

**IN THE HIGH COURT AT CALCUTTA
(Constitutional Writ Jurisdiction)
APPELLATE SIDE**

Present:

The Hon'ble Justice Madhuresh Prasad

And

The Hon'ble Justice Supratim Bhattacharya

W.P.C.T. 36 of 2019

**Dr. Sujit Chakraborty
Versus
Union of India and others**

For the Petitioner : Mr. D. Purakyastha
Mrs. Baisali Ghoshal
Mr. Md. Kalam
Mrs. Esita Sanyal

For the Union : Mr. Anirban Mitra
of India

For the Respondent : Ms. Aparna Banerjee
No. 3 to 7

Judgement Delivered On : 12.03.2025

Supratim Bhattacharya, J.:

1. Being aggrieved by and dissatisfied with the order passed by the Central Administrative Tribunal, Kolkata Bench in Original Application (O.A.) No. 621 of 2012 the petitioner has preferred the instant writ application.
2. The O.A. was filed by the petitioner assailing the entire departmental disciplinary proceedings. The disciplinary proceedings was initiated against the petitioner through the Memorandum of Charges dated 29.03.2000, which culminated

into an order of dismissal dated 22.05.2012. The O.A. was filed seeking the following reliefs:

“...8. (a) An order be passed setting aside the entire disciplinary proceeding initiated under the Memorandum of Charges dated 29.03.2000, the enquiry report, the alleged order of disagreement with the finding of the enquiry officer dated 30.03.2005 and the final order of dismissal dated 22.05.2012 communicated upon the petitioner on 13.06.2012;
(b) A direction do issue upon the respondents to forthwith allow the petitioner to resume duties at the Chittaranjan National Cancer Institute as specialist Grade-1 and Head, Department of Radiotherapy of Chittaranjan National Cancer Institute and to pay the petitioner all admissible dues to which the petitioner is entitled to had there been no such order of dismissal dated 22.05.2012 served upon the petitioner on 13.06.2012 together with interest at the rate of 18% per annum on all sum fallen due and payable to the petitioner within a particular period of time to be specified by this Learned Tribunal.”

3. The said Tribunal has dismissed the O.A. vide order dated 13.11.2018 and has been pleased to pass the following:

“17. Having understood the true import of the decisions supra and the limited scope of interference in disciplinary proceedings we noted the fact that the order dated 08.09.1998 was never translated into any order permitting the applicant to leave the country on EOL, yet he left. His leaving the country on EOL to join foreign institution was, therefore, palpably illegal, unauthorized and in violation of the statutory rules. Further, failure to resume duties despite repeated directions and having never bothered to seek permission to resume his duties for so long, the dismissal from service as ordered against the applicant could not be faulted. No

extenuating circumstances prevail which would tempt us to pass Orders impelled by benediction. Accordingly the O.A. is dismissed. No costs."

4. Factual matrix of the instant lis

The petitioner was working at the Chittaranjan National Cancer Institute in Kolkata (hereinafter to be referred to as the Institute) in the department of Radiotherapy as Specialist Grade-I and Head of the Department, Department of Radiation and Oncology.

5. The petitioner was desirous of taking an assignment in Malaysia as a consultant Radio Therapist at Mount Miriam Hospital, Pinang, Malaysia.

As such he applied for extraordinary leave (EOL) for a period of two years. The said application was recommended by the Director of the Respondent Institute and the Director of the said institute issued a no objection certificate dated 13.02.1996.

Though a no objection certificate was issued by the then Director but the actual permission was to be ultimately granted by the Government of India which reveals from a letter dated 22.08.1998 issued by the then Director of the Institute addressed to the Secretary to the Government of India, Ministry of Health and Family Welfare. Thereafter another letter dated 01.09.1998 was issued by the then Administrative Officer of the Institute addressed to the petitioner, advising the petitioner not to avail extraordinary leave and not to leave the country without proper sanction as

necessary permission from the Government of India, Ministry of Health and Family Welfare was not received.

