2016 (05:18 p.m.) is reproduced as under:

*"From : Anju Bala (mailto:aanvianiu@gmail.com)
Sent: Friday, June 03, 2016 %:18 p.m.
To: St. Teresa's Hospital
Subject: Appointment of dermatologist.
Dear Sir/Maam,
My daughter Aanvi is suffering from psoriasis right from her birth itself and now she is 8 years.
I wanted an appointment of the best dermatologist for either 11 or 12 of June 2016 first half of the day.
Regards,
Anju
Sent from my iPhone 6."*

4. In response to the request, the petitioner received a response dated 06.06.2016, whereby she was informed that there was no dermatology department in the hospital. A copy of the response is as under:

*"..... Fwd: Appointment of dermatologist
From: QEH Internet PRO officer geh.pro@ha.org.hk
Date: 6 June 2016 at 9:59:22 AM 1ST
To: aanvianiu@gmail.com aanvianiu@gmail.com
Subject: RE: Appointment of dermatologist
Dear Ms./Mr.Anju,
There is no dermatologist in our hospital. If you are looking for dermatological services, you may visit Yau Ma Tei Dermatologist Clinic.
Yau Ma Tie Dermatologist Clinic.
12/F, Yau Ma Tei Specialist Clinic Extension.
143 Battery Street, Yau Ma Tei
Tel: 27704639
Thank you.
Regards,*

*Kayeel Leung
Patient Services Office
Queen Elizabeth Hospital"*

5. Thereafter, the petitioner received another mail dated 10.06.2016 from Skin Centre, St.Teresa Hospital, is reproduced below:

*"From: "Skin Centre" <skinc@sth.org.hk>
Date: 10 June 2016 at 9:21:26 AM IST
To: aanvianiu@gmail.com aanvianiu@gmail.com
Subject: RE: Appointment of dermatologist
Dear Anju,
Thank you for your inquiry,
We have made an appointment on 11.06.2016 1730 for
you to see out dermatologist Dr.Chan Sheung Hey, please
come to our centre located on 1/f, East Wing, St Teresa's
Hospital, 327 Prince Edward Road West, Kowloon for
registration.
The consultation fee is HK\$350, not including medication
and treatment fee.
Please contact us for further inquiries.
Regards
Skin Centre
St Teresa;s Hospital."*

*"From: "St. Teresa's Hospital
Sent: Saturday, June 04, 2016 10:06 AM
To: Skin Centre : Thomas Chan Sheung Hey
Subject: Fwd: Appointment of dermatologist
Dear Dr Chan/Skin Centre
Please see the below enquiry for your kind follow up.
Regards,
Heller Ext 580...."*

6. As the petitioner got appointment at a very short notice, she had to leave for China/Hongkong in emergent situation, for treatment of her minor

daughter. Thus, she applied for extension of leave and also intimated the respondents about the emergent situation in which she had to proceed abroad. The intimation for proceeding abroad for her daughter's treatment and the application for extension of leave sent by the petitioner to respondents by mail is reproduced below:-

"...Fwd: Intimation for proceeding abroad for daughters treatment.

From: Anju aniu.bala@gail.co.in

Date:- 10 June 2016 at 11:27:05 AM IST

To: Himika Sagar himika.sagar@gail.co.in ,

Subject: Intimation for proceeding abroad for daughters treatment.

Dear Himika,

This is an intimation to GAIL for proceeding abroad for my daughter treatment Aanvi is suffering from psoriasis right from childhood and I have tried all the possible treatments in India be it allopathy or ayurvedic but is of no use I am taking her to China as the only treatment available in the world is in traditional Chinese herbal medicine so I am taking her there for her treatment. My child is very young and I don't want her to suffer any side effects of allopathy treatment. As she is the only child I have I don't want to take any chance for her. She is also suffering bronchitis my poor daughter is suffering a lot and I have to take care of her. Since I am on CCL I want her to get well fully. You are also requested to please extend my CCL by 1 year please. Till my daughter is completely well.

May please forward the mail to all concerned departments.

Thanking you

Regards,

Anju

Sent from my iPhone 6"

7. Mr. A.K. Bhardwaj, learned counsel appearing on behalf of the petitioner submitted that leaving abroad for treatment of her daughter with due intimation to the respondents and after applying for extension of leave, the petitioner had not violated any rules or instructions and not committed any misconduct, but had acted in due deference to the OM No. 13018/2/2008-(Estt-EL) dated 11.09.2008 in terms of which the child care leave is allowed inter-alia for attending the sickness of the child. Had the petitioner not proceeded abroad for treatment of her child, it could be violation of the OM dated 11.09.2008 (ibid). Moreover, the respondents had sent no communication either electronically or otherwise to the petitioner either cancelling her leave or rejecting her leave application or refusing the permission to go abroad or asking her to re-join the service. Accordingly, in the absence of any such decision and communication thereof to the petitioner, no disciplinary action could have been initiated against her.

8. Counsel for petition has relied upon the relevant instructions issued by Government of India in this regard are read as under:

“.....(3) Action for unauthorized absence from duty or overstaying of leave. - The following decisions have been

taken in consultation with the Department of Personnel and the Ministry of Finance: -

(i) When a temporary Government servant asks for leave in excess of the limits prescribed under Rule 14 (b) of the Revised Leave Rules, 1933 (now Rule 32 of the Central Civil Services (Leave) Rules, 1972) and if the circumstances are exceptional, a decision could be taken by the leave sanctioning authority to grant further leave in excess of the limits in consultation with the Ministry of Finance. Such cases should be referred to the Directorate.

(ii) When a temporary Government servant applies for leave beyond the prescribed limit of extraordinary leave and the leave sanctioning authority is not satisfied with the genuineness of the grounds on which further leave has been asked for, nor does it consider the grounds as exceptional, the leave cannot be granted. In such a case, the Government servant should be asked to re-join duty within a specified date failing which he would render himself liable for disciplinary action. Disobedience or orders to re-join duly within a specified period would afford good and sufficient reasons for initiating disciplinary action under CCS (CCA) Rules, 1965. If he re-joins duty by the stipulated date, he may be taken back to service and the period of absence not covered by leave be treated as overstayal of leave and dealt with in accordance with the orders regarding regularization of overstayal of leave.

If the Government servant does not join duty by the stipulated date, it would be open to the disciplinary authority to institute disciplinary proceedings against him. If during the course of disciplinary proceedings becomes for re-joining duty, he should be allowed to do so without prejudice to the disciplinary action already initiated against him (unless he is placed under suspension) and the disciplinary action concluded as quickly as possible. The question of regularization of the period of overstayal of leave be left over for

consideration till the finalization of the disciplinary proceedings.

(iii) If a Government servant absents himself abruptly or applies for leave which is refused in the exigencies of service and still he happens to absent himself from duty, he should be told of the consequences, viz, that the entire period of absence would be treated as unauthorized entailing loss of pay for the period in question under proviso to Fundamental Rule 17, thereby resulting in break in service. If, however, he reports for duty before or after initiation of disciplinary proceedings, he may be taken back for duty because he has not been placed under suspension. The disciplinary action may be concluded and the period of absence treated as unauthorized resulting in loss in pay and allowances for the period of absence under proviso to FR 17 (1) and thus a break in service. The question whether the break should be condoned or not and treated as dies non should be considered only after conclusion of the disciplinary proceedings and that too after the Government servant represents in this regard.

2. It is clear that a Government servant who remains absent unauthorizedly without proper permission should be proceeded against immediately and this should not be put off till the absence exceeds the limit prescribed in Rule 32 (2) (a) of the COS (Leave) Rules, 1972. However, the disciplinary authority should consider the grounds adducted by the Government servant for his unauthorized absence before initiating disciplinary proceedings. If the disciplinary authority is satisfied that the grounds adducted for unauthorized absence are justified, the leave of the kind applied for and due and admissible may be granted to him ".

9. It is further submitted that in exercising her Fundamental Right to travel, when she was on Child Care Leave, the petitioner did not commit any

misconduct. She had duly informed the respondents about her act of proceeding abroad and had also applied for extension of leave. The respondents never sent her any communication, asking her not to go abroad or to return back or espousing that she had no permission to go abroad.

10. To strengthen his arguments, learned counsel for the petitioner has relied upon the case of *Satish Chandra Verma vs. Union of India Anr.: 2019 (2) SCT 741(SC)* whereby an IPS Officer who was denied permission to go abroad, Hon'ble Supreme Court reversed the Judgment of High Court and Central Administrative Tribunal and ruled that even the pendency of Departmental proceedings can also be no ground to prevent the appellant from travelling abroad. So when the respondents could not have prevented, the petitioner from travelling abroad and could not have denied her permission to do so, if the petitioner exercised her fundamental right, no misconduct could have been alleged against her.

11. It is argued by counsel for the petitioner that the petitioner had committed no misconduct, however at the instance of one Pooja Arora, Ms. Vandana Chanana i.e. respondent No.4 issued a frivolous charge memo dated 02.08.2016, which was never served upon the petitioner, till imposition of penalty of removal upon her. The malafide and bias on the

part of respondent No.4 in issuing the charge memo is apparent from the fact that in the charge sheet itself she deemed the duly sanctioned CCL to petitioner as cancelled and treated the period as unauthorized absence; questioned the non-furnishing of affidavit, which was never asked for before sanctioning the CCL; and made the allegation contained in Article II of the charge which was dropped by the appellate authority. The averments made by respondents in their counter affidavit stating that the charge No.2 was dropped read thus:- *"Hence the charge No.2 was dropped"*. When charge No.2 was dropped by the appellate authority, virtually there was no misconduct by the petitioner, as regarding absence, when no order cancelling the leave of the petitioner and calling upon her to re-join the duty had been passed and the duly sanctioned leave was cancelled only in the charge sheet, no misconduct could have been alleged against the petitioner and the impugned charge sheet could not have been issued. Regarding requirement of affidavit at the time of applying for CCL, when the petitioner was not required to furnish any such affidavit and the leave was duly sanctioned to her, again by no stretch of imagination, one could say that in not furnishing a document which was never asked for, the petitioner committed any misconduct. As far as travelling abroad is concerned, as has

been ruled by Hon'ble Supreme Court, in *Satish Chandra Verma (Supra)* the petitioner has fundamental right to do so and she had duly informed about her proceeding abroad to respondents and had also applied for extension of leave. The respondents never refused the petitioner either the permission to go abroad or the extension for leave.

12. Ld. Counsel argued that as can be seen from the Article of charges/imputation of misconduct, there is no allegation of willful absence against the petitioner. It is stair decisis that the absence or even unauthorized absence does not amount to misconduct, unless the same is found willful.

13. To strengthen his arguments, learned counsel has relied upon the case of *Krushan Kant Parmar Vs. Union of India & Anr.: (2012) 3 SCC 178* whereby the Hon'ble Supreme Court held that:

".....18. In a departmental proceeding, if allegation of unauthorized absence from duty is made, the disciplinary authority is required to prove that the absence is willful, in the absence of such finding, the absence will not amount to misconduct "

14. Ld. Counsel submitted neither the charge sheet was actually served upon the petitioner nor any attempt made to actually serve the same upon her, but the respondent conducted ex-parte inquiry. It is the finding of the

inquiring authority that whereabouts of the petitioner were not known. Thus, there could be any question of service of charge sheet upon the petitioner.

The relevant excerpt of the inquiry report read as under:

".....18. Brief Submitted by CO: NilL Co did not appear before Inquiring Authority for hearing. All the possible efforts were made throughout the inquiry to find out the present whereabouts of CO. Neither CO replied to any of the communication sent to her nor did she try to inform about her whereabouts during the inquiry. Therefore, the inquiry was held ex-parte. After receiving the brief of PO on her official e-mail ID for her submission if, any. However, CO failed to submit her written brief to IA till submission of this report...."

15. It is further submitted that the fact of the petitioner being abroad and the absence of actual service of charge sheet upon her is also apparent from the order of the appellate authority. The relevant excerpt of the order read as under:

" AND WHEREAS Ms. Anju was directed to submit her written representation as she might wish to make against the proposal within 15 days of receipt of the said Memorandum. As Ms. Anju had already proceeded abroad, the above communication was also sent through Registered AD to all her residential address available in the official records as well as through her official e-mail ID. Ms. Anju Neither responded to the above communications nor she submitted her written reply to Disciplinary Authority. Accordingly, Disciplinary Authority decided that an inquiry should be conducted under rule 30 of GAIL Employees (CDA) Rules, 1986 and

vide order dated 30.08.2016, Shri S S Pangti, DGM (HRES), GAIL, New Delhi was appointed as Inquiring Authority (IA) to inquire into the charges framed against Ms Anju and Ms Gurmeet Bawa, Manager (HR-ES), GAIL, New Delhi was appointed as Presenting Officer (PC) to present the case before IA;

AND WHEREAS after completion of the inquiry, IA submitted its report dated 28.03.2017 to the Disciplinary Authority. In the inquiry report, IA concluded that all the charges levelled against Ms Anju stand proved. As per the provision of Rule 31 (ii) of GAIL Employees' (CDA) Rule 1986, a copy of the IA's report was forwarded to Ms. Anju vide memorandum dated 29.03.2017 to her official e-mail ID and to her addresses through Regd. AD., with a direction to submit her representation, if any within 7 days of the receipt of this memorandum. Ms. Anju did not submit her reply within the stipulated time period.

Further, in order to uphold the Principles of Natural Justice, a personal hearing was also granted to Ms. Anju vide e-mail dated 10.04.2017 directing her to appear in person on 17.04.2017 to explain the circumstances of the case in her defence. However, Ms Anju did not avail the opportunity of Personal Hearing on the scheduled date as afforded to her...."

16. Ld. counsel has pointed out that the charge sheet was served upon the petitioner through e-mail is incorrect, however the charge sheet was never served upon her. Even, when she attended the office on 01.06.2017, the removal order dated 31.05.2017 was not handed over to her and was sent only by post. Thus, apparently the respondents had devised to proceed against the petitioner not only ex-parte but clandestinely, which is violative of the 'Principle of Natural Justice and fair play'. As has been ruled by

Hon'ble Supreme Court in *Union of India & Ors vs. Dinanath Shantaram Karekar & Ors.: AIR 1988 SC 2722*, that in the absence of actual service of the charge sheet, the entire proceedings are vitiated. The relevant excerpt of the judgment dated 30.07.1998 read as under:

".....Where the services are terminated, the status of the delinquent, as a Government servant, comes to an end and nothing further remains to be done in the matter. But if the order is passed and merely kept in the file, it would not be treated to be an order terminating services nor shall the said order be deemed to have been communicated. Where the disciplinary proceedings are intended to be initiated by issuing a charge sheet, its actual service is essential as the person to whom the charge sheet is issued is required to submit his reply and, thereafter, to participate in the disciplinary proceedings. So also, when the show-cause notice is issued, the employee is called upon to submit his reply to the action proposed to be taken against him. Since in both the situations, the employee is given an opportunity to submit his reply, the theory of "Communication" cannot be invoked and "Actual Service" must be proved and established. It has already been found that neither the charge sheet nor the show cause notice were ever served upon the original respondent, Dinanath Shantaram Karekar, consequently, the entire proceedings were vitiated "

17. It is also submitted by counsel for the petitioner that not only the inquiry was conducted ex-parte, but the penalty of removal from service was imposed upon the petitioner by an authority sub-ordinate to the appointing authority. The fact that the order has been passed by an authority sub-

ordinate to the appointing authority is accepted in the order passed in appeal, which read as under:

".....The above ground of Ms. Anju that ED (CC & CSR) was not her Disciplinary Authority has no basis, as she has relied on the old schedule under Rule 29 of GAIL (CDA) Rules. Further, it is the Appointing Authority who can remove any employee from service and in this case, before removing Ms. Anju from the services of GAIL, ED (CC & CSR) being the Disciplinary Authority had also obtained necessary approval from her (Ms. Anju's) Appointing Authority i.e. Director (HR)..."

18. On the other hand, Mr. V.K. Garg, learned Sr. Advocate appearing for the respondent has submitted that the petitioner joined service of respondent-GAIL India Ltd. on 01.06.2002 as the then management trainee (CO) (Corporate Communication) in Grade-E-1. Subsequently, petitioner was promoted as Sr. Officer (CO), Dy. Manager(CC) and then Manager (CO) w.e.f. 15.04.2015. Petitioner was last working as Manager (CO) in Grade E-4. She applied online for childcare leave (CCL) for the period from 25.04.2016 to 25.10.2016. Though she did not submit an affidavit as mandated in Clause 12B (xiii) 85 Rule 19 of GAIL Leave Rules and also Circulars dated 12.01.2010 & 09.10.2014, the CCL came to be sanctioned online for period upto 25.10.2016. On scrutiny of attendance register of CC department for the month of April 2016, it was noticed that petitioner had

not submitted the affidavit in support of her application for childcare leave as is mandated, by GAIL Leave Rules and Circulars. The dealing Officer of HR Department [DM (HR)] accordingly, sent an email/communication dated 09.06.2016 on the official email address of petitioner, requesting her to immediately submit the required affidavit. This email was replied by petitioner vide mail dated 10.06.2016 at 11:27:05 a.m. 1ST stating as follows:—

"This is an intimation to GAIL for proceeding abroad for my daughter's treatment. Aanvi is suffering from psoriasis right from childhood and I have tried all possible treatments in India be it allopathy, or Ayurvedic but it is of no use. I'm taking her to China as the only treatment available is in traditional Chinese herbal medicine so I am taking her there for her treatment. My child is very young and I don't want her to suffer any side effects of allopathy treatment. As she is the only child I have I don't want to take any chance for her. She is also suffering from bronchitis. My poor daughter is suffering a lot and I have to take care of her. Since I am on CCL I want her to get well fully. You are also requested to please extend my CCL by 1 year please. Till my daughter is completely well."

19. It is further submitted that at the time of writing of the above email at 11:27 a.m., petitioner had already boarded flight number TG 324 from New Delhi to Bangkok without any prior intimation to the respondents. GAIL Employees (Conduct, Discipline and Appeal) Rules, 1986 per Rule 5 define

the following as misconduct:

- (ii) leaving station without permission;*
- (xvii) breach of any law or of the conduct rules and any other rule or order/instructions issued by the company from time to time;*
- (xxxviii) no employee shall leave country without obtaining prior permission of the competent authority.*
- (xl) no employee shall absent himself from duty without having obtained the permission of the authority empowered to grant him leave. No employee shall leave station where he is posted without obtaining previous permission of the authority.*
- (xli) in case any employee proceeds on any foreign trip with due permission and sanction of the competent authority, he shall return to his headquarters immediately on expiry of the sanctioned period of the trip and shall not overstay in any foreign country without prior permission and sanction of the competent authority."*

20. Clause 12B (xiii) of GAIL Leave Rules (Page 596) provide as under:

"Rule 12B(xiii): No CCL shall be sanctioned to proceed abroad and those who have already been sanctioned CCL shall also not proceed abroad during such sanctioned leave. The employee shall submit an affidavit in the enclosed format to, this effect"

21. Clause 19 and 22 of Leave Rules of GAIL state as follows:

19. PRIOR SANCTION OF LEAVE

An employee shall not proceed on leave without prior sanction from the Competent Authority. He shall state the reasons for the leave applied for and his leave address. Except in emergencies, applications for leave for a periods upto 3 days shall be made one day in advance and for leave of more than 3 days at least 7 days in advance of the date from which the leave is required.

22. ABSENCE FROM DUTY

If an employee remains absent without proper intimation, he will be marked absent and it will render him liable for disciplinary action for misconduct. If an employee remains absent for a period of more than 10 days or does not report for duty within 10 days from the date of expiry of leave granted to him, the Appointing Authority may presume that he has no interest in the employment and has voluntarily abandoned the service of the Company and accordingly his name shall be struck off the rolls of GAIL without any notice.”

22. It is also submitted that since the petitioner not only failed to comply with the Rules but also proceeded to travel abroad without prior permission, the disciplinary authority defined under Rule 3(g) of the Rules read with Rule 29 issued a charge memo dated 02.08.2016 . The charge memo contained two charges which are as follows:

Article-I

a) Ms. Anju while applying for childcare leave did not submit an affidavit which is mandatory requirement under the Rules.

b) Ms. Anju proceeded abroad without prior permission from the competent authority.

c) The CCL sanctioned to Ms. Anju w.e.f. 25.04.2016 shall be deemed to be cancelled and thereby her absence from duty w.e.f. 25.04.2016 is unauthorised.

Article-II

While working as DM(CC) and DM(Marketing), Ms Anju had submitted on 16.08.2011 and subsequently on 07.07.2014 giving false information regarding

transactions made during the purchase of immovable property and submitted bogus documents.

23. It is submitted that the charge memo was sent to the petitioner a) by registered AD post on her last known address; b) through email and c) the notice for inquiry was also published in Times of India as well as Dainik Jagran on 27/28.10.2016. The petitioner did not respond to any of these modes of service and neither joined the inquiry nor wrote any letter to the respondent. The inquiry authority also sent notice of initiation of disciplinary inquiry vide email dated 12.09.2016 at 04:31 p.m. This was duly delivered to the petitioner on 12.09.2016 at 05:34 p.m. The inquiry authority thus left with no choice, had to proceed the inquiry ex-parte. The inquiry was completed and the inquiry authority directed the presenting officer to submit a written brief. The presenting officer submitted written brief dated 22.03.2017 and a copy of the same was also sent to the petitioner through email on 23.03.2017 at 05:09 p.m. The inquiry officer thereafter vide its report dated 28.03.2017 concluded both the charges to be proved against petitioner. Vide email dated 29.03.2017 at 01:20 p.m., the disciplinary authority forwarded copy of inquiry report to the petitioner on her operational official email id. This was delivered to the petitioner on 29.03.2017 at 01:21 p.m. The disciplinary authority once again forwarded

the copy of the inquiry report to the petitioner on 10.04.2017 at 12:22 p.m. Petitioner still did not respond.

24. The GAIL Employees (Conduct, Discipline and Appeal) Rules, 1986 provide (Page 308) as under:

"4. The DGM, GM and ED as DA, if not the appointing authority, before imposing the major penalty of removal or dismissal needs to seek prior approval of the appointing authority of the employee against whom such penalty is proposed to be imposed. Similarly, the appellate authority or the reviewing authority as the case may be, if not the appointing authority, needs to seek prior approval of the appointing authority of the employee against whom such penalty is proposed to be imposed. Where the appellate authority or the reviewing authority is higher than the appointing authority, no such approval is required."

25. It is further submitted by counsel for the respondent that the disciplinary authority i.e. Executive Director (CO and GSR) took prior approval/ concurrence of the appointing authority namely Director HR and passed punishment order dated 31.05.2017 imposing punishment of removal from service. The petitioner has not disclosed the date of her returning back to India. However, as per status report filed on 22.05.2015 by Shri Dinesh Tiwari, ACP/ DIU/WEST shows that Petitioner was residing in Faridabad along with her daughter and Shri Rajat Arora and his 02 children on

25.05.2017. The Petitioner preferred appeal dated 24.06.2017 against the order of punishment. The appellate authority vide order dated 23.08.2017 was pleased to drop Article of charge no. II, however maintained the order of punishment i.e. removal from service for the Article of charge no. I. Review dated 30.01.2018 was rejected by the reviewing authority vide order dated 11.04.2018. Thereafter, petitioner vide W.P.(C) No.7061/2018 challenged the inquiry report, order of punishment, the appellate order and also the order passed by the reviewing authority. This Court vide order dated 30.07.2018 concluded that circumstances do not support the case of the petitioner as the termination has gone through various steps. However, in view of the case pleaded, the order of removal was passed at the back of the petitioner and the appellate/reviewing authority were not having sufficient material to consider the case of the petitioner. Thus, this Court remanded the matter back to the reviewing authority with a direction to pass fresh order by giving due opportunity to the petitioner to explain her case as to whether her absence was under compelling circumstances or was willful disobedience. In terms of order dated 30.07.2018 of this Court, petitioner appeared before the reviewing authority for personal hearing and the reviewing authority vide reasoned order dated 06.12.2018 was again pleased to reject the review

petition.

26. Submissions made by the counsel for respondent (in rebuttal to the submission of petitioner) were that the GAIL Employees (Conduct, Disciplinary and Appeal) Rules, 1986 prescribe Executive Director as the disciplinary authority for an officer E-4 Grade and thus the disciplinary authority need not be the appointing authority for issuance of the charge sheet and an authority though subordinate to the appointing authority but if superior to the charged officer, is competent to issue charge memo. Reliance in support is placed on *State of M.P. vs. Shardul Singh: (1970) 1 SCC 108*; *Steel Authority of India vs. Dr. R.K. Diwakar: (1997) 11 SCC 17* and *Secretary, Ministry of Defence vs. Prabhash Chandra Mirdha: (2012) 11 SCC 565*.

