IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment delivered on: October 31, 2023

\+ W.P.(C) 12357/2019, CM APPLs. 50503/2019, 21777/2022, 33649/2022, 26746/2023 & 27604/2023

RAMAKRISHNA DUTTA

..... Petitioner

Through: Mr. Dinesh S. Badiar, Mr. Ujjwal Kumar and Ms. Renu Mishra, Advs.

versus

UNION OF INDIA AND ORS.

..... Respondents

Through: Mr. Ravi Prakash, CGSC with Mr. Farman Ali, Ms. Usha Jamnal and Ms. Astu Khandelwal, Advs.

CORAM:
HON'BLE MR. JUSTICE V. KAMESWAR RAO
HON'BLE MR. JUSTICE ANOOP KUMAR MENDIRATTA

J U D G M E N T

V. KAMESWAR RAO, J

1. This petition has been filed challenging the order dated May 31, 2019 passed by the Central Administrative Tribunal, Principal Bench, New Delhi, ('Tribunal', for short) in Original Application (OA) Nos.252/2016, 532/2016, 2739/2016 and Review Application (RA) No.50/2019 in OA No.2739/2016. OA No.252/2016 was filed to set aside the order of penalty dated October 23, 2015, OA No.532/2016 was filed against the order dated November 20, 2015, whereby the

petitioner's salary has been stopped from January 2015. OA No.2739/2016 was filed to set aside the order of dismissal dated February 4, 2016. The Tribunal has decided the above OAs by a common order which has been impugned in this writ petition.

2. The petitioner was appointed as Stenographer Grade-III on October 8, 1993. He was promoted as Stenographer Grade-II and subsequently as Stenographer Grade-I. On March 24, 2014, he was granted 2nd Modified Assured Career Progression Scheme ('MACP', hereinafter) on completion of more than 20 years of continuous service. He participated in the departmental examination for promotion to the grade of Inspector held in 1998 and qualified the same. However, while his juniors and similarly situated persons in the respondent department were promoted, the petitioner was denied promotion to the grade of Inspector. In this connection, several litigation were initiated by the petitioner including OA No.1914/2010 before the Tribunal which vide order dated October 31, 2012 directed the respondent department to consider the grievances of the petitioner. During the pendency of the said OA, the respondent department stopped the salary of the petitioner for the month of July 2012 without issuing any notice to him. Consequently, the petitioner filed OA No.2777/2012, during the pendency of which, the respondent department started paying salary from October 2012. The Tribunal vide order dated May 30, 2014 directed the respondent department to pay the salary to the petitioner for the left out period, i.e., July, August and September, 2012.

3. Subsequently, a charge sheet dated July 4/7, 2014 was issued

by the respondents and disciplinary proceedings were ordered to be initiated against the petitioner. The charge sheet was challenged by the petitioner by way of OA No.3281/2014, which was disposed of by the Tribunal directing the respondent No.3 herein to withdraw the charge sheet. Though, the respondent No.3 withdrew the charge sheet dated July 4/7, 2014, a fresh charge sheet dated December 4, 2014 was issued, alleging the petitioner's absence from July 25, 2011 to August 14, 2014.

4. The petitioner challenged the charge sheet dated December 4, 2014 in OA No.631/2015. During the pendency of the OA, departmental inquiry proceedings were initiated in charge sheet dated December 4, 2014, and a penalty order dated October 23, 2015 was issued, which reads as under:

> *"Order*
> *Now therefore, for his acts of omission and commissions, discussed herein before, I order that:*
> *i. Shri Ramakrishna Dutta, Stenograher Gr-1 (PB2-GP4200/-) is reduced to a lower post of Stenographer Gr-II (PBl, GP-2400/-) from 26.10.2015 for a period of 5 years.*
> *ii. During the above period he will earn normal increment in the post of Stenographer Gr-II.*
> *iii. On promotion on the expiry of above period his two future increments will be postponed.*
> *iv. He will not regain his seniority after the expiry of above period.*
> *v. The period of unauthorized absence and recovery of salary / emoluments paid during the period of unauthorized absence shall be dealt by extant rules.*
> *(Rajeev Jain)*
> *Additional Director General (Admn.)"*

5. The above order was challenged by the petitioner before the Appellate Authority, which reduced the penalty vide order dated January 6, 2016 in the following manner:

"Order

I, accordingly, after considering the gravity of this case and quantum of penalty imposed by the Disciplinary Authority under Rule 11 (vi) of COS (CCA) Rules 1965 vis its the defence submissions, made by the Appellant, pass the following order under Rule 27 of the CCS (CCA) Rules, 1965:-

Shri Ramakrishna Dutta, Stenographer Gr-I (PB2-GP4200/-) is reduced to a lower post of Stenographer Gr-II (PBl, GP-2400/-) from 26.10.2015 for a period of 3 years.

i. During the above period he will earn normal increment in the post of Stenographer Gr-II.
ii. On promotion on the expiry of above period his two future increments will be postponed.
iii. He will not regain his seniority after the expiry of above period.
iv. The period of unauthorized absence and recovery of salary / emoluments paid during the period of unauthorized absence shall be dealt by extant rules.

The order of the Disciplinary Authority dated 23.10.2015 stands modified to the aforesaid extent.

(P.K.Mohanty)
Director General
Directorate General of Performance Management,
New Delhi"

6. Meanwhile, an order dated January 30, 2015 was passed by the respondent No.2 for the period from September 23, 2014 to January 14, 2015, relevant part of which reads as under:

"13. In light of the above findings, I order as follows:

1. I order that the period from 23.9.2014 to 14.1.2015 be treated as unauthorised absence from office by Shri R. K. Dutta, Stenographer Grade-I and he is not entitled to the pay and allowance during the period from 23.9.2014 till the date he joins his duty as per FR 17(1). Any pay and allowances paid to him during this period shall henceforth be recovered from him.
2. I order the period of absence of Shri R.K. Dutta from 23.9.2014 to 14.1.2015 shall be treated as break in service as per rule FR 17 A (iii).
3. I also order to initiate disciplinary action against Shri R. K. Dutta, Stenographer Gr.I to his unauthorized absence under CCS (CCA) Rules.
……………………......

(Rajeev Jain)
Additional Director General (Admn.)"

7. Subsequently, pursuant to the order dated January 30, 2015 a charge sheet dated April 10, 2015 was issued, which was challenged by the petitioner in OA No.3369/2015.

8. That apart, the petitioner's repeated requests to pay his salary allowances etc. during the pendency of the proceedings were rejected by the respondents. Even the request for payment of petitioner's own General Provident Fund ('GPF', for short) was rejected. It is consequent to this that OA No.1916/2015 was filed. Though the GPF money was paid by the respondents consequent to the order of the Tribunal dated October 8, 2015, a memo was issued on November 20, 2015 stating that the petitioner is not willing to join his duties. Therefore, OA No.532/2016 was filed.

9. It is the case of Mr. Dinesh S. Badiar, learned counsel for the petitioner that the charge sheets have been issued against the petitioner

after 3-4 years, and as such they suffer from inordinate delay. Further, ever since the petitioner's appointment w.e.f. October 08, 1993 till December 31, 2014 salary has been continuously paid to the petitioner by the respondents after mandatory absentee statement and issuance of certificates every month by different authorities after full verification of actual attendance, actual employment, amount actually due and after obtaining sanction by the competent authority as per rules and orders etc. including as per Rules 66, 67, 68 etc. of the Central Government Accounts (Receipts and Payments) Rules, 1983 promulgated under Article 283 of the Constitution of India. Even Leave Travel Concession (LTC), Leave Encashment for availing LTC and intermittent leaves of various kinds including earned leave, commuted leave, casual leave, restricted holiday etc. have been granted to the petitioner even during the alleged period of unauthorized absence, making it evident that the respondents have treated the petitioner to be in continuous service.

10. He stated that the pay and allowances of the petitioner were stopped and withheld vide order dated January 30, 2015, despite the petitioner not being suspended or terminated. Even subsistence allowance, children's education allowance and medical allowances were stopped, leading to great difficulties for the petitioner and his family.

11. After becoming Stenographer Grade-I vide order dated February 18, 2011, the petitioner has not signed the attendance register as per the common practice that was prevalent amongst the employees of the Group-A and B like Administrative Officer, Private Secretary,

Superintendent etc., till the introduction of the Biometric Attendance System w.e.f. April 27, 2015 vide general order dated April 24, 2015, wherefrom all employees including Group-A, B, C and D started marking attendance through the system. He has referred to the names of multiple employees of the respondent department, who have not signed the attendance register.

12. Mr. Badiar has submitted that the inquiry against the petitioner has been conducted without disbursing his salary and that the inquiry officer did not accede to the petitioner's request for engaging a defence assistant. He also stated that the statement of witnesses were neither on record nor provided to the petitioner and that the same were recorded behind his back. He also contended that the petitioner was paid salary for the period of absence and therefore it cannot be said that he was not working during that period. That apart, the fact that he was granted the 2nd MACP vide order dated March 24, 2014 was also overlooked while imposing the penalty. Further, on November 20, 2015, a certificate was issued by the respondent No. 2 to the petitioner stating that he has completed 22 years of continuous government service as of October 2015.

13. The case of the petitioner is that since he is a Group-B Officer, he is not required to put his initials in the attendance register and therefore the ground of unauthorized absence due to non marking of attendance in the register is not sustainable. That apart the petitioner had given various joining reports dated March 9, 2015, May 11, 2015, December 7, 2015, October 9, 2015 followed by letters dated October 15, 2015, October 23, 2015, November 2, 2015, November 16, 2015

and February 1, 2016.

14. He also submitted that the petitioner has been imposed with 'multiple punishment orders' which is clearly in violation of the principle of double jeopardy and as such they need to be set aside.

15. He submitted that the following issues are required to be considered by this Court in the present petition:

> *"1. Whether the charge sheet dated 04/12/2014 (OA No.252/2016), and penalty order dt. 30/01/2015 and subsequently Issued charge sheet dated 10.04.2015 and the penalty order dated 30/01/2015 (OA No. 2739), charge sheet dt. and office order dt.20.11.2015 issued against the petitioner are valid/legal or permissible in the eyes of law?*
> *2. Whether the petitioner actually absented from duty?*
> *3. Whether the IO has collected the evidence & witnesses regarding the allegations against the petitioner and proved the allegations against the petitioner?*
> *4. Whether the penalty imposed on the petitioner is disproportionate to the gravity of alleged misconduct?*
> *5. Whether the action of the respondents amounts to Double Jeopardy against the petitioner?*
> *6. Whether the enquiry can be conducted without payment of Subsistence Allowance? And after Total Stoppage of Pay and All Allowances?*
> *7. Whether the respondent no.3 Shri Rajeev Jain was personally involved in the matter?*
> *8. Whether the petitioner is entitled for relief (s) in all the three OAs."*

16. It is submitted that the CCS (CCA) Rules do not provide for issuance of charge sheet after a delay of 3 – 4 years. If the delinquent employee is absent from duty regularly, the employer / department should issue a memo for absent period within ten days, and later a charge sheet may be issued and action be taken immediately. He has

relied upon the judgment in ***UCO Bank and Ors. v. Rajendra Shankar Shukla***, ***Civil Appeal No. 2693 of 2013*** to contend that delay in issuing a charge sheet would vitiate the disciplinary proceedings against an employee.

17. On January 30, 2015, the respondents issued a penalty order, and thereafter on April 10, 2015 issued a charge sheet based on the order of January 30, 2015. The charge sheet having been issued subsequent to a penalty order, shall have no sanctity in law, in addition it is putting the petitioner in double jeopardy which is in violation of Article 20 of the Constitution of India.

18. That apart, he has referred to the Central Government Accounts (Receipt and Payments) Rules, 1983 which states that the payment of salary, i.e., the pay bill shall be duly supported with (i) form and preparation of pay and travelling allowances in form No.13/U/R66, (ii) absentee statement in form GAR 20 under Rule 67 and (3) increment certificate in form No.21 under Rule 68. If the petitioner was absent, then the absentee statement in form GAR 20 would show "absent" and relevant amount would be deducted. The fact that the petitioner has been paid salary presupposes the presence of the petitioner at work.

19. Further, Mr. Badiar submitted that even during the course of the inquiry, the Inquiry Officer neither collected the requisite information from different officers nor called them as witnesses. The Inquiry Officer also disregarded various joining reports submitted by the petitioner.

20. It is also submitted that the principles of "no work no pay" can

be invoked only if an employee has failed to perform his duty. In the present case, the petitioner was never absent from duty. In any case, it is only after taking a final decision on merits regarding the absence of the petitioner, that the respondents could have denied pay to him. Therefore, it is clear that the respondent first stopped pay and allowances vide order dated January 30, 2015, reduced his rank from Stenographer Grade-I to Stenographer Grade-II vide order dated October 23,2015 and further imposed the major penalty of dismissal from service vide order dated February 4, 2016. This is clearly and manifestly disproportionate to the gravity of the alleged misconduct.

21. It is alleged that the respondent No.3 herein has been willfully, deliberately and personally involved in the departmental proceedings / actions against the petitioner with *mala fide* intentions and ulterior motives by abusing his power and position.

22. He has sought the prayers as made in the petition.

23. Mr. Ravi Prakash, learned CGSC appearing for the respondents has denied the allegations of the petitioner. The disciplinary proceedings were initiated against the petitioner through a Memorandum of Charges dated December 4, 2014 under Rule 14 of the Central Civil Service (Classification, Control and Appeal), Rules 1965 ('CCS (CCA) Rules', for short), alleging contravention of Rule 3 (1)(ii) and (iii) of the Central Civil Service (Conduct) Rules, 1964 ('CCS (Conduct) Rules', for short). The charges against the petitioner were that while working as a Stenographer Grade-I he showed lack of devotion to duty and acted in a manner unbecoming of a government servant. This was evident from his actions, as he was on unauthorized

absence from duty from July 25, 2011 for a period of 878 days, details of which are as under:

> *"i. The petitioner, while being posted in Directorate General Human Resource and Development ('DGHRD') remained absent from 25.07.2011 to 21.05.2012, for a total of 259 days without prior permission or intimation.*
> *ii. That the petitioner further, while posted at DGICCE (now DGPM, New Delhi) remained absent for a period of 96 days from 25.06.2012 to 29.09.2012 without prior permission or intimation.*
> *iii. That while the petitioner was posted in the DG Audit from 01.10.2012 to 05.02.2014, he remained on unauthorised absence without prior permission or intimation for a period of 343 days.*
> *iv. That further, while posted in DG Safeguards, the petitioner remained absent for 180 days without prior permission from 13.02.2014 to 14.08.2014.*
> *v. As a result of which, a Charge Memorandum dated 10.04.2015(placed in writ petition at page no 1231 Volume VI) was issued to him regarding unauthorised absence for the period from 23.09.2014 to 14.01.2015 vide F.No. 1049/27/93/Confl./Pt-II."*

24. The period for which the petitioner remained on unauthorized leave has been tabulated as under:

Place of Posting	*Period of Posting*	*Total days of unauthorised absence*
DGHRD	*25.07.2011 to 21.06.2012*	*259*
DGPM	*25.06.2012 to 30.09.2012*	*96*
DG Audit	*01.10.2012 to 05.02.2014*	*343*
DG safeguard	*13.02.2014 to 14.08.2014*	*180*
Total		*878 days*

25. While the petitioner was posted in DGPM, he was issued an OM dated October 30, 2012 wherein he was ordered to join his duties with immediate effect, which he did not do. When he was posted at the office of the DG, Audit, he was again asked to immediately report for duty vide letter dated February 7, 2013, which he failed to do. Further, the Additional Commissioner (Admn.), DG Safeguard, vide OM dated April 11, 2014 called for an explanation from the petitioner regarding his unauthorized absence from the period between February 2, 2014 to March 23, 2014. The petitioner did not comply with the same, thereby disobeying the orders of a higher authority. Thereafter a second OM dated July 9, 2014 was issued to the petitioner whereby he was informed that he had not replied to the OM dated April 11, 2014, and was given an opportunity to justify his unauthorized absence and as to why suitable action under the CCS (Conduct) Rules should not be initiated against him. Thereafter on August 21, 2014 the Addl. Director (Confl.), DGPM, New Delhi issued an OM, granting him yet another opportunity to demonstrate as to why action should not be taken against him for not adhering to the second OM dated July 9, 2014. No reply was filed by the petitioner even to this OM. Thereafter, disciplinary proceedings were initiated against him on conclusion of which major penalty under Rule 11 (vi) of the CCS (CCA) Rules, of reduction to the lower post of Stenographer-II was imposed. On appeal, the appellate authority *vide* order dated January 6, 2015 upheld the order of the disciplinary authority, but modified it to the extent that reduction to the lower grade will only be for a period

of three years.

26. Meanwhile, the petitioner was issued several OMs dated October 8, 2014, October 13, 2014, October 27, 2014, November 7, 2014, November 19, 2014, December 23, 2014 and January 6, 2015 for his unauthorized absence. A letter dated January 14, 2015 was issued to the petitioner, referring to another letter dated January 12, 2015 of the Addl. Director (DGPM), to seek an explanation for his absence. In response to the OM dated January 14, 2015, the petitioner submitted his reply dated January 21, 2015 stating that he has been duly performing his duties and was getting salary for the same. He asserted that it is merely a case of not signing the attendance register and misinterpretation of Fundamental Rule (FR) 17(1) and requested to withdraw the OM.

27. The ADG, DGPM New Delhi stated vide order dated January 30, 2015 that the petitioner be treated as on unauthorized absence from the duty between September 23, 2014 to January 14, 2015 and no pay and allowances be given to the petitioner till he joins his duty. It was also stated in the order that the said period be treated as a break in service and disciplinary proceedings be initiated against the petitioner. Mr. Prakash stated that even after all this the petitioner continued to remain absent unauthorisedly from January 15, 2015 to August 3, 2015 while posted as Stenographer Grade-I in the office of DGPM (CCE&ST) HQ New Delhi (erstwhile DGICCE). A memorandum dated October 13, 2015 was issued against this period of absence.

28. Though, during his absence, the petitioner requested for withdrawal of his GPF amount, he was informed vide letter dated

February 25, 2015, that his request shall be considered on merit once he joins the office and submits a proper joining report. It is thereafter, the petitioner approached the Tribunal praying for disbursal of his GPF amount. The Tribunal vide order dated October 8, 2015 directed the petitioner to *"report for duty and submit a fresh joining report and work sincerely as per the directions of his superior officers"* and thereafter submit a fresh application for GPF withdrawal and that the respondent shall consider the same. In response to the order of the Tribunal, the petitioner vide letter dated October 9, 2015 stated that *"even though I am performing my duty continuously as apparent from documents but, however, I am complying the order of the Hon'ble Tribunal accordingly. My GPF application dated 09.10.2015 along with GPF slip for the year 2014-15 in respect of my GPF account no. DEL/DGICCE/806 is also enclosed herewith as per the Hon'ble Tribunal aforesaid order, with a request for payment of the same at the earliest and oblige."*

29. Considering the fact that the petitioner's salary was stopped from January 2015 due to his unauthorized absence, the Competent Authority took a lenient view and disbursed an amount of ₹1,80,000/- as his GPF withdrawal under Rule 16 read with Rule 15(1) A(a) of the General Provident Fund (Central Services) Rules, 1960 for the purpose of education of his children, vide order dated November 20, 2015.

30. However, vide letter dated October 21, 2015, the Additional Director (Admn.) stated that the letter dated October 9, 2015 submitted by the petitioner cannot be treated as his joining report. It is also stated that on October 9, 2015, the petitioner attended the office only at 14:30

Hrs. and from October 12, 2015 to October 19, 2015 he had attended the office only after 11:50 Hrs., which cannot be treated as joining his duties as per the order of the Tribunal. Thereafter the petitioner challenged the order dated November 20, 2015 before the Tribunal, wherein vide order dated May 31, 2019 the Tribunal stated that the so called joining report submitted by the petitioner cannot be treated to be proper. The Tribunal also observed that the order dated November 20, 2015, was in accordance with FR 17(1) and 17(A)(iii) and was passed on the principle of no work no pay while recommending disciplinary action against the petitioner for his unauthorized absence.

31. He submitted that the Principal Additional Director General, DGPM, New Delhi vide order dated February 4, 2016 made under Rule 11(ix) of CCS (CCA) Rules ordered the dismissal of the petitioner from service. According to him, the major penalty of dismissal from service has been imposed after duly and fairly conducting the disciplinary proceedings against the petitioner, and no case of double jeopardy has been made out by him, as has been held by the Tribunal in the impugned order.

32. According to him, the inquiry was conducted as per the rules and the applicant was given adequate opportunity of hearing and also to inspect documents and cross examine witnesses, however, he failed to avail of the same. He has contested the submission of Mr. Badiar that the petitioner was denied the opportunity to engage a defence assistant, by stating that he was asked by the Inquiry Officer (IO) to submit the name of the defence assistant he wishes to engage. However, the petitioner maintained that he would only name the

defence assistant after inspection of records, which he also did not do. Though he was granted full opportunity of personal hearing by the Disciplinary Authority, he did not attend the hearing or make any request for adjournment. Both the orders dated October 23, 2015 and also January 30, 2015 were passed after granting him sufficient and ample opportunities to plead his case.

33. Mr. Prakash would also oppose the submission that the petitioner being a Group-B Officer is not required to sign the attendance register. As per the Model Recruitment Rules the post of Stenographer Grade-I is a Group-B non-gazetted post and all non-gazetted Officers of the Central Government are required to mandatorily mark their attendance. He has given an example of Technical Officers and Inspectors, whose grade pay is higher than that of Stenographers Grade-I, signing the attendance register, to contend that the petitioner was mandatorily required to mark his attendance, and his not doing so, is indicative of his absence from duty on the given dates.

34. It is submitted on behalf of the respondents that the petitioner's conduct involving his prolonged period of unauthorized absence and non performance of work in the office has given an impression that he was gainfully employed elsewhere, which became manifest when he made multiple verbal demands for him to be suspended.

35. Insofar as the issues of payment of salary during the period of absence and also of the 2nd MACP are concerned, he would state that the recovery along with interest can be affected after the conclusion of the inquiry at the discretion of the employer.

36. The respondents have negated the submission of the learned counsel for the petitioner that the petitioner needs to be granted subsistence allowance, by stating that the same is only given to employees, who are placed under suspension, whereas the applicant was never suspended. Mr. Prakash has attempted to clarify that FR 17 is different from disciplinary proceedings under the CCS (CCA) Rules. In case of unauthorized absence, the first step is to stop the salary by giving notice to the employee and then pass an order under FR 17, following which disciplinary proceedings are initiated. The order under FR 17 is only for stopping the salary, and not for imposing any penalty. In order to impose penalty, a proper charge sheet under the CCS (CCA) Rules need to be issued, which has been done in the present case vide memo dated April 10, 2015 on the basis of his attendance record maintained by the Controlling Officer.

37. He has sought dismissal of the petition.

FINDINGS

38. Having heard the learned counsel for the parties and perused the records, the issue which arises for consideration is whether the Tribunal is justified in rejecting the three OAs filed by the petitioner and also the Review Application filed in OA No. 2739/2016.

39. As noted above, the petitioner joined the respondent organization namely Directorate General of Performance Management on October 08, 1993. In the year 2009, he was promoted to the post of Stenographer Grade-II in the pay-scale of ₹5000 - ₹8000/- with effect from December 23, 2005. While working so, on August 01, 2012, he was issued a memorandum for unauthorized absence from June 26,

2012. Another memorandum was issued on August 30, 2012 for unauthorized absence. Several warning letters were also issued to the petitioner on January 22, 2013, February 07, 2013, March 06, 2013, March 13, 2013 and March 22, 2013. Second MACP was granted to the petitioner in the grade pay of ₹4600/- with effect from September 13, 2013.

40. It is noted that a memorandum dated April 11, 2014 was issued to the petitioner for unauthorized absence from February 14, 2014 to March 24, 2015. Yet another memorandum dated July 09, 2014 was issued for willful absence from March 25, 2014 to April 11, 2014. Similarly, a further memorandum was issued on August 21/22, 2014 for willful absence for the period till July 09, 2014. The charge sheet was issued on July 4/7, 2014, which though challenged by the petitioner in OA 3281/2014 was later withdrawn. A fresh charge sheet was issued on December 04, 2014. Because of the long unauthorized absence, the salary was stopped and order was issued not to grant GPF to the petitioner vide order dated February 24, 2015. The charge sheet dated December 04, 2014 resulted in a penalty order dated October 23, 2015 for downgrading the petitioner to Stenographer Grade-II for 5 years and related penalties. The said penalty was reduced by the Appellate Authority to a period of 3 years vide its order dated January 06, 2016.

41. As the petitioner continued to remain unauthorisedly absent from September 23, 2014 to January 14, 2015, another charge sheet dated April 10, 2015 was issued to him. So, it is noted that the petitioner had filed three OAs; (i) OA No. 252/2016 against reduction

to lower grade of Stenographer Grade-II and related penalties; (ii) OA No.532/2016 for withholding the salary, which was withheld from January 2015 onwards due to the unauthorised absence of the petitioner and; (iii) OA 2739/2016 against dismissal order for being absent from duty for a further period w.e.f September 23, 2014 to January 14, 2015.

42. Insofar as OA 252/2016 whereby the petitioner challenged the penalty order dated October 23, 2015 and appellate order dated January 06, 2016 downgrading the petitioner to the post of Stenographer Grade-II for three years is concerned, the Tribunal has in paragraphs 9 and 10 held as under:-

> *"9. The respondents have stated that several dates were given at various stages of the enquiry to the applicant but he chose not to participate in the proceedings or to cross examine the witnesses. He also did not produce any evidence in the course of enquiry. He sought to inspect documents but did not turn up on the dates given. Though he sought the help of defence assistant yet on being asked to give the name of the defence assistant, he did not do so. The applicant appeared in the enquiry proceedings only on two occasions and sought adjournments over phone on most of the dates on one ground or the other.*
>
> *10. The contention of the applicant that he, being a Group-B officer, is not supposed to sign the attendance register has been refuted by the respondents. It has been pointed out that as per the model recruitment rules the post of Stenographer Gr.I is Group-B non-gazetted and all non-gazetted officers of Central Government are required to mark their attendance in the register. It has been brought to light that though the Grade Pay of Technical Officers and Inspectors is even higher than that of Stenographer Gr.I, yet Ms. Indu Kakkar, Sh. Sanjay Kumar, Ms. Meenu Miglani, Ms. Megha*

Rawat, who all are Technical Officers and Sh. Chandra Shekhar Prasad, Inspector, were regularly marking their attendance. Therefore, it is clear that the applicant was required to sign the attendance register and his not signing it, is indicative of his absence from duty on the given dates."