In the meantime, on 29.08.1998 the petitioner had already proceeded to Malaysia after leaving his duties at the Institute. The order granting permission of leave was issued later by the Government of India on 08.09.1998. The respondents thus proceeded against the petitioner by a Memorandum of Charges dated 29.03.2000. The substance of the allegations against the petitioner were as follows:

“Article-I

That the said Dr. Sujit Chakraborty while functioning as Specialist Grade I and Head Department of Radiotherapy of the hospital of Chittaranjan National Cancer Institute on substantive basis, has accepted a foreign employment at Mount Miriam Hospital, Penang, Malaysia without prior approval of Chittaranjan National Cancer Institute and Government of India, Ministry of Health & Family Welfare, New Delhi. Such acceptance of private employment at Malaysia without the sanction of Government of India and Chittaranjan National Cancer Institute is an act of misconduct or misbehaviour and alleged to be in violation of Rule 15 (1) (a & b) of the Central Civil Services (Conduct) Rules, 1964.

Article-II

That Dr. Sujit Chakraborty while functioning as Specialist Grade I and Head Department of Radiotherapy of the hospital of Chittaranjan National Cancer Institute and during subsistence of the said employment on substantive basis left India for joining at Mount Miriam Hospital, Penang, Malaysia without prior sanction of extra ordinary leave and such action on his part is also a misconduct and is an act of violation of provision of Fundamental Rules 17A.

Article-III

That Dr. Sujit Chakraborty was intimated by office Letter No. CNCI/Hosp/1559 dated 25.9.1998 that the Government of India, Ministry of Health & Family Welfare, New Delhi, has refused to grant extra ordinary leave and to permit him to travel to Malaysia to take up a private employment and Dr. Chakraborty was subsequently requested to resume his duties at Chittaranjan National Cancer Institute. In spite of such due communication, Dr. Chakraborty has failed to join. at Chittaranjan National Cancer Institute till date. It is alleged that failure to join at Chittaranjan National Cancer Institute, amounts abandonment of service of Chittaranjan National. Cancer Institute and insubordination.

Article-IV

That Dr. Sujit Chakraborty while functioning as Specialist Grade I and Head of the Department of Radiotherapy in the hospital of Chittaranjan National Cancer Institute was allotted Quarter No. Type IV/36 at Salt Lake for discharging his official duties. It appears that the said quarter is still under lock and key. Dr. Chakraborty has not paid the required licence fee to the office of Chittaranjan National Cancer Institute since September 1998. Dr. Chakraborty has not handed over the possession of the said quarter in favour of Chittaranjan National Cancer Institute prior to his joining at Mount Mirium Hospital, Penang, Malaysia. As a result thereof the said Quarter could not be used by any other officer of Chittaranjan National Cancer Institute and such conduct on the part of Dr. Chakraborty is also an act of misconduct on his part.”

6. The petitioner participated in the proceedings. The inquiry officer after concluding the proceedings submitted the inquiry report on 09.08.2002 and returned a finding that the charges have not been proved. The inquiry officer conducted the inquiry which was held on 15 dates in between 25.09.2001 and 15.07.2002, when witnesses were also examined and cross-examined by the

parties and the petitioner was afforded full opportunity. The inquiry officer submitted his report on 02.09.2002. According to the inquiry officer the charges were not sustainable/ not proved.

Upon submission of the inquiry report, the Disciplinary Authority did not agree with the conclusion of the inquiry officer and accordingly recorded the points for tentative disagreement with the conclusion of the inquiry officer and communicated the same to the petitioner by a letter dated 11.11.2005. The petitioner replied to the same on 07.02.2006. The Disciplinary Authority thereafter proceeded to consider the issue. The Disciplinary Authority has found that the petitioner could not produce any material whatsoever from which it can be said that he was accorded permission to proceed for taking up a foreign assignment of a date prior to his departure that is on 29.08.1998. The Disciplinary Authority therefore was of the opinion that the petitioner had proceeded to join foreign assignment at Mount Mirian Hospital, Malaysia, without prior sanction of extraordinary leave and such an act of the petitioner constituted misconduct. The Disciplinary Authority has further taken note of the fact that the petitioner was asked to resume his duties under a communication dated 25.09.1998, however he never cared to join/resume his duties, not even till the date of passing of the order by the Disciplinary Authority.