27. Learned counsel further submitted that the respondents have followed every possible mode of service to serve the charge memo upon the petitioner a) by registered AD post on her last known address; b) through email and c) the notice for inquiry was also published in Times of India as well as Dainik Jagran on 27/28.10.2016. Petitioner did not respond to any of these modes of service and neither joined the inquiry nor wrote any letter to the respondent. The inquiry authority also sent notice of initiation of disciplinary inquiry

vide email dated 12.09.2016 at 04:31 p.m., accordingly, duly delivered to the petitioner on 12.09.2016 at 05:34 p.m. Thus the petitioner was served by more than one method of service prescribed in law.

28. Moreover, after the inquiry was completed ex-parte, the petitioner was duly served with the copy of the written brief dated 22.03.2017 submitted by the presenting officer through email dated 23.03.2017 at 05:09 p.m. Thereafter vide email dated 29.03.2017 at 01:20 p.m. the disciplinary authority forwarded the copy of inquiry report to the petitioner on her operational official email ID which has been delivered to the petitioner on 29.03.2017 at 01:21 p.m. Thus the submission that the petitioner was not served with the charge memo or that she was unaware of the inquiry against her is without any basis.

29. Further submitted that respondent GAIL being a government company is a State for the limited meaning of the term under Article 12 of the constitution. However the employees of GAIL are not the "*govt. employees*" within the meaning of the term as used in Article 311 of the Constitution and therefore the mandate under Article 311(1) that the order of punishment of removal/dismissal cannot be passed by an authority subordinate to the appointing authority, is not applicable in case of the

employees of a govt. company such as GAIL, Additionally, the memorandum of article of GAIL also does not provide that the mandate of Article 311(1) shall be applicable to its employees. Therefore an order of punishment of removal from service passed by the disciplinary authority who is subordinate to the appointing authority is not vitiated in this case.

30. Even otherwise, the QAIL Employees (Conduct, Discipline and Appeal) Rule\$, 1986 provide that the DGM, GM and ED as DA, if not the appointing authority, before imposing the major penalty of removal or dismissal need to seek prior approval of the appointing authority of the employee against whom such penalty is proposed to be imposed. Accordingly in the present case, the disciplinary authority i.e. Executive Director (CC and GSR) had taken prior approval/concurrence of the appointing authority namely Director HR before passing punishment order dated 31.05.2017.

31. In addition, the record clearly shows that the petitioner went abroad for a joyous sojourn with Mr. Rajat Arora and his children to several tourist destinations than the false claim of medical emergency of her daughter pleaded as an explanation for her unauthorized foreign travel. The following facts would expose the falsity of the explanation submitted by the petitioner

before this Court:

(a) Petitioner claims to have received email confirmation for the doctor's appointment on 10.06.2016 at 9.21 am and she boarded flight at 11 am which cannot be possible unless petitioner at least 30 days in advance apply for visa and only after getting visa book an international ticket. Here petitioner concealed all this from this.

(b) Before this Court, petitioner orally claimed that she had purchased ticket on 9.6.2016 using the influence of her father. Assuming it to be true without admitting, petitioner has not explained as to how on 9.6.2016 she had come to know that she will get an email on 10.6.2016 for appointment with the doctor. Apart from the fact that petitioner till date has not produced any medical record of such treatment of her daughter in China and it has been verified by the police in its status report that petitioner in fact had on 10.6.2016 boarded flight no.TG 324 to Bangkok instead of Hong Kong. Further petitioner had travelled along-with Rajat Arora and his children. There is no explanation as to how they also had got visa and ticket for the same day and same flight.

(c) Ms. Pooja Arora wife of Rajat Arora against whom petitioner has

made allegations of malafide had filed a police complaint on 10.6.2016 itself at PS Hari Nagar, Delhi alleging that her husband Rajat Arora was in illicit relationship with the petitioner (Anju Bala) and had secretly fled abroad alongwith her two children.

(d) Ms. Pooja Arora also filed a habeas corpus petition vide W.P. (Crl.) No. 1922/2016 before this Court wherein the police in its status report not only verified that petitioner had gone abroad with said Rajat Arora but also the countries she visited. Not only this, petitioner and the said Rajat Arora returned back to India after one year only after red corner notice was issued against the said Rajat Arora under the orders of this Court. Even after her return petitioner was living with the said Rajat Arora at Faridabad as reported by Police.

(e) Petitioner herself filed on record her own letter dated 23.07.2016 addressed to her father, wherein she has stated as under:

" Nonu is absolutely fine and happy. Yanha Thodi sit hand hai to nonu ke feet thode se dry ho rahe hai but psoriasis ki problem nahi hai ab, main ramdev wali medicines le aayi thi for at least 4 months, I bag was only full of medicines. I brought my medicine too and I am well too"

"..... In GAIL I have applied CCL for another year and have not resigned. I wrote a mail to HR stating that I am going to China for my daughter's treatment of

psoriasis and bronchitis as only Chinese traditional medicine has a cure for both. I am not working anywhere and going to China only for my daughter's treatments. I have already signed and handed over the vakaltnama and my lawyer will take care if any problem arises in GAIL, aur aap bhi sabko vahi kehna ki nonu ke illai ke live hi mein China gavi hoon aur kuch nahi...

....Muje phirse who country chodni padi and had to change the country again so sub kuch dobara karna 16 pada. Nonu ka school admission bhi ghar bhi etc. etc. Nonu ka admission ho gaya thankfully uska year waste nahi hua bach gaya "

32. This letter of the petitioner is an admission by her that the plea of medical treatment of the daughter was a ruse and strategy adopted by her and she advised her father not to tell anyone the truth but this excuse only. She also admits that she was settled in some country and even had got her daughter admitted to the school. Therefore it is admitted by the petitioner that the plea of treatment of her daughter was taken by the petitioner as a strategy than truth. In spite of this, Court specifically asked the petitioner to disclose and produce her passport, she first tried to mislead the court by taking the plea that her passport was seized by the police. Later when belied by the police, she intentionally did not produce her passport and took the plea that she does not know where is her passport. Father of the petitioner too in his letter dated 17.07.2016 has admitted that petitioner has visited

China, Singapore, Malaysia, HongKong, Bangkok etc. for touring and/or for appearing in interview for positions better than Manager GAIL India Ltd. where she is working presently for the last 14 years. She told him so many times that she may leave India in a hurry to join a foreign oil/gas company in case she is selected. Therefore, there is no acceptable explanation by the petitioner about her travel abroad in violation of the Rules. Facts clearly demonstrate that her visit abroad was willful, planned and not due to any compelling circumstances. Petitioner has exposed her conduct as well as falsity of her plea before this Court.

