

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.2732 of 2025

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Animesh Kumar S/o Sri Bharat Bhushan Kumar resident of -H 01, Near
Futani Chowk, Officers Colony Mirchaibari, Katihar, Katihar, Bihar, 854105.

... .. Petitioner

Versus

1. The State of Bihar through chief Secretary, Government of Bihar, Patna.
2. The Additional Chief Secretary, General Administration Department,
Government of Bihar, Patna
3. The District Magistrate, Katihar.
4. The Chairman, Union Public Service Commission, Dholpur House,
Shahjahan Road, New Delhi.

... .. Respondents

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Appearance :

For the Petitioner	:	Mr. Santosh Kumar, Sr. Advocate Mr. Sourav Suman, Advocate Ms. Pragati Patra, Advocate Mr. Sushant Srivastava, Advocate Mr. Aalekh Anand, Advocate
For the State	:	Mr. P.K. Verma, A.A.G.-3 Dr. Mankeshwar Tiwari, A.C. to AAG-3 Mr. Suman Kumar Jha, A.C. to AAG-3 Mr. Raghwendra Kumar, S.C.-22 Mr. Ravi Ranjan, A.C. to S.C.-22
For the Union of India	:	Mr. Amish Kumar, Advocate

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CORAM: HONOURABLE MR. JUSTICE SANDEEP KUMAR
C.A.V. JUDGMENT
Date : 15-05-2026

The present writ petition has been preferred under Article 226 of the Constitution of India along with four successive Interlocutory Applications, by which the petitioner, who is a member of the Bihar Administrative Service, has assailed the action of the respondents in placing him under suspension during the currency of his medical leave and in initiating departmental proceedings against him under Rule 17



of the Bihar Government Servant (Classification, Control and Appeal) Rules, 2005.

2. In this case, the petitioner is challenging the memo no.1396 dated 23.01.2025 issued by the General Administration Department, Government of Bihar, whereby and whereunder the petitioner has been placed under suspension in exercise of powers conferred under Rule 9(1)(a) of the Bihar Government Servant (Classification, Control and Appeal) Rules, 2005. Consequently, the petitioner has also prayed for a direction upon the respondent authorities for revocation of his suspension and to reinstate him in service with immediate effect. The petitioner has furthermore prayed for a direction upon the respondent authorities to ensure that his suspension should not have any adverse effect on his promotion and grant of other consequential benefits.

3. By way of filing *Interlocutory Application No.01 of 2025*, the petitioner has prayed for amending the prayer portion of the main writ petition and challenged the Article of Charge (*Prapatra-Ka*) prepared by the District Magistrate, Katihar *vide* letter No.1408 dated 27.12.2023. Through *Interlocutory Application No.02 of 2025*, the petitioner has again prayed for amending the prayer portion and



challenged the Memo No.15354 dated 19.08.2025, whereby the departmental proceeding has been initiated against him under Rule 17 of the Bihar CCA Rules, 2005.

4. In *Interlocutory Application No.03 of 2025*, the petitioner has prayed for a direction upon the Union Public Service Commission to consider the candidature of the petitioner for his induction into the Indian Administrative Service cadre or alternatively to withhold the final publication of the notification regarding induction of officers in the I.A.S. cadre until the disposal of the present writ petition.

5. In *Interlocutory Application No.04 of 2025*, the petitioner has also prayed for amending the prayer portion of the main writ petition and has prayed for grant of stay of the ongoing departmental enquiry against him, which is being conducted by the Divisional Commissioner, Bhagalpur.

6. The brief factual matrix relevant for the present purpose is that the petitioner is an Officer of the Bihar Administrative Service, having joined the service in the year 1996. In the month of September, 2021, the petitioner was transferred to the District of Katihar as Senior Deputy Collector. It is the case of the petitioner that he is a longstanding patient of psychosomatic disorder, for several years and has been



undergoing regular treatment at Medanta Hospital, New Delhi as well as at AIIMS, Delhi. It is further the case of the petitioner that earlier also he had remained on leave for a period exceeding four years for his treatment for the said ailment and the said leave was duly regularized by the General Administration Department, Government of Bihar, as extraordinary leave.

7. It is further the case of the petitioner that in the early months of the year 2023, the health of the petitioner started deteriorating, accordingly he applied for casual leave for four days, for the purpose of his medical checkup, which was duly approved by the District Magistrate, Katihar. Accordingly, the petitioner availed his approved casual leave for four days starting from 25.04.2023 to 28.04.2023. The petitioner was medically examined on 27.04.2023 wherein he was advised for complete bed rest and to remain under strict vigilance.

8. It is also the case of the petitioner that he was continuously in touch with the District Magistrate, Katihar and had sent his contemporaneous medical records for seeking sanction of earned leave and subsequently extension thereof. On 17.06.2023, the petitioner was served with a show cause notice alleging that after the expiry of the initial four days sanctioned casual leave, he remained absent without authorization. The



petitioner submitted his reply to the said show-cause *vide* e-mail dated 24.06.2023 explaining that he was suffering from Psychosomatic Disorder for a long period of time for which he had undergone prolonged treatment at AIIMS, New Delhi and Medanta Hospital and the treating physician had advised bed rest and strict vigilance. However, the General Administration Department, Government of Bihar *vide* its letter dated 02.11.2023 and a reminder letter dated 28.11.2023 issued show cause notices regarding his unauthorized absence from duty, to the petitioner which were received by him, through WhatsApp only. The petitioner submitted his detailed response on 30.12.2023. The General Administration Department, thereafter, sought opinion from the District Magistrate, Katihar on the detailed response submitted by the petitioner on 30.12.2023, which was responded to, by the District Magistrate, Katihar, opining that the absence of the petitioner is an act of misconduct under Rule-3(i), 3(ii) and 3(iii) of the Bihar Government Servant Conduct Rules, 1976. Subsequently, a memo of charge was prepared and forwarded to the General Administration Department, Government of Bihar, Patna.

9. After lapse of more than one year and seven months, the petitioner was suspended *vide* Resolution dated



23.01.2025 under Rule-9(1)(a) of the Bihar CCA Rules, 2005 and during the suspension period, the headquarters of the petitioner was fixed at the office of the Divisional Commissioner, Bhagalpur Division, Bhagalpur and further it was directed that the petitioner would be entitled to subsistence allowance under Rule 10 of the Bihar CCA Rules, 2005. Initially the petitioner had challenged the aforesaid resolution of suspension in the present writ petition, which was subsequently, enlarged owing to subsequent developments in the disciplinary proceeding.

10. Thereafter, by letter no.1939 dated 31.01.2025, the General Administration Department forwarded the approved Article of Charge to the petitioner at his permanent address at Katihar requiring him to submit his response within a fortnight. Thereafter, by letter no.248/Estab. dated 19.02.2025, the Office of the Commissioner, Bhagalpur reported to the General Administration Department that the petitioner had not joined the headquarters at Bhagalpur, on account of which the aforesaid letter dated 31.01.2025 could not be handed over to him. A reminder letter was sent to the petