



2025:DHC:10203-DB



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

Reserved on: 16.10.2025

Pronounced on: 20.11.2025

+ **W.P.(C) 14142/2023 & CM APPL. 55948/2023**

GOVERNMENT OF NCT OF DELHI AND ORS

..... Petitioners

Through: Ms.Avshreya Pratap Singh
Rudy, CGSC with Ms.Usha
Jamnal and Mr.Mohammad
Junaid Mahmood, Adv. along
with ASI Puneet

versus

SATISH KUMAR

..... Respondent

Through: Mr.Anil Singal, Adv.

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

HON'BLE MS. JUSTICE MADHU JAIN

J U D G M E N T

NAVIN CHAWLA, J.

1. This petition has been filed challenging the Judgment and Order dated 11.08.2023 (hereinafter referred to as the 'Impugned Order') passed by the learned Central Administrative Tribunal, Principal Bench, New Delhi, (hereinafter referred to as the 'Tribunal') in O.A. No.2496/2016 titled *Satish Kumar v. Govt. of NCT of Delhi & Ors.*, whereby the learned Tribunal had allowed the O.A. filed by the Respondent herein and set aside the punishment of dismissal from



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service awarded to the Respondent herein and remanded the matter back to the Disciplinary Authority.

Brief Facts:

2. The Respondent had joined the Delhi Police on 01.08.1989. While working as a Constable in the West District, the Respondent was issued two Absentee Notices, being No. 6005-08/SIP(West) and No. 2228/SIP(West) dated 24.05.2011 and 28.02.2012 respectively, for being absent from duty without any intimation/permission on nine different occasions from 10.05.2011 to 05.12.2012. The Respondent, *vide* the said Absentee Notices, was asked to resume his duty immediately, however, he failed to do so. The details of leave without intimation/permission taken by the Respondent are as follows:

Sl. No.	D.D. No. & Date of absent	D.D. No. and date of arrival	Absent period
1.	06 dated 10.05.11, District Lines	09, dated 16.06.11, District Lines	37 days 04 Hours & 30 Minutes
2.	39-B, dated 25.06.11, PS Maya Puri	41-B, dated 09.08.11 PS Maya Puri	45 days
3.	42-B, dated 13.02.12, PS Maya Puri	72-B dated 13.02.12, PS Maya Puri	08 hours & 20 Minutes
4.	47-B, dated 05.03.12, PS Maya Puri	DD No. 50-B, dated 05.03.12, PS Maya Puri	40 Minutes.
5.	41-B, dated 19.2.12, PS Maya Puri	24-B, dated 27.02.12, PS Maya Puri	07 days 12 hours and 35 minutes.
6.	65-B, dated 06.03.12 PS Maya Puri	27-B, dated 07.03.12 PS, Maya Puri	01 day & 45 minutes
7.	08, dated 26.4.12, District Lines.	12, dated 04.05.12 District Lines	08 days & 04 hours.
8	06, dated 05.05.12, District Line	D.D. No. 10, dated 08.05.12, District Lines	03 days, 03 hours & 30 minutes.
9.	DD No. 03, dated 02.12.12, District Line	D.D. No. 04, dated 06.12.12 District Lines	04 days & 20 Minutes

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3. It is the case of the Petitioners that a perusal of the service record of the Respondent would reveal that earlier also, the Respondent had absented himself on 74 different occasions, for which the Respondent was awarded various warnings/censure/major punishments. However, the Respondent, being a habitual absentee, continued to absent himself from duty without any intimation/permission from the competent authority.

4. It is the case of the Petitioners that keeping in view the conduct of the Respondent, a disciplinary inquiry was initiated against the Respondent, *vide* Order No. 3821-45/HAP(P-I)/West dated 06.03.2013, in terms of the Delhi Police (Punishment & Appeal) Rules, 1980 (in short, 'Rules').

5. It is the case of the Petitioners that the Inquiry Officer prepared the summary of allegations, list witnesses, list of documents, and other relevant documents, and served the same upon the Respondent on 24.04.2013, against his proper receipt at his home. However, the Respondent did not join the disciplinary inquiry proceeding deliberately, thereby, adopting delaying tactics.

6. It is the case of the Petitioners that a notice dated 02.05.2013 was issued by the Inquiry Officer to the Respondent, directing him to join the disciplinary inquiry proceeding on 05.05.2013, failing which *ex-parte* proceedings would be initiated on the said date. The said notice was duly received by the Respondent on 03.05.2013, against his proper receipt, however, he did not join the disciplinary inquiry proceeding. Consequently, the Inquiry Officer, having no alternative,



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requested the Disciplinary Authority for permission to proceed *ex-parte* under Rule 18 of the Rules.