43. Insofar as claim of the petitioner in OA 532/2016 for non payment of the salary is concerned, in paragraphs 23, 24, 25 and 26, the Tribunal stated as under:-

23. As far as the impugned order dated 20.11.2015 is concerned, it has been found that the applicant has not submitted any proper joining report. The so called joining report reads as follows:-

> *"The Original Application No.1916/2015 in respect of GPF filed by the undersigned before the Hon'ble CAT, PB, New Delhi, has been disposed of on 8th October, 2015. A copy of the Hon'ble Tribunal's order will be submitted as soon as the same is received. Even though I am performing my duty continuously as apparent from documents but, however, I am complying the Oder of the Hon'ble Tribunal accordingly. My GPF Application dated 9th October, 2015 along with GPF Slip for the year 2014- 15 in respect of my GPF Account No.DEL/DICCE/806 is also enclosed herewith as per the Hon'ble Tribunal's aforesaid order, with a request for payment of the same at the earliest and oblige."*
>
> *This cannot be treated as a proper joining report which must give a date and time of joining. Further, since the applicant has not attended office in the prescribed manner during the period in question, it cannot be said that he joined his duties in compliance with the Tribunal"s order dated 08.10.2015. His plea for not signing the*

attendance register and the reasons put forth by him for not signing the attendance register do not hold water as already discussed. Therefore, the relief claimed for striking down the order dated 20.11.2015 does not have any merit.

24. The relevant part of the order dated 30.01.2015 reads as follows:-

> *"1. I order that the period from 23.09.2014 to 14.01.2015 be treated as unauthorized absence from office by Shri R.K. Dutta, Stenographer Gr.I and he is not entitled to the pay & allowance during the period from 23.09.2014 till the date he joins his duty as per FR.17(1). Any pay & allowances paid to him during this period shall henceforth be recovered from him.*
>
> *2. I order the period of absence of Shri R.K. Dutta from 23.09.2014 to 14.01.15 shall be treated as break in service as per Rule FR 17A(iii).*
>
> *3. I also order to initiate Disciplinary Action Shri R.K. Dutt, Stenographer Gr.I for his unauthorized absence under CCS (CCA) Rules."*

25. As far as this order is concerned, it is stated that the applicant was issued several memoranda for unauthorized absence for different periods and he was given opportunity to explain his conduct. In the reply submitted by him on 21.01.2015, he took the plea that Group-B officers/employees do not have to sign attendance register. This has already been discussed above and found to be without basis. He was also given opportunity for personal hearing on several dates which he does not appear to have availed of. Therefore, the order treating his absence in the given period as unauthorized and denying him pay and allowances during such period till his joining of duties and *treating it as break in service cannot be found fault with. It is noted that no ground of jurisdiction has been taken regarding this order.*

26. No fault can be found in the impugned order since it is as per the Fundamental Rule 17(1) and 17A (iii) and passed simply on the principle of „no work no pay" and recommending disciplinary action against the applicant for his unauthorized absence."

44. Similarly, with regard to challenge to the order of dismissal dated February 04, 2016 and of the Appellate Authority dated June 15, 2016 in OA 2739/2016, the Tribunal has in paragraphs 39 to 45, held as under:-

"39. The issues regarding unauthorized absence being proven through not signing the attendance register, hiring of defence assistant and cross-examining witnesses are on the same lines as pleaded in earlier two OAs and they deserve the same treatment.

40. A point has been raised regarding multiple penalties. In written submissions, the applicant has claimed that there is double jeopardy. The period of unauthorized absence for which penalties have been imposed from time to time differ. In the present OA, the period of absence is from 23.09.2014 to 14.01.2015 (114 days).

41. From perusal of the order dated 30.01.2015, it emerges that the order has been passed as per the provisions of FR 17(1) and 17A (iii), which read as under:-

> *"17(1) Subject to any exceptions specifically made in these rules and to the provision of sub-rule (2) an officer shall begin to draw the pay and allowances attached to his tenure of a post with effect from the date when he assumes the duties of that post, and shall cease to draw them as soon as he ceases to*

discharge those duties;
Provided that an officer who is absent from duty without any authority shall not be entitled to any pay and allowances during the period of such absence.

17-A. Without prejudice to the provisions of Rule 27 of the Central Civil Services (Pension) Rules, 1972, a period of an unauthorized absence –
(i) In the case of employees working in industrial establishments, during a strike which has been declared illegal under the provisions of the Industrial Disputes Act, 1947, or any other law for the time being in force;
(ii) In the case of other employees as a result of which action in combination or in concerted manner, which as during a strike, without any authority from, or valid reason to the satisfaction of the competent authority; and
(iii) In the case of an individual employee, remaining absent unauthorizedly or deserting the post,
shall be deemed to cause an interruption or break in service of the employee, unless otherwise decided by the competent authority for the purpose of leave travel concession, quasi-permanency and eligibility for appearing in departmental examinations, for which a minimum period of continuous service is required."

42. From perusal of this provision, it is clear that the impugned order is based on „no work no pay" principle. It clearly provides that an officer/employee not being entitled to pay for un-authorized absence from duty. Rule 17-A (iii) of FR clearly provides that if an individual employee remains absent unauthorizedly, it shall be deemed to cause an interruption and break in service of the employee for certain purposes for which a minimum period of continuous *service is required. This is precisely what the order dated 30.01.2016 is all about.*

43. This is clearly not a substitute for formal disciplinary proceedings which can subsequently be initiated by giving formal chargesheet, conducting formal enquiry with a view to reach a conclusion whether the charges are established or not, and thereafter deciding on the quantum of punishment. Therefore, there is no case made out for double jeopardy because both the proceedings have different scope.

44. It has also been brought to light that the applicant filed WP(C) No.10504/2017 and CM No.42997-98/2017 for issuing directions in three OAs, namely, OA No.252/2016, 532/2016 and 2739/2016. The Hon"ble High Court of Delhi saw no reason to interfere with the impugned interim orders given by this Tribunal.

45. In light of the above, we are of the view that disciplinary proceedings against the applicant have been duly conducted and concluded and accordingly penalties imposed. No case of double jeopardy is made out. Therefore, the present OA also fails being devoid of merits. There shall be no order as to costs.