33. On behalf of the petitioner, mainly the following four submissions were made:

a. The charge memo dated 02.08.2016 has been issued by the executive director-disciplinary authority who is subordinate to the appointing authority (Petitioner however later on gave up this argument).

b. The charge memo dated 02.08.2016 has never been served upon the petitioner therefore, in the absence of service of charge sheet upon the petitioner, the entire subsequent exercise namely the disciplinary proceedings, the punishment order etc. stand vitiated. Petitioner relied upon

the apex court judgment in *Union of India vs. Dinanath Shantaram Karekar: AIR 1988 SC 2722* in this behalf.

c. The order of punishment has been passed by the disciplinary authority who undisputedly is subordinate to the appointing authority. Petitioner relied upon the judgment of this Court in *Rama Tyagi Vs. Delhi Development Authority: (2000) 56 DRJ (Suppl.) 602*.

d. Even though the Rules require prior permission for travelling abroad, petitioner has a justifiable explanation for non compliance of the Rules and therefore her travelling abroad due to medical emergency while on childcare leave cannot be treated as willful. It is also argued that right to travel abroad is an important basic human right. Petitioner relied upon the judgment of the Hon'ble Supreme Court of India in *Mrs. Maneka Gandhi v. Union of India: (1978) 1 SCC 248*.

e. In this behalf, ld. counsel for the petitioner to claim the action of the petitioner as not willful but arisen out of emergency relied upon email dated 03.06.2016 at 05:18 p.m. written by petitioner to St.Teresa's Hospital, Hong Kong whereby petitioner sought appointment of a dermatologist for treatment of her daughter Aanvi whom she claimed to be suffering from

psoriasis since birth. This email was replied by another hospital namely Queen Elizabeth Hospital, Hong Kong on 06.06.2016 at 09:59 a.m. to say that there is no dermatology department in the hospital. Petitioner next relied upon email dated 10.06.2016 received at 09:21 a.m. whereby petitioner was informed that she has an appointment with a dermatologist on 11.06.2016 at 1730 hours. According to petitioner it was because of this urgency that the petitioner on receipt of this email ,dated 10.06.2016 at 09:21 a.m. boarded a flight to Bangkok on 10.06.2016 at 11:00 a.m. itself and could not thus seek prior permission of the respondent.

34. During the course of arguments, this Court confronted the petitioner as to how she could on 10.06.2016 itself take an international ticket and travel abroad within almost one and half hours. This Court also questioned the petitioner as to how she could get visa to travel to China. The petitioner present in court informed this Court that she had taken the ticket in the evening of 09.06.2016 by using influence of her father to arrange everything for her. On the asking of the Court, Ld. Counsel spoke to the petitioner on the speaker of his cell phone from the court itself and the petitioner also reiterated the same. This Court then directed the petitioner to produce her passport as that would reveal all the places which the petitioner visited

during her one year stay abroad between 10.06.2016 till June 2017. Petitioner initially claimed that her passport was seized by DIU (West) Unit, P.S. Hari Nagar, however when the Insp. Inder Lai from DIU (West) appeared on 04.09.2019, pursuant to the orders of this Court and pointed out that the passport of petitioner or her daughter were never seized, then the petitioner could not offer any further explanation but still did not produce her passport. This Court then confronted the petitioner with the status report dated 27.07.2016 filed before this Court by SHO PS Hari Nagar, Delhi wherein it has been stated that petitioner and her friend with whom she had left on 11.06.2016 had travelled to United Arab Emirate, Belgium, Hong Kong and United Kingdom, petitioner informed this Court that she had travelled to South Africa and Nepal also.

35. During hearing, it was argued on behalf of the respondents thus:-

- i) The petitioner visited different countries and there was no emergency to leave the country on 10.06.2016.
- ii) Charge sheet was served upon her by e-mail.
- iii) In view of the judgment of Hon'ble Supreme Court in ***Pyarelal Sharma Vs Managing Director & Ors. Etc etc: (1989) 3 SCC 448***, the penalty could

be imposed by the subordinate authority.

36. As far as the first plea is concerned, the petitioner had to leave the country in emergency and under compelling circumstances.

37. Unfortunately, the marriage of the petitioner with Chander Veer Singh Ved got dissolved, which could not go well with the parents of the petitioner and she alongwith her minor daughter were left alone. Being in depressed state, she fall in prey of ploy of Pooja Arora and her family, which played deep trick against her, just to extract financial benefits from her. When the petitioner started demanding her money back from Pooja Arora, her husband projected soft corner towards her, so that she was prevented from taking drastic action against the family and Pooja Arora colluded with respondent No.4 to cause damage to her service. The fact that the Pooja Arora extorted money from the petitioner can be established from two cheques issued by Pooja Arora in favour of the petitioner as return of the money she took from the petitioner. Later both the cheques got dishonoured. The ploy can also be established from the fact that Pooja Arora filed W.P.(Crl) No. 1922/2016 against the petitioner and her father as also against her husband, but when on 25.05.2017, this Court discharged the notice issued to the petitioner and her father, on 01.08.2017 she did not press the petitioner against her husband

namely Rajat Arora. The petitioner had to leave the country for treatment of her daughter, for which she was helped by the husband of Pooja Arora, which in fact was a ploy against her. When petitioner reached Hongkong, she was told by the husband of Pooja Arora that her money, which was with him, was lost and then she was at his mercy. Nevertheless, what is relevant for the purpose of present petition is that the petitioner had to leave the country in emergency and then she had to stay there against her wishes and in compelling circumstances. In other words, the travelling abroad by the petitioner was in emergent and compelling situation and was not willful. Nevertheless she availed treatment for her daughter at China. The medical prescription is enclosed herewith (Annexure E). The petitioner could not come in open against the person who controlled her movements after she reached Hongkong by threatening her, as she could be subjected to further harm either to her or to her daughter.