The Disciplinary Authority has further taken note of the fact that the official residential quarter allotted to the petitioner had not been vacated by the petitioner. The petitioner had not even paid the required license fee in respect of his allotted quarter since September, 1998. Prior to leaving the institute for joining his assignment at Malaysia, he did not hand over possession of the quarter to the authorities. This also according to the Disciplinary Authority constituted misconduct.

While recording such finding, the Disciplinary Authority has taken note of the fact that the quarter was vacated by the petitioner on 31.07.2000. In view of such findings the Disciplinary Authority has proceeded to pass an order imposing the punishment of dismissal from service which would not entitle the petitioner for any compensation and other pensionary benefits.

The Disciplinary Authority thus recorded a finding that the charges have been proved and rejected the representation of the petitioner. Relevant extract of the order passed on 22.05.2012 reads as follows:

“Having regard to the nature of charges brought against Dr. Sujit Chakraborty evidence on record and considering his defence, the Disciplinary authority is of the opinion that an order of dismissal from service would be just and proper because the charges have been fully established against him and accordingly an order of punishment for dismissal from service as specified in Rule 11(ix) of the Central Civil Services

(Classification, Control & Appeal) Rules, 1965 is hereby imposed upon Dr. Sujit Chakraborty with immediate effect. It is made clear that Dr. Sujit Chakraborty will not be entitled for any pension and other pensionary benefits. Dr. Sujit Chakraborty will be entitled to receive his provident fund dues in accordance with law. This order is being issued with the prior approval of the Competent Authority.”

7. It is under these circumstances that the petitioner approached the Central Administrative Tribunal by filing O.A. No. 621 of 2012. The Tribunal has taken note of all the materials on record. It has considered the fact that the petitioner proceeded to leave the institute without permission. After he left, the respondents issued letters to him cancelling the leave which was sanctioned, after the petitioner had left the institute. They thus requested the petitioner to resume his duties. When efforts to serve such order failed since the petitioner was not present in his official quarters they communicated the same even to the Mount Miriam Hospital, Pinang, Malaysia where he had gone to take up the foreign assignment. Such communication was sent by FAX on 02.11.1998 and thereafter similar communication was sent on 14.09.1998 communicating to the petitioner the fact that the leave sanctioned on 19.09.1998 was cancelled and withdrawn. The Tribunal took note of the fact that he chose to continue at the foreign assignment. The Tribunal has further taken note of the

fact that in spite of ample opportunity been given to the petitioner to come back and resume his duties he chose to continue with the foreign assignment. The Tribunal has further taken note of the fact that the inquiry was conducted as per procedure, observing the principles of natural justice and giving due opportunity to the petitioner. The Tribunal thus proceeded to conclude on the basis of the above noted fact that since it was not an Appellate Authority and its scope of judicial review was confined to the decision making process and not the decision itself as such there is no occasion to set aside the punishment order, same is in accordance with the principles of natural justice inherent in the procedure prescribed in the CCS (CCA) Rules, 1965 under which the inquiry was conducted. Referring to and relying upon the decision of the Apex Court in the case of **Union of India and Others Vs. P. Gunasekaran**, the Tribunal has proceeded to dismiss the original application filed by the petitioner. The operative part of the Tribunal's order reads as follows:

“... 17. Having understood the true import of the decisions supra and the limited scope of interference in disciplinary proceedings we noted the fact that the order dated 08.09.1998 was never translated into any order permitting the applicant to leave the country on EOL, yet he left. His leaving the country on EOL to join foreign institution was, therefore, palpably illegal, unauthorized and in violation of the statutory rules. Further, failure to resume duties despite repeated directions and having never bothered to seek permission to resume his duties

for so long, the dismissal from service as ordered against the applicant could not be faulted. No extenuating circumstances prevail which would tempt us to pass Orders impelled by benediction. Accordingly the O.A. is dismissed. No costs."

8. The findings of the department have been assailed by the petitioner before the Tribunal which has rejected the application filed by the petitioner, thus the petitioner has approached this Court by way of the present writ petition.