45. Insofar as RA 50/2019 in OA 2739/2016 is concerned, the same was filed in MA No. 1655/2016 by the respondent Nos.1 and 2 therein against the order of the Tribunal dated January 23, 2019 in OA 2739/2016 for deletion of the name of the respondent No.2, Director General in his personal capacity (as respondent No.3) as it is not the appointing authority of the petitioner, and as such not a proper party in the matter, which was allowed by the Tribunal.

46. Having said that, the submissions of Mr. Badiar are primarily that; (i) the charge sheet dated December 04, 2014 was issued after a

period of four years; (ii) from 1993 till December 2014, salary was always being paid to the petitioner after full verification of actual attendance, after obtaining sanction from the Competent Authority; (iii) even LTC, leave encashment for availing LTC, intermittent leaves of various kinds including earned leaves, commuted leaves, casual leaves have been granted to the petitioner, even during the alleged period of unauthorized absence making it evident that the respondents are treating the petitioner to be in continuous service; (iv) the inquiry was conducted against the petitioner without disbursing his salary, (v) the inquiry officer did not accede to the petitioner's request for engaging a defence assistant; (vi) the statements of witnesses were neither on record nor provided to the petitioner and the same were recorded behind his back; (vii) he was paid salary for the period of absence, therefore, it cannot be said that he was not working during the said period; (viii) he was granted second MACP vide order dated March 24, 2014; (ix) on November 20, 2015 a certificate was issued by the respondent No.2 to the petitioner stating that he has completed 20 years of government service as of October, 2015; (x) as the petitioner is a Group-B officer, he was not required to put his signature in the attendance register, therefore, the ground of unauthorized absence due to non-marking of attendance in the register is not sustainable; (xi) the petitioner had given various joining reports dated March 09, 2015, May 11, 2015, October 09, 2015 and December 07, 2015; (xii) the petitioner has been imposed with multiple punishments, which is clearly in violation of the principle of double jeopardy; (xiii) on January 30, 2015, the respondent issued a penalty order and thereafter on April 10, 2015 issued a charge sheet based on the order dated January 30, 2015. The charge sheet having been issued subsequent to penalty order, shall have no sanctity in law; (xiv) the principle of no work no pay can be invoked only if an employee has failed to perform his duty. In the present case, the petitioner never absented from duty. In any case, it is only after final decision on merit regarding absence of the petitioner that the respondent could have denied pay to him. Hence, it is clear that the respondents have first stopped the pay and allowances vide penalty order dated January 30, 2015 and reduced his rank from Stenographer Grade-I to Stenographer Grade-II and further imposed a major penalty of dismissal from service dated February 04, 2016.

47. We are not impressed by the submissions made by Mr. Badiar. The initial charge sheet dated December 04, 2014 was issued to the petitioner for absence of the petitioner for the period from July 25, 2011 to September 14, 2014, for a period of 878 days. It is stated that during this period, the petitioner was issued various memorandums / communications of which a reference has already been given above. The plea of the petitioner is only that he was not absent during the said period. According to him, as a non-gazetted Group-B officer, he is not required to mark his attendance. That apart, he has made various submissions like payment of salary, grant of second MACP during the period of absence which according to him, would enure to his favour. But it is a fact that the salary was stopped on January 30, 2015, which became a subject matter of OA No.532/2016. There is no denial of the fact that multiple office memoranda were issued to the petitioner

regarding his unauthorized absence.

48. The Tribunal rejected the said plea in paragraph 10, wherein it is stated, as per the Model Recruitment Rules, the post of Stenographer Grade-I is Group-B and non-gazetted and all non-gazetted officers of the Central Government are required to mark their attendance in the register. Even officers, who were in higher ranks than Stenographer Grade-I, were regularly marking their attendance. The finding of the Tribunal was that the applicant was required to sign the attendance register and not signing the same, is indicative of his absence from duty on the given dates. The finding of the Tribunal has not been controverted by Mr. Badiar in his submissions.

49. One of the pleas of Mr. Badiar is, in the absence of payment of salary, the petitioner could not have attended the inquiry. The plea is not appealing for the simple reason that the charges framed against the petitioner are of unauthorised absence and FR 17(1) contemplates no work no pay. In fact, the plea of the petitioner in OA 532/2016 that he had given joining reports on March 09, 2015, May 11, 2015, October 09, 2015, November 16, 2015 and December 07, 2015 would clearly reveal that the joining reports were given by the petitioner because he intends to join the duties, which he was not performing during the earlier period. Hence, it is clear that he was absent from his duties.

50. That apart, the very fact that he has been giving joining reports on so many successive occasions would also highlight the fact that the same were not accepted by the respondents. In fact, the respondents have, on January 18, 2016 called an explanation from the petitioner for not submitting a proper joining report and not properly marking the

biometric attendance for the period subsequent to the period which became the subject matter of charge sheet dated December 04, 2014. So in that sense, the plea of the petitioner for challenging the decision of the respondents for withholding his salary is also without any merit.