38. As far as the plea of service of charge sheet through e-mail is concerned, the same is incorrect. The charge sheet was never served upon the petitioner through e-mail or any mode. Even when the petitioner was personally present in office on 01.06.2017, the removal order was not disclosed to her and were sent to her residence by post, which was received

on 02.06.2017.

39. Regarding the plea of the judgment of Hon'ble Supreme Court in the case of ***Pyarelal Sharma (Supra)*** the judgment is in favour of the petitioner. In para 19 of the judgment it has been noted that the Managing Director who terminated the services of the petitioner was appointing authority. The relevant excerpt of the judgment read as under:-

"..... Since on the date of termination of Sharma's service, the Managing Director had the powers of appointing authority, he was legally competent to terminate Sharma's services."

40. It is not the case of respondents that the removal order was not required to be passed by the appointing authority. The stand taken by them is that the subordinate authority could pass the order with approval of the appointing authority. At the first page the removal order does not reflect any prior approval and secondly as has been ruled by this Court and Hon'ble Supreme Court, that the power of appointing authority to pass removal order can neither be conferred upon any subordinate authority nor can it be validated subsequently. In the case of ***Rama Tyagi (supra)***, this Court had relied upon a judgment in ***Gujarat Steel Tube Ltd vs. Gujarat Steel Tubes Mazdoor Sabha: AIR 1980 SC 1896*** to take a view that the order of

removal could not have been passed by the authority subordinate to appointing authority. Obviously, the Gujarat Steel Tube Ltd was a company, as GAIL, in the present case. Para 8 of the judgment read as under:

*"8. It is not disputed that the petitioner was removed from service by the Director (Personnel) who is an authority subordinate in rank to the Vice-Chairman, who appointed the petitioner in service. In support of her contention, the learned counsel for the petitioner relied upon the ratio of the decision in **Gujarat Steel Tubes Ltd. Vs. Gujarat Steel Tubes Majdoor Sabha; AIR 1979 SC 1914** as also the decision of the Supreme Court in **Dhara, Dev Mehta Vs. The Union of India and Ors, 1980 U.J. SC1980** as also the decision of this court in **SC Mehta V. Union of India and Ors; 1983(3) SLR 714**. While refuting the aforesaid submission of the counsel for the petitioner, counsel for the respondent in support of his contention relied upon the ratio of the decision in **State Bank of India vs. S. Vijaya Kumar; AIR 191 SC 79...**"*

41. As has been ruled by Hon'ble Supreme Court in **Malkiat Singh vss. State of Punjab & Ors.: JT 1996 (2) SC 648**, absence sometimes may be inevitable and the employees should be given opportunity to work efficiently to prove excellence. Though the petitioner wants to live in peace and has no intention to prosper any allegation against anyone to invite danger to the life of her daughter as also to her life. But just to satisfy the conscious of the Court that she has been prey of ploy of the husband of Pooja Arora, she enclosed herewith her whatsapp chat with her husband, this

clearly shows that they had all eyes on financial resources of the petitioner and made her to leave the country and then created the circumstances that she was compelled to stay there as per his wish. The chat read thus:

*"....Pooja : Online
I overheard Mumy n Papa talking.. Dnt think I
overheard Jagat Singh... As I was Sleeping at that time.
...R U Aware of HDFC account of Anju What's this
now!....
... Her personal account in HDFC.
...If U r aware of What's in that
...I dnt know... I hd t details long time What
... .Rest wtz new in tat... I dnt knowMeans...
...Means ..Tat we can always check. If ur*

42. The fact remains that in the charge sheet itself, she deemed the duly sanctioned CCL to petitioner as cancelled and treated the period as unauthorized absence. Regarding the non-furnishing of affidavit which was never asked for before sanctioning the CCL and the allegations contained in Article II of the charge has been dropped by the appellate authority. The averments made by respondents in their counter affidavit that the charge No.2 was dropped. When charge No.2 was dropped by the appellate authority, virtually there was no misconduct by the petitioner. Regarding absence, when no order cancelling the leave of the petitioner and calling upon her to re-join the duty had been passed and the duly sanctioned leave

was cancelled only in the charge sheet, no misconduct could have been alleged against the petitioner and the impugned charge sheet could not have been issued.

43. Regarding requirement of affidavit at the time of applying for CCL, when the petitioner was not required to furnish any such affidavit and the leave was duly sanctioned, by no stretch of imagination, one could say that in not furnishing a document which was never asked for, the petitioner committed any misconduct regarding visiting to China.

44. As far as travelling abroad is concerned, as has been ruled by Hon'ble Supreme Court, in *Satish Chandra Verma (Supra)* the petitioner has fundamental right to do so and she had duly informed about her proceeding abroad to respondents and had also applied for extension of leave. However, the respondents never refused the petitioner either the permission to go abroad or the extension for leave.

45. On perusal the material available on record, it is established that neither the charge sheet was actually served upon the petitioner nor any attempt made to actually serve the same upon her, but the respondents conducted ex-parte inquiry. It is pertinent to mention here that in the finding

of the inquiring authority, whereabouts of the petitioner were not known. Thus, there could not be any question of service of charge sheet upon the petitioner.

46. As pointed out by counsel for the respondent that the charge sheet was served upon the petitioner through e-mail is incorrect, however, the charge sheet was never served upon her. Even when she attended the office on 01.06.2017, the removal order dated 31.05.2017 was not handed over to her and was sent only by post. Thus, apparently the respondents had devised to proceed against the petitioner not only ex-parte but clandestinely, which is violative of the '*Principle of Natural Justice and fair play*'.

47. It is pertinent to mention here that the Hon'ble Supreme Court in ***Dinanath Shantaram Karekar (supra)***, that in the absence of actual service of the charge sheet, the entire proceedings are vitiated.

48. It is not in dispute that the penalty of removal from service was imposed upon the petitioner by an authority sub-ordinate to the appointing authority. The fact that the order has been passed by an authority sub-ordinate to the appointing authority is accepted in the order passed in appeal.