9. The Ld. Counsel Mr. D. Purakyastha being assisted by Mrs. Baisali Ghoshal, Mr. Md. Kalam and Mrs. Esita Sanyal representing the petitioner during exhaustive arguments has laid emphasis on the following points:-

i) That from the very inception of the proceedings there is gross procedural irregularity since the issuance of the Memorandum of Charge, as there has been failure to comply with the requirements of Rule 14 of the Central Civil Services (Classification, Control and Appeal) Rules {for short CCS (CCA).

ii) He has further submitted that the disciplinary authority has not framed the charges by exercising independent application of mind in terms of Rule 14 of CCS (CCA). The charges have been framed as per directions of the governing body.

iii) Another submission in this regard is that the disciplinary authority has signed the charge memo as a member of the

governing body and the same was not framed or signed by the Disciplinary Authority. The charge Memo is thus unsustainable.

iv) The Ld. Counsel has also referred the Memorandum of Association of the institute and submitted that as per the schedule appended thereto it is the Director of the Institute who was the disciplinary authority in respect of the petitioner. Therefore, framing of charges based on directions of the governing body vitiates the charge memo itself.

v) It is further contended that the disciplinary authority has not considered the written statement filed by the petitioner before the inquiry officer.

vi) He has thus submitted that the proceedings suffer from procedural lapses invalidating the actions taken subsequent thereto including the order of dismissal from service. The procedural lapses have resulted in violation of the principles of natural justice and the decision of the Disciplinary Authority is thus unsustainable and the dismissal order is liable to be set aside.

vii) He has further submitted that the Tribunal has failed to consider the above stated issues and therefore prayed that the Court should set aside the order of the administrative tribunal and also the punishment inflicted upon the petitioner as a result of the exercise which is not in accordance with law.

10. The Ld. Counsel Ms. Aparna Banerjee representing the respondent Institute has drawn our attention to certain parts of the pleading forming part of the records as also the documents appended thereto, she has advanced the following submissions:

i) It is submitted that immediately after the authorities realized that the petitioner has proceeded abroad without waiting for the requisite permission of the competent authority, they had written to the petitioner at his office address intimating him that the leave has been recalled and the petitioner should immediately return. On realising that the same could not be served at the official address of the petitioner since he has already proceeded abroad, so on 07.10.1998 the respondent institute issued letter dated 07.10.1998 at his address in Malaysia, providing him such intimation.

ii) The communication of the charge memo and other documents during the course of the proceedings have also been served upon the petitioner at his address at Malaysia.

iii) Even if the leave which was granted on 08.09.1998 was not cancelled, the same would have been valid till 07.09.2000. The petitioner had participated in the proceeding knowing well that the leave was cancelled.

iv) The petitioner however has never cared to come back to join his duties, not even after lapse of the two years period for which

he had applied for leave. In fact according to the institute the petitioner made an application for the first time, to come back in the year 2016. In this regard, the petitioner's counsel has submitted that since the petitioner had attained the age of superannuation in the year 2012 so there was no occasion for him to send the letter in the year 2016. It has been emphatically stated by the Ld. Counsel for the petitioner that no letter had been written by the petitioner seeking permission to come back and join the institute since the petitioner was contesting the proceedings.

11. Ld. Counsel Mr. Anirban Mitra representing the Union of India referring to the decision of the Hon'ble Apex Court in the case of *State of Rajasthan and another vs. Mohammed Ayub Naz* reported in (2006) 1 SCC 589 has submitted that

i) The Hon'ble Apex Court has taken notice of the fact that absenteeism from office for a prolonged period without prior permission by a Government Servant has become a principal cause of indiscipline greatly affecting various Government services, which in the present case is a health care service primarily for providing treatment of cancer.

ii) It has been further submitted that the absenteeism being considered by the Apex Court in the said judgment was for three years. In the instant case there is no dispute that after the

petitioner left the country without permission of the competent authority on 29.08.1998, he has never cared to even send an application to join the service till he attended the age of superannuation in the year 2012.

iii) He has further submitted that this 14 (fourteen) years period of absence and the fact that he left without leave of the competent authority is not disputed by the petitioner rather it is admitted as will be apparent from a bare reading of the written statement filed by the petitioner in response to the charge memo as well as his representation filed against the communication by the disciplinary authority. The fact being admitted. The points urged by the petitioner regarding procedural irregularity are devoid of any substance as because the petitioner has made specific admission of this fact, so the finding of the Tribunal upholding the punishment of the petitioner does not call for any interference.