7. Upon such request, the Disciplinary Authority granted such permission, and thereafter, the Inquiry Officer conducted the inquiry *ex-parte*, during which 5 witnesses were examined by the Department in the absence of the Respondent.

8. It is averred that on the basis of the testimony of these witnesses, the Inquiry Officer framed the charge against the Respondent, which was duly approved by the Disciplinary Authority. The said charge was served upon the Respondent on 05.06.2013 against his proper receipt. The Respondent did not admit the Charge, and was accordingly, directed to submit his list of Defence Witnesses and Defence Statement. However, he failed to produce any Defence Witness or file any statement in his defence.

9. It is the case of the Petitioners that since the Respondent did not submit his defence statement in respect of the Charge, the Inquiry Officer proceeded to complete the departmental inquiry in accordance with the procedure prescribed under the Rules.

10. The Inquiry Officer thereafter submitted his findings on 18.06.2013, concluding that the charge framed against the Respondent stood proved beyond any doubt.

11. It is the case of the Petitioners that the Disciplinary Authority, tentatively agreeing with the findings of the Inquiry Officer, forwarded the findings to the RI/West District, *vide* Order dated 28.06.2013, for serving the same upon the Respondent with a



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direction to obtain the Respondent's representation against the findings of the Inquiry Officer.

12. It is averred that the Respondent received a copy of the findings on 03.07.2013, against his proper receipt. The Respondent's reply to the findings was due on or before 12.07.2013, but he did not submit any reply. Thereafter, a communication, being U.O. No. 13259/HAP (P-I)/West dated 16.07.2013, was issued to RI/West District directing that the Respondent be called upon to submit his reply within two days, failing which the matter would be decided *ex-parte* on merits without any further reminders.

13. It is the case of the Petitioners that Constable Ashwani Kumar, No. 3242/DAP from District Lines/West District was deputed to serve the copy of the summons upon the Respondent at his residence. The said Constable visited the native village of the Respondent, where his wife, Smt. Veena Devi, was found present. She informed that her husband, Sh. Satish Kumar, had gone to a nearby village. Accordingly, a copy of the summons was served upon the wife of the Respondent on 18.07.2013 against her proper receipt.

14. It is further the case of the Petitioners that the Respondent was given a last opportunity, *vide* office letter dated 20.07.2013, issued through RI/West, directing him to appear before the Disciplinary Authority along with his reply to the findings, on 22.07.2013 at 10:30 AM, failing which the departmental inquiry would be decided *ex-parte* on merits. The Respondent received the copy of the said last opportunity notice on 21.07.2013 against his proper receipt, however,



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he did not appear before the Disciplinary Authority on 22.07.2013 at the given time. Moreover, the Respondent also did not send any representation with regard to the findings of the Inquiry Officer before the Disciplinary Authority.

15. It is averred that the Disciplinary Authority, after carefully examining the entire record of the departmental inquiry, including the findings of the Inquiry Officer, observed that all the prosecution witnesses had been examined during the inquiry proceedings in the absence of the Respondent, who had failed to cooperate, and that these witnesses had supported the allegations and charge framed against the Respondent. The Disciplinary Authority further noted that, in adherence to the principles of natural justice, the Respondent had been afforded an opportunity to appear before the Disciplinary Authority on 22.07.2013 along with his reply to the findings of the Inquiry Officer, however, he neither submitted any reply nor appeared, indicating that he had nothing to state in his defence. The Disciplinary Authority also took into consideration the previous record of the Respondent, which revealed that he was a habitual absentee and had earlier been awarded the punishment of forfeiture of five years of approved service permanently on 29.05.2013, yet he failed to mend his conduct. The Disciplinary Authority, concurring with the findings of the Inquiry Officer that the charge against the Respondent stood fully proved, found no reason to disagree with the said findings, and was of the opinion that the Respondent did not deserve any leniency and was unfit for further retention in the Police Force. Accordingly, the



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Additional Deputy Commissioner of Police, West District, Delhi, dismissed the Respondent from service *vide* Order dated 24.07.2013. Further, the period of absence of the Respondent, as mentioned in the order of dismissal, was also treated as “Not Spent on Duty” for all intents and purposes, in accordance with the principle of “No Work, No Pay.” It was further ordered that the said period shall not be regularised in any manner whatsoever.

16. The Respondent, thereafter, preferred an appeal against the order of dismissal before the Joint Commissioner of Police, South Western Range, Delhi, who is the Appellate Authority.