49. It is pertinent to mention here that as can be seen from the above, the

appellate authority viewed that the disciplinary authority had obtained the approval of the appointing authority. The said finding is not correct. The penalty order nowhere says that the same has been issued with the approval of the appointing authority. Rather, the authority which passed the order authoritatively says, "*now therefore it is ordered*". For easy reference, the relevant excerpt of the penalty order is reproduced herein below:-

".....NOW, THEREFORE, it is ordered that Ms. Anju Manager (CC), be removed from services of GAIL (India) Limited with immediate effect i.e. the date of issuance of this order. Her continued unauthorized absence from duty w.e.f. 26.10.2016 till date of issue of this order is treated as dies-non for which no pay 85 allowances, perks & performance related payments shall be admissible. It is further ordered that the entire period of absence from 26.10.2016 till date of this order, shall be treated on 'no work no pay' basis and shall not be counted for her service. However, Ms Anju shall be entitled for other statutory benefits such as PF, gratuity etc, as per the relevant rules (if admissible otherwise) and for purpose, the period of her unauthorized absence shall not be counted.

A copy of this order shall be placed in PAD/Personal File of Ms. Anju.

Receipt of this Order shall be acknowledged by Ms. Anju, Manager (CC) Emp. No. 8238"

50. The order passed by an authority sub-ordinate to the appointing authority and there was no prior approval by the appointing authority. Besides as has been ruled by this Hon'ble Court in ***Rama Tyagi (supra)***

when an authority is not competent to pass the penalty order, the subsequent authorization made in its favour would not validate the order passed not by the appointing authority. Para 11 of the judgment read thus:-

".....11. In view of the aforesaid material difference in the language of the two provisions, in my considered opinions, the ratio of the decision in State Bank of India (supra) is not applicable to the facts and circumstances of the present case. The conclusion is also in consonance with the decision of the Supreme Court in Krishna Kumar (supra) for in that case, the provisions contained in Article 311(1) was considered by the Supreme Court and in that context held that, whether or not an authority is subordinate in rank to another has to be determined with reference to the state of affairs existing on the date of appointment and that it is at that point of time that the constitutional guarantee under Article 311(1) would become available and that the subsequent authorization made in favour of the authority passing the order of removal in regard to making appointments to the post held by the appellant cannot confer upon him the power to remove him. The aforesaid ratio of the Supreme Court is clearly applicable to the facts and circumstance of the present case. Even the subsequent empowerment made in favour of the Director (Personnel) by virtue of the amendment made in the Schedule in the year 1994 could not and did not change the situation where the order of appointment was made by a higher authority. The writ petition is, therefore, required to be allowed on this score alone. The impugned order, therefore, is required to be set aside, which I hereby do and she is ordered to be reinstated in service. However, it is not the end of the matter for at this stage it would be necessary also to decide as to what relief including consequential relief the petitioner is entitled to "

51. Counsel for the petitioner has further relied upon a case of ***Mysore State Road Transport Corporation vs. Mirja Khasim Ali Beg & Anr: AIR 1977 SC 747*** and ***State of Mysore vs. S.M. Ahmed & Anr.: (1977) 2 SCC 457*** wherein it was held that the power of dismissal could not be conferred upon the sub-ordinate authority. Para 11 of the judgment read thus:-

*"..... 11. In Mahadev Prasad Roy V. S.N. Chatterjee where the petitioner was appointed in 1928 as line operator in the Government Press by the Superintendent of the Press and the Government order was passed on June 20, 1952 delegating the power of appointment and dismissal to the Dy. Superintendent who initiated proceedings against the petitioner on a charge of theft and passed an order dismissing the petitioner from service on September 16, 1953, Ramaswami, J. (as he then was) accepting the contention of the petitioner that he could be dismissed only by the Superintendent of the Govt Press or by any higher authority and the order passed by the Deputy Superintendent was invalid and inoperative observed.
The word 'subordinate' in Article 311(1) must be properly construed to mean subordination in rank and not subordination of function; otherwise, the protection referred to in Article 311 would be illusory."*

52. A similar view was expressed by a Full Bench of the High Court of Jammu & Kashmir in ***State of J & K vs. Raj Mohammad: 1971 J & K LR 558***. In the case of ***State of UP Vs. Ram Naresh Rai: (1970) 3 SCC 173***, the Hon'ble Supreme Court held that *".....the power can be conferred on an officer other than the appointing authority to dismiss a Government*

servant provided he is not subordinate in rank to the appointing office or authority "

53. In view of the above discussions, under no circumstances, the authority subordinate to the appointing authority could have passed the order of removal of petitioner from service. As can be seen from the GAIL recruitment and procedure, the appointing authority for the petitioner is Director (HR). The Para 3.5 of the procedure read as under:-

"3.5 Appointing Authority means the authority to whom the power of appointment has been delegated as indicated below: -

a) The appointing authority for Executive posts in the Grade of E-7 to E-9 will be C& MD.

b) The Appointing Authority for Executive posts up to the Grade of E-6 including Executive Trainee E-1) will be Director (HR)

c) The Appointment Authority for Non-Executive posts (S-0 to S-7) will be as under:-

i) GM (if OIC)/ED of work centre for work centre level recruitment

ii) ED (HR)/ED (HRD) for recruitment at CO...."

54. The appointing authority for the petitioner (E-4) is Director (HR) whereas, Executive Director who passed the removal order is subordinate to it. In addition, penalty order is also vitiated on the ground that it could be based on the allegation which was not the part of charge sheet. When in the charge sheet, the leave sanctioned to the petitioner was deemed as cancelled

and she was treated absent from duty for the period of sanctioned leave, in the penalty order, the absence period was treated from 26.10.2016 onwards.

55. Since it is the opinion of the appellate authority that order of removal has been passed by the subordinate to the appointing authority, therefore, the inquiry proceedings and impugned order of removal of service is vitiated.

56. In view of above, I hereby set aside the impugned order dated 02.08.2016, inquiry report dated 28.03.2017, orders dated 31.05.2017, 23.08.2017, 11.04.2018 and 06.12.2018.

57. Consequently, the respondents are directed to reinstate the petitioner in service with all consequential benefits with 50% of the backwages for the period she has not worked.

58. Before parting from this petition, it is not in dispute that the petitioner had sought permission to go to China for treatment of her daughter but admitted fact is that she travelled to various countries and that is without taking prior permission from the respondents. Thus going to different countries without permission is a misconduct.

59. Accordingly, respondents are at liberty to initiate inquiry if deem fit by taking steps afresh by giving opportunity on being heard, to the

petitioner.

60. In view of above directions, the petition is allowed and disposed of.

(SURESH KUMAR KAIT)
JUDGE

NOVEMBER 05, 2019
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