12. We have heard the submission on behalf of the petitioner, the respondent Institute and the respondent/Union of India and on minutely gone through the averments made by the parties and documents relied upon by the parties. It transpires that the then Director of the Institute had issued a no objection certificate on 13.02.1996, in favour of the petitioner allowing him to make an application for extraordinary leave to take up

foreign assignment. In the said certificate it has been stated that the institute has no objection if Dr. Chakraborty gets himself assigned for any foreign assignment and in case he is offered a suitable assignment his case will be treated as per the Rules of the Institute. After obtaining such no objection the petitioner made his application.

- 13.** On 22.08.1998 a letter was issued by the then Director of the Institute to the Secretary to the Government of India, Ministry of Health and Family Welfare in the matter of permission in respect of the petitioner to go abroad under extraordinary leave from the Institute. The same clearly stipulates that the leave will be effective only after obtaining the required permission from the Ministry to go abroad under the provisions of rules governing foreign travel.

Thereafter the Administrative Officer informed the petitioner by a letter dated 01.09.1998 that permission of the Ministry of Health and Family Welfare, Government of India had not yet been received. Few days prior to the communication made to the petitioner and without waiting for any permission or sanction of his extraordinary leave to take up a foreign assignment, the petitioner on 29.08.1998 had proceeded to take up the assignment overseas. The Administrative officer thus issued a letter on 07.10.1998

directing him to return to the country and resume his service. Thereafter repeated communications in this regard have been sent to the petitioner even at the Mount Miriam Hospital, Pinang, Malaysia. Details of such communications have already been taken note of above. The petitioner was not bothered by such communication and did not care to resume his duties.

On the records we find only one communication dated 30.11.1998 written by the petitioner to the institute which he has relied upon. The same reads as follows:

“Thanks for your faxes and letters. I would like to remind you that I took upon the present task with permission and consent of the authority vide the NOC and also I submitted my contact form one year prior to my departure without being refused. Please try to find out how the period to be regularized within our frame of rules. CNCI being autonomous Institute it has provision for extending our expertise outside. Our status is definitely different from GOI employees.

Please also let me know how the period of absence will be regularized if I come back now as per your request.

With warm wishes and season’s greeting.”

From a bare perusal of the same the intention of the petitioner is clear that the letter cannot be said to be an application to resume duties.

Under the circumstances, a letter was issued from the Ministry of Health and Family Welfare Government of India on 26.02.1999 to the Director of the institute directing initiation of

disciplinary proceeding against the applicant as per Rule 14 of CCS (CCA) Rules, 1965. The Charge Memo was thus issued on 29.03.2000 and received by the applicant on 20.04.2000. The applicant submitted his reply to the Charge Memo requesting for certain documents and thereafter the proceedings were conducted on various dates (15 dates) as recorded above.

Upon conclusion of the inquiry, the Inquiry Officer submitted the inquiry report to the Disciplinary Authority holding the charges not proved. After communicating the tentative points of disagreement to the petitioner, by a disagreement note on 11.11.2005; and after offering him opportunity of representation against the same, the Disciplinary Authority has considered the entire issue and proceeded to pass the order of punishment. We consider it relevant to mention here that in response to the disagreement note, the petitioner gave a reply/representation thereto on 07.02.2006, that is after about three months. In reply the petitioner has substantially admitted the charge that he left the institute without permission. He has also admitted that he retained the official quarter and did not hand over possession of the same before he left to join his foreign assignment in Malaysia. While admitting these facts in his representation

dated 07.02.2006, he has tried to justify the same in the following terms:

“ 6. I do acknowledge that leaving the country without the proper documents was shortsighted, but I could not help it as the time was running out and the opportunity would have slipped away for ever. I had made all the efforts to hand over the charges and responsibilities to the respective officers so that the functioning of duties etc would not suffer. In that light it was not abandonment of my office or responsibility.