17. The Appellate Authority, after considering the appeal, and after granting the Respondent an opportunity of hearing, keeping in view the past service record of the Respondent wherein he had remained absent on 74 different occasions earlier, had been censured on 7 occasions, and had also been awarded major penalties on 3 separate occasions, rejected the appeal *vide* Order dated 09.09.2015, holding that the Respondent is unfit to serve in a disciplined Force.

18. Aggrieved thereof, the Respondent filed the aforesaid O.A. before the learned Tribunal, seeking quashing and setting aside of the findings dated 18.06.2013 of the Inquiry Officer, the Order of punishment dated 24.07.2013, and the Appellate Authority's Order dated 09.09.2015. In the alternative, the Respondent sought a direction to the Petitioners herein to convert the punishment of dismissal from service into one of compulsory retirement, or grant him compassionate allowance along with all consequential benefits under Rule 41 of the



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Central Civil Services (Pension) Rules, 1972 (in short, 'Pension Rules').

19. The learned Tribunal, *vide* the Impugned Order, allowed the said O.A. and quashed the orders passed by the Disciplinary Authority as well as the Appellate Authority. The matter was remitted to the Disciplinary Authority to revisit the case and pass a fresh order imposing a fresh penalty upon the Respondent, other than the penalty of dismissal from service. The relevant paragraphs of the Impugned Order read as under:

"9. We are conscious that it is the sole discretion and prerogative of the disciplinary authority to impose any of the penalties listed in the disciplinary rules and dismissal is one of such penalties. We have no reason therefore to question the wisdom and authority of the disciplinary authority while passing an order with respect to such a penalty. We are also conscious of the fact that our authority is limited only to adjudicate the legality of an action and not to dwell upon the wisdom of the said authority in exercise of its legitimate powers. However, at the same time, responsibility is cast upon us that while upholding the law, principles of natural justice also must be protected. Moreover, once we hold that the penalty imposed upon him is excessive and certainly not commensurate with the allegation leveled and proven against the applicant and considering that there are precedents when in identical facts and circumstances, this Tribunal has remitted the cases back to the disciplinary authority for re-consideration of the penalty imposed, we have no hesitation in holding that the facts and circumstances of the present case also warrant us to interfere in the orders of the disciplinary and appellate authorities by



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taking a similar view. Also, if the punishment is imposed by the disciplinary or the appellate authorities shocks the conscience of the Tribunal, it is incumbent upon us to direct the disciplinary/appellate authorities to consider the penalty imposed. While absenteeism in a disciplined force is a serious matter, it is not the case that the applicant has been found to be involved in a criminal case, and convicted or in matters of financial misappropriation, corruption or moral turpitude. Further, in his appeal, he has mentioned that he was seriously ill during the time of his purported absence and has relevant medical records to the effect which have been ignored by the Respondents while taking the decision of dismissal. We find that the appellate authority while disposing of his appeal has considered the factum of illness of his wife though the contention of the applicant in his appeal about his precarious medical condition has not been considered by the appellate authority.

10. In view of aforesaid facts and circumstances, we consider it appropriate to set aside the said impugned orders and remit the case back to the disciplinary authority to revisit the matter and pass an order afresh. The disciplinary authority, after due consideration, shall take a decision to impose a fresh penalty upon the applicant. However, the said authority would be at liberty to impose any penalty other than the penalty of dismissal from service. The said directions shall be complied with, within a period of eight weeks from the date of receipt of a certified copy of this order. The applicant, if the circumstances so arise, shall be entitled to all consequential benefits that may subsequently accrue, in accordance with law.”

(Emphasis supplied)



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20. Aggrieved by the said Order, the Petitioners have preferred the present petition.

Submissions by the learned counsel for the Petitioners:

21. The learned counsel for the Petitioners, reiterating the findings of the Inquiry Officer, Disciplinary Authority, and the Appellate Authority, submits that the said orders have been passed by considering the past record of Respondent which reflects that he remained absent on 74 different occasions earlier; was censured on 07 occasions; and was also awarded major penalty on 03 occasions, which shows that he is an incorrigible person who cannot be accepted in a disciplined Force. In support, she places reliance on the Judgment of this Court in ***Durga Prasad v. Govt, of N.C.T. of Delhi***, 2002 SCC OnLine Del 1042.

22. She submits that the learned Tribunal failed to appreciate that absenteeism in a disciplined Force is a serious matter as it cripples the entire administration of police department. She further submits that wilful and unauthorized absence, if taken leniently, will not only encourage others in a disciplined Force to follow suit but it will also destroy the whole fabric of discipline. In support, she places reliance on the Judgments of Supreme Court in ***Maan Singh v. Union of India & Ors.***, (2003) 3 SCC 464, ***Mithilesh Singh v. Union of India & Ors.***, (2003) 3 SCC 309, ***DTC v. Sardar Singh***, (2004) 7 SCC 574, and ***State of U.P. & Ors. v. Ashok Kumar Singh & Anr.***, (1996) 1 SCC 302.