51. OA No.2739/2016, lays a challenge to the order of dismissal of the petitioner for 114 days i.e., for the period from September 23, 2014 till January 14, 2015. The Inquiry Officer in his report has clearly held the charges as proved. The order of dismissal dated February 04, 2016 reads as under:-

> *"14.1 I fully agree with the findings of the inquiry report and hold that both the charges mentioned in Article 1 and Article II stand proved. The C.O. has daring the impugned period has acted in most brazen manner by not attending the office, and wilfully disobeying the senior officers and received pay and allowances.*
>
> *14.0 1, accordingly, hold that the C.O. has shown lack of devotion to duty and conduct unbecoming of Government servant, thus, guilty of contravention of the provisions of rule 3(1) (i) and (ii) of the CCS (Conduct) Rules 1984 for his unauthorized absence from duty and defiance of the order of the his superior officers by not joining duty, which attracts Major Penalty under rule 11 of the Central Civil Services (CCA) Rules 1965. He had been continuously and repeatedly on unauthorised absence, irregular & indiscipline towards his office duties in total defiance of the office orders. He received salary and other benefits of Rs.1,14,820/-(for the period from 23.09.2014 to 31.12.2014) without attending office and doing any office work. Therefore, I find that the C.O.is incorrigible, therefore deserves stern action for his misconduct. Consequently I find that the actions of the C.O. attracts major penalty of "Dismissal from service which shall ordinarily be a disqualification for future employment under the*

Government" under rule 11(ix) of CCS (CCA) Rules 1965.
15. Order
Now therefore, for his acts of omission and commissions, discussed herein before, I order that:-

15.1 Shri Ramakrishna Dutta, Stenographer Grade-II is dismissed from the service under rule 11(ix) of CCS(CCA) Rules, 1965 with immediate effect.

15.2 Recovery of salary / emoluments paid during the period of unauthorized absence shall be dealt by extant rules."

52. The plea of the petitioner before the Tribunal was identical to the one raised by him in the above two OAs i.e., he was not required to put his signatures in the attendance register. The said plea has already been rejected by the Tribunal and even by this Court in the aforesaid paragraphs.

53. Another plea of the petitioner is that as the respondents, by the order dated January 30, 2015, had treated the period between September 23, 2014 to January 14, 2015 as unauthorized absence for which the petitioner was not entitled to pay and allowances and had also held the same as a break in service, the subsequent chargesheet issued for the same period resulting in the dismissal of the petitioner would amount to double jeopardy and as such is untenable. We are not in agreement with this plea of the petitioner for the simple reason that as noted from the order dated January 30, 2015 itself, the competent authority has invoked FR 17(1) which contemplates non-payment of pay and allowances for authorized absence. If a government servant is remaining unauthorizedly absent, the same shall result in an

interruption or a break in service, which is clear as per FR 17-A(iii). So, in that sense, though the above two provisions have been applied to stop pay and allowances of the employee and to treat the period as a break in service, the authority will be within its rights to proceed against the employee under the conduct rules.

54. At this juncture, we may take judicial notice of an office memorandum dated March 20, 2013 issued by the DoP&T which contemplates that strict action under FR 17(1) and FR 17-A needs to be taken against government servants remaining absent from duty without authorization / grant of leave. The relevant part of the memorandum reads as under:

> *"2. In view of this, attention of all Ministries/Departments is invited to the various provisions of the relevant rules, as indicated in the following paragraphs for strict adherence in situations of unauthorised absence of Government servants. It is also suggested that these provisions may be brought to the notice of all the employees so as to highlight the consequences which may visit if a Government servant is on unauthorised absence. The present OM intends to provide ready reference points in respect of the relevant provisions, hence it is advised that the relevant rules, as are being cited below, are referred to by the competent authorities for appropriate and judicious application. The relevant provisions which may be kept in mind while considering such cases are indicated as follows:*
> *(a) Proviso to FR 17(1)*
> *The said provision stipulates that an officer who is absent from duty without any authority shall not be entitled to any pay and allowances during the period of such absence.*
> *(b) FR 17-A*
> *The said provision inter alia provides that where an individual employee remains absent unauthorisedly or deserts the post, the period of such absence shall be deemed*

to cause an interruption or break in service of the employee, unless otherwise decided by the competent authority for the purpose of leave travel concession and eligibility for appearing in departmental examinations, for which a minimum period of service is required."

55. One of the grounds raised by Mr. Badiar is of double jeopardy. According to him, the petitioner has already been imposed a penalty of reduction to the lower grade of Stenographer Grade-II for unauthorized absence and hence, no further penalty for the same reason could have been imposed. We are not impressed by the submission for the simple reason that though two charge sheets have been issued for unauthorized absence, the period of absence, which are subject matter of the charge sheets are different. Though, the earlier charge sheet was for 878 days, the Disciplinary Authority has imposed a very light punishment on the petitioner. But the second charge sheet, though was for unauthorized absence of 114 days, in view of the earlier absence, the Disciplinary Authority has imposed the major penalty of dismissal. In that sense, there is no double jeopardy as the charges are separate for two different periods, the penalty against each of the charge sheet need to be considered separately and not as one.

56. Insofar as the non-payment of subsistence allowance is concerned, the case of the respondents is the petitioner was not suspended and hence not paid subsistence allowance. In other words, the petitioner continued to remain absent even during the pendency of the departmental proceedings. If that be so, we agree with the submission made by learned counsel for the respondents that the

petitioner was rightly not paid subsistence allowance as he was being unauthorisedly absent and was never suspended. The reliance placed by Mr. Badiar on the judgments of ***UCO Bank (supra), M. Paul Anthony v. Bharat Goldmines Ltd. & Anr., (1999) 3 SCC 679, State of Bihar and Ors. v. Arvind, (2013) 16 SCC 615; State of Maharashtra v. Chandra Bhan Tale, 1983 3 SCC 387; Jagdamba Prasad Shukla v. State of UP and Ors., 2000 7 SCC 90; R.S. Mishra v. Union of India and Ors., 2012 8 SCC 558*** have no applicability to the facts of this case.

57. We are of the view that the challenge in this petition to the common order of the Tribunal in the three OAs and the RA is without any merit. The writ petition and connected applications are dismissed. No costs.

V. KAMESWAR RAO, J

ANOOP KUMAR MENDIRATTA, J.

OCTOBER 31, 2023/*aky*