7. Keeping the quarter was not with any malice. As I was the Chairman of the Quarter allotment Committee, I could swear that there was low demand and still vacant quarters were in plenty. Without even a first time request to vacate a quarter, charge sheeting an officer is really mala fide and unheard off. This proves how hostile the attitude of the administration was. I paid up the Licence fees at the earliest opportunity. Nevertheless I am prepared to act according to the final judgement and will always be ready to compensate if there is any.”

The entire allegations of the petitioner regarding the procedure being in any way unfair or in violation of principles of natural justice, therefore is required to be considered keeping in background the admission of the petitioner as contained in his reply to the show-cause against the communication of the Disciplinary Authority dated 17.11.2005, containing the points of disagreement with the finding of the Inquiry Officer.

From the facts available from the inquiry records, recorded above it is evident that the charge was served on the

petitioner, he submitted his reply thereto. The inquiry was conducted on many dates and the petitioner was afforded opportunity of cross-examining the witnesses who had deposed. It is also fact that the Inquiry Officer was convinced of the petitioner's stand and had submitted an inquiry report in favour of the petitioner, finding the charges not proved.

The Disciplinary Authority while considering inquiry report has also complied with the procedural fairness, by communicating to the petitioner the tentative points of disagreement with the findings of the Inquiry Officer and by allowing the petitioner an opportunity to make his representation against such tentative findings as per the settled law as evident from the decision of the Apex Court in the case of ***Punjab National Bank Vs. Kunj Behari Misra*** reported in ***(1998) 7 SCC 84***.

It is at this stage that the petitioner has substantially admitted the allegations in his representation to the Disciplinary Authority submitted on 07.02.2006. His admission in Para 6 & 7 of his representation has been recorded above. A bare perusal of these two Paragraphs leaves no room for doubt that the petitioner does not deny that he left his job without proper permission or that he had not handed over the possession of the official quarter before leaving. There is also

no scope to deny the fact that the leave had been cancelled and intimation in this regard duly communicated to the petitioner. On the contrary we find that the petitioner has stated before the Inquiry Officer that he presented himself on 2nd August, 2021 with an intention to join back but he was denied by the Administrative Officer to join.

Before this Court however, the learned counsel for the petitioner has submitted that the petitioner had never sought permission to resume his duties. In his reply to the show-cause issued by the Disciplinary Authority upon disagreement with the enquiry report, the petitioner has not stated anywhere that the communications regarding cancellation of his leave, including the FAX message sent to Mount Miriam Hospital, Pinang, Malaysia was not served upon him; or that upon receipt of such intimation he had made any effort to rejoin. Such being the admitted facts and there being no procedural lapse in the proceedings conducted against the petitioner we find no infirmity in the decision of the Tribunal to reject the petitioner's challenge to the punishment order and consequence thereof. The Tribunal has rightly relied upon the case of *P. Gunasekaran (supra)* wherein the Apex Court has in specific terms laid down the law regarding the limited scope of interference in a disciplinary proceeding. The Apex Court has

taken note of the settled position that a writ court exercising jurisdiction under Article 226 of the Constitution of India does not exercise jurisdiction as a Court of appeal over the decision of the authorities holding a departmental inquiry. The concern of the High Court is only to see whether the inquiry is held by an authority competent in that behalf and according to the procedure prescribed. The Apex Court has further stated that the writ Court is also required to see that the rules of natural justice are not violated. In a case where there is some material accepted by the authorities and which may reasonably support the conclusion of the delinquent being guilty of the charge, the High Court is not to review the evidence and arrive at an independent finding thereupon. Only where the proceedings are conducted inconsistent with the principles of natural justice or in violation of the statutory rules prescribing the mode of inquiry, the High Court may be justified in interfering with the conclusion of the Disciplinary Authority or Authorities conducting the inquiry. The Apex Court has further held that the High Court may interfere where the conclusion is based on considerations extraneous to the evidence or based on an irrelevant consideration. Interference has been held justified also when the conclusion on the very face of it is wholly arbitrary and capricious that no reasonable person could have

arrived at that conclusion, or on similar grounds. If the inquiry on the other hand is properly held on the basis of some legal evidence then there is hardly any scope for interference. The Apex Court has relied upon various earlier judgments in this regard and has thus recorded in the case between *Union of India and ors. Vs. P. Gunasekaran*, in Paragraphs 12 and 13 as follows :