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23. She submits that the Respondent was accorded multiple opportunities to present his case and explain his conduct before the Inquiry Officer and even the Disciplinary Authority, however, the Respondent showing blatant disregard to the due process, failed to even appear before the concerned Authority or provide a justification for his leave without intimation/permission. It was only after the Order dated 24.07.2013, dismissing the Respondent from service was passed, that the Respondent decided to set up his case in form of an appeal before the Appellate Authority.

24. The learned counsel for the Petitioners submits that the learned Tribunal, while exercising its limited power of judicial review, could not have sat in appeal over the well-reasoned findings of the Disciplinary Authority and the Appellate Authority, which were arrived at after due consideration of the evidence on record and the past service conduct of the Respondent. The Appellate Authority, upon an independent appraisal of the record and after recording cogent reasons reflecting application of mind, had duly affirmed the finding of guilt returned by the Inquiry Officer and upheld the punishment of dismissal. She submits that in the absence of any perversity, procedural irregularity, or violation of the principles of natural justice, the learned Tribunal was not justified in re-appreciating the evidence or substituting its own view on the proportionality of punishment. In support, she places reliance on the Judgment of Supreme Court in *Union of India & Ors. v. Bishamber Das Dogra*, (2009) 13 SCC 102.



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Submissions by the learned counsel for the Respondent:

25. On the other hand, the learned counsel for the Respondent submits that the punishment of dismissal from service is wholly disproportionate to the nature of the alleged misconduct. It was contended that the Respondent is not guilty of any grave or serious delinquency nor of any act involving moral turpitude, dishonesty, or dereliction of duty of such magnitude so as to warrant the extreme penalty of dismissal. The only charge attributed to the Respondent pertains to his absence from duty, which, it was urged, occurred under *bona fide* circumstances beyond his control.

26. He submits that such absence, even if taken at its face value, cannot be equated with wilful or deliberate misconduct so as to justify his removal from service. It was further contended that the learned Tribunal had rightly appreciated the facts and circumstances of the case, keeping in view the principles of natural justice, proportionality, fairness, and therefore justifiably interfered with the punishment imposed by the Disciplinary and Appellate Authorities.

27. He further submits that the respondent was unwell during the relevant period and had been admitted in hospital or advised rest. The Respondent's wife had also fallen seriously ill during the relevant period, and his children, being of tender age, were incapable of attending to her medical needs or managing the household in his absence. He contends that faced with such unavoidable family exigencies, the Respondent was constrained to remain away from duty for the said period. The Respondent had duly brought these facts to



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the notice of the Appellate Authority and had specifically pleaded that his absence was not an act of insubordination or negligence, but the result of unavoidable domestic hardships. He submits that the Appellate Authority failed to appreciate these mitigating circumstances while imposing and upholding the extreme penalty of dismissal.

28. He further submits that the Respondent had duly placed on record the relevant medical papers and supporting documents which clearly established that his absence from duty was occasioned by genuine illness and circumstances beyond his control. The medical evidence justifies the Respondent's absence and therefore, the same cannot, by any stretch of reasoning, be construed as wilful or contumacious, and as such, the punishment founded upon such an erroneous finding is liable to be set aside.

Analysis and findings:

29. We have considered the submissions made by the learned counsels for the parties and have also gone through the record of the Disciplinary Proceedings.

30. At the outset, we would note that the learned Tribunal has found no fault with the conduct of the inquiry or with the inquiry report. We quote from the impugned order as under:

"8. The facts of the case are not disputed. The applicant has remained absent for long period, for which departmental proceedings will draw against him. It is also not in dispute that the applicant did not participate in the enquiry



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proceedings which had to be conducted ex parte. The due procedure was followed in the conduct of the enquiry and a penalty of dismissal was imposed which was also upheld by the appellate authority.”

31. The learned Tribunal has, however, found fault with the penalty imposed on the Respondent, finding the same to be excessive and not commensurate with the allegations levelled and proven against the Respondent. The learned Tribunal states that though it is conscious of its limited jurisdiction to interfere, *inter alia*, with the penalty imposed, and that absenteeism in a disciplined Force is a serious matter, at the same time, observes that this is not a case where the Respondent has been found to be involved in a criminal case and convicted, or in a matter of financial misappropriation, corruption, or moral turpitude. The learned Tribunal further finds that though the Respondent, in his appeal, has mentioned that he was seriously ill during the time of his purported absence and has relevant medical records for the same, the said submission has been ignored by the Appellate Authority while disposing of his appeal.

