

09.04.2025
(D/L-8)
Ct. No.4
(B.K.N.)

W.P.C.T. 62 of 2025

Santosh Kumar Das
Vs.
Union of India & Ors.

Mr. Mahadeb Ghosh,
Mr. Pritam Ghosh,
Mr. Arun Kumar Paul

...for the Petitioner

Mr. Sukumar Bhattacharyya,
Ms. Anamika Pandey,
Ms. Oindrila Chatterjee,
Ms. Puja Sonkar

...for the Respondent U.O.I.

1. The petitioner approached the Central Administrative Tribunal, Kolkata Bench for the following relief:

“a) An order directing the Respondent authorities to set aside the order dated 12.10.2015 passed by the respondent authorities and reinstate the applicant in service considering the financial circumstances of the applicant.

b) Any further or other order or orders and/or direction or directions as to this Learned Tribunal may deem fit and proper.”

The Tribunal has dismissed the O.A. No. 00662 of 2018 filed by the petitioner vide order dated 06.02.2025.

2. Heard learned counsel for the petitioner and the learned counsel for the respondents.
3. The petitioner was proceeded against on account of his unauthorized absence. As per the charge memo he was

absent from duty for two different spells that is from 01.01.2000 to 01.01.2003 and thereafter 22.01.2003 to 02.04.2003. An Enquiry Officer was appointed on 25.06.2003. The applicant/petitioner was allowed to appoint his defence helper. After the defence helper was appointed by him the authorities have repeatedly intimated to the petitioner the various dates fixed in the departmental enquiry. He attended the first sitting of the enquiry on 30th September, 2003. Thereafter four dates were fixed from 10.11.2003 to 05.06.2004. An intimation was given to him as well as the defence helper (D.H). The petitioner, however, did not participate in the proceedings. He has attended the enquiry only on 10.11.2003 and he and his defence helper thereafter remained absent in the other dates before the Enquiry Officer.

4. In the circumstances an exparte enquiry report was submitted on 29.06.2004. The petitioner received the same, however, did not file any representation. The disciplinary authority, therefore, passed the impugned order of petitioner's removal from service. It is thereafter that he has preferred an appeal on 12.05.2006. The appeal was also rejected by the Appellate Authority. The petitioner's removal order is of the year 2006. The order of the Appellate Authority is of the year 2006 and he has filed an Original Application assailing these findings in the year 2012.

O.A. No. 214 of 2012 has been considered by the Central Administrative Tribunal, Calcutta Bench and by an order dated 01.07.2015 the same has been disposed of with a direction to the Appellate Authority to reconsider the petitioner's appeal. The appeal has been reconsidered by a speaking order dated 12.10.2015 wherein the Appellate Authority has taken note of all the above noted facts. The Appellate Authority has further taken note of the fact that it is only after the punishment of removal was served on the petitioner that he has made his first representation by way of the appeal. In the appeal he has admitted absence in the period regarding which the allegations are contained in the charge memo. He, however, has claimed that the absence is intermittent and not continuous. The Appellate Authority has rejected the appeal filed by the petitioner. The same has been assailed by way of another Original Application. The second Original Application filed by the petitioner bearing number O.A. 00662 of 2018 has been dismissed by the Tribunal by its order dated 06.02.2025.

5. The learned counsel for the petitioner submits that the petitioner had adequate reasons for being absent. The absence was under compelling circumstances arising out of medical needs. The authorities have relied upon a later period of absence in between 2005 and 2006 to

remove him from service whereas the charge memo was in respect of the periods in between 2000 to 2003.

6. The learned counsel for the respondents on the other hand has submitted that the submissions advanced on behalf of the petitioner are devoid of any substance. The period for which the proceeding was conducted by way of the charge memo is between 01.01.2000 to 02.04.2003. It is this period which forms the substance of allegation against the petitioner.
7. It is apparent from the records that he was given ample opportunity. The defence helper was also appointed. The petitioner has continuously chosen not to appear before the Enquiry Officer. He has also not represented against the enquiry report. The first representation of the petitioner is by way of appeal against the order of removal. The Appellate Authority, upon remand from the Tribunal in the earlier O.A. No. 214 of 2012 has passed a detailed and speaking order wherein the entire proceedings conducted against the petitioner has been taken note of. There being no procedural infirmity the petitioner does not deserve any consideration within the scope of judicial review in respect of a departmental proceedings.
8. We find no infirmity in the decision of the Appellate Authority dated 12.10.2015. The order is a detailed speaking order taking note of all the dates in the enquiry and all the materials produced in the enquiry

proceedings taken not above. We thus find no reason to interfere with the same, in exercise of Judicial Review under Article 226 of the Constitution of India as it is a settled position that while exercising such jurisdiction the Court is concerned with the decision making process and not the decision itself. No procedural error has been pointed. The decision is also not assailed on the ground of perversity. It is also not in dispute that the petitioner did not appear before the Enquiry Officer throughout the proceedings. It is also not in dispute that he did not raise his objection or make a representation to the enquiry report when it was submitted.

9. Thus being the circumstances, keeping in background the continued absence from service for a period of more than three years, we do not find it a fit case to interfere in the matter. The decision of the Apex Court in the case of ***Board of Directors, H. P. Transport Corporation –Vs.- K. C. Rahi*** reported in ***(2008) 11 SCC 502*** squarely comes the facts and circumstances of the present case. In the said report, Apex Court has held when an employee chooses not to avail of the opportunity granted, there is deemed waiver of compliance with the Principles of Natural Justice and such employee is estopped from raising the plea of noncompliance of Principles of Natural Justice.

10. We find no reason to interfere with the order dated 06.02.2025 passed in O.A. No. 00662 of 2018. The writ petition is dismissed.

(Madhuresh Prasad, J.)

(Supratim Bhattacharya, J.)