“12. Despite the well-settled position, it is painfully disturbing to note that the High Court has acted as an appellate authority in the disciplinary proceedings, reappreciating even the evidence before the enquiry officer. The finding on Charge I was accepted by the disciplinary authority and was also endorsed by the Central Administrative Tribunal. In disciplinary proceedings, the High Court is not and cannot act as a second court of first appeal. The High Court, in exercise of its powers under Articles 226/227 of the Constitution of India, shall not venture into reappreciation of the evidence. The High Court can only see whether:

- (a) the enquiry is held by a competent authority;*
- (b) the enquiry is held according to the procedure prescribed in that behalf;*
- (c) there is violation of the principles of natural justice in conducting the proceedings;*
- (d) the authorities have disabled themselves from reaching a fair conclusion by some considerations extraneous to the evidence and merits of the case;*
- (e) the authorities have allowed themselves to be influenced by irrelevant or extraneous considerations;*
- (f) the conclusion, on the very face of it, is so wholly arbitrary and capricious that no reasonable person could ever have arrived at such conclusion;*

- (g) the disciplinary authority had erroneously failed to admit the admissible and material evidence;*
- (h) the disciplinary authority had erroneously admitted inadmissible evidence which influenced the finding;*
- (i) the finding of fact is based on no evidence.*

13. *Under Articles 226/227 of the Constitution of India, the High Court shall not:*

- (i) reappreciate the evidence;*
- (ii) interfere with the conclusions in the enquiry, in case the same has been conducted in accordance with law;*
- (iii) go into the adequacy of the evidence;*
- (iv) go into the reliability of the evidence;*
- (v) interfere, if there be some legal evidence on which findings can be based.*
- (vi) correct the error of fact however grave it may appear to be;*
- (vii) go into the proportionality of punishment unless it shocks its conscience.”*

In the instant case the Tribunal has rightly found that there is no procedural infirmity as full opportunity had been granted to the petitioner.

We have also taken note of the substantial admission of the petitioner with respect to the four charges contained in the Charge Memo. which are more explicit from reading of the entire representation dated 07.02.2006 submitted by the petitioner, in response to the show-cause issued by the Inquiry Officer on 11.11.2005.

In view of such circumstances we find that there is no scope for the petitioner to contend that there is any violation with the principles of natural justice. It is settled position of law by now that natural justice cannot be put in a straightjacket formula and its application may vary having regard to the facts and context, which arise for consideration. It is also settled by now that to sustain an allegation regarding violation of principles of natural justice one is required to establish that prejudice is caused due to its non-observance. In the present case, the alleged violation of procedure or violation of principles of natural justice is also unsustainable in view of the fact that the petitioners stand taken in his representation dated 07.02.2006 filed in response to the show-cause issued by the Disciplinary Authority, contains statements, which manifest admission regarding his proceeding on foreign assignment without permission and without handing over the official quarter which were the substance of the four articles of charges for which the proceedings was conducted.