32. We are unable to accept the finding of the learned Tribunal. At the outset, we would note the limited jurisdiction which a Court exercises in judicial review of a disciplinary proceeding and the punishment imposed on the delinquent employee. The Court, while exercising such power, does not sit in appeal against the orders passed by the disciplinary authorities. Specifically, coming to the punishment imposed, the Court can interfere with the same only when the



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punishment imposed shocks the conscience of the Court. Mere finding that in a given fact the Court may have proceeded to award a lesser punishment, is not sufficient to interfere with the punishment awarded by the Disciplinary Authority.

33. In ***Chennai Metropolitan Water Supply and Sewerage Board & Ors. v. T.T. Murali Babu***, (2014) 4 SCC 108, while considering a case of an employee being dismissed from service on the finding of 'habitual absenteeism', the Court reiterated that the doctrine of proportionality in the context of imposition of punishment in service law gets attracted when the Court, on the analysis of material brought on record, comes to the conclusion that the punishment imposed by the disciplinary authority or the appellate authority 'shocks the conscience of the Court'. The Court, taking into account the adamant attitude of the employee, wherein the employee had even failed to respond to the repeated communication from the employer, held that the punishment of dismissal from service was not disproportionate to the gravity of misconduct and that the doctrine of proportionality was not remotely attracted.

34. In the present case as well, the allegation against the Respondent was of remaining absent from duty. In spite of repeated notices from the Inquiry Officer and thereafter by the Disciplinary Authority, the Respondent failed to respond to the same and did not lead any evidence or file any document in support of his plea that he was ill because of which he had remained absent from duty. The Inquiry Officer and the Disciplinary Authority, therefore, had to



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proceed *ex parte* against the Respondent and found him to be wilfully absent from duty during the alleged period. They also found that the Respondent had been previously found guilty of misconduct on 74 occasions and visited with varying punishments. It is only at the appellate stage that the Respondent produced the documents of his alleged illness. The learned Tribunal has itself not seen these documents, nor commented on them. It has also not found any reason supplied by the Respondent for not submitting these documents, if not during the period when he was wilfully absent from duty, but at least before the Inquiry Officer or the Disciplinary Authority. The Respondent cannot claim a right to join the disciplinary proceedings at his own whims and fancies and whenever convenient to him. He cannot bring to a naught the entire inquiry proceeding by producing some documents at an appellate stage and then claim a right that these documents shall be considered by the Disciplinary Authority as a justified excuse for remaining absent from duty, without holding a proper inquiry into the same.

35. Even otherwise, we have perused the documents filed by the Respondent along with his appeal to the Appellate Authority. While for some period they do show that the Respondent was ill-disposed, at the same time, such period was intermittent and not regular. There are certificates from doctors certifying that he was fit to join duty. When he joins duty, he should then produce these documents and seek regularization of his leave. It is not even the case of the Respondent that he made any such application to the Petitioners during the



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relevant period.

36. The observation of the learned Tribunal that the Respondent had not been found guilty of any criminal offence or of any allegation involving financial or moral turpitude, thereby making the punishment disproportionate, does not impress us. In a disciplined Force like the Delhi Police, unauthorized absence from duty cannot be accepted. It is a grave misconduct which can have far-reaching consequences. In any case, as observed by us hereinbefore, it is only when the punishment shocks the conscience of the Court that the Court would be justified in interfering with the punishment. In our opinion, no such case was made out by the Respondent.

37. In view of our above observations, we cannot uphold the Impugned Order passed by the learned Tribunal. The same is accordingly set aside.

38. We may, however, note that in the O.A. filed before the learned Tribunal, the Respondent had made an alternate prayer for seeking compassionate allowance in terms of Rule 41 of the Pension Rules. From a perusal of the record, we do not find the competent authority to have considered the said prayer of the Respondent. It shall, therefore, be open to the Respondent to make a fresh application, if not already made, to the competent authority of the Petitioners for considering the above prayer of the Respondent. In case such an application is filed by the Respondent within a period of six weeks from the date of this judgment, the same shall be considered by the competent authority of the Petitioners, and a reasoned order thereon



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shall be passed within a period of eight weeks of the receipt of such application. If aggrieved of the same, it shall be open to the Respondent to challenge it in accordance with the law.

39. The petition along with the pending application is disposed of in the above terms. There shall be no order as to costs.

NAVIN CHAWLA, J.

MADHU JAIN, J.

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