14. Thus under such circumstances that the Apex Court as in the case of *Managing Director, ECIL, Hyderabad and others Vs. B. Karunakar* reported in (1993) 4 SCC 727 held that the same would amount to “unnatural expansion of natural justice”. The said observation of the Apex Court in the case of *B. Karunakar*

(*supra*) have been quoted in the subsequent decision of the Apex Court in the case of *Union of India and Others Vs. Bishamber Das Dogra* reported in (2009) 13 SCC 102 as follows:

“14. It is settled legal position that an order is required to be examined on the touchstone of doctrine of prejudice. A Constitution Bench of this Court in *ECIL v. B. Karunakar* [(1993) 4 SCC 727 : 1993 SCC (L&S) 1184 : (1993) 25 ATC 704], considered the issue at length and after taking into consideration its earlier judgment in *Union of India v. Mohd. Ramzan Khan* [(1991) 1 SCC 588 : 1991 SCC (L&S) 612 : (1991) 16 ATC 505], came to the conclusion that (B. Karunakar case [(1993) 4 SCC 727 : 1993 SCC (L&S) 1184 : (1993) 25 ATC 704], SCC p. 755, para 28) furnishing the copy of the enquiry report and consideration of the employee's reply to the same by the disciplinary authority constitute an integral part of the enquiry.

“28. ... The second stage follows the enquiry so carried out and it consists of the issuance of the notice to show cause against the proposed penalty and of considering the reply to the notice and deciding upon the penalty.”

Thus, it is the right of the employee to get the opportunity to make a representation against the findings in the enquiry report.

15. However, the Court further held that : (B. Karunakar case [(1993) 4 SCC 727 : 1993 SCC (L&S) 1184 : (1993) 25 ATC 704], SCC p. 757, para 30)

“30. (v) ... The theory of reasonable opportunity and the principles of natural justice have been evolved to uphold the rule of law and to assist the individual to vindicate his just rights.”

The Court further observed as under : (B. Karunakar case [(1993) 4 SCC 727 : 1993 SCC (L&S) 1184 : (1993) 25 ATC 704] , SCC pp. 757-58, paras 30-31)

“30. (v) ... They are not incantations to be invoked nor rites to be performed on all and sundry occasions. Whether in fact, prejudice has been caused to the employee or not on account of the denial to him of the report, has to be considered on the facts and circumstances of each case. Where, therefore, even after the furnishing of the report, no different consequence would have followed, it would be a perversion of justice to permit the employee to resume duty and to get all the consequential benefits. It amounts to rewarding the dishonest and the guilty and thus to stretching the concept of justice to illogical and exasperating limits. It amounts to an ‘unnatural expansion of natural justice’ which in itself is antithetical to justice.

31. ... It is only if the court/tribunal finds that the furnishing of the report would have made a difference to the result in the case that it should set aside the order of punishment.”

- 15.** We also find it worth taking into consideration the decision of the Apex Court in the case of *State of Rajasthan and Another vs. Mohammed Ayub Naz* reported in (2006) 1 SCC 589, which has been cited by the learned Counsel for the Union of India. The decision is relevant to the facts and circumstances of the present case since the Apex Court in the said judgment has observed that absenteeism from office for a prolonged

period of time without prior permission by a Government servant has become a principal cause of indiscipline which has greatly affected various Government services. Taking note of the provisions contained in Rajasthan service Rules and having regard to the fact that the employee therein was wilfully absent for 3 years without intimation to the Government and had participated in the disciplinary proceedings conducted against him as also the admitted fact of absence being borne from the records found it a fit case for award of punishment of removal from service. In the present case also petitioner has been proceeded against by a charge memo in duly constituted disciplinary proceeding wherein he was afforded adequate opportunity. The fact of his proceeding to assume a foreign assignment, without sanction of his leave/ permission, and the fact that before leaving the institute he had not even handed over possession of the residential quarter allotted to him is also admitted as will be borne from his representation dated 07.02.2006, in response to the notice of disagreement dated 11.11.2005 of the disciplinary authority. In view of such facts and circumstances it cannot be said that the same would not invite punishment of dismissal from service.

- 16.** In view of the above consideration we find no reason to interfere with the order of the Tribunal passed in O.A. No. 621 of 2012 and this writ petition being No. **W.P.C.T. 36 of 2019** is thus **dismissed.**

17. Parties shall be entitled to act on the basis of the server copy of the judgment and order placed on the official website of the Court.

18. Urgent certified photo copies of this judgment, if applied for, be given to the parties upon compliance of the requisite formalities.

I Agree,

(Madhuresh Prasad, J.)

(Supratim Bhattacharya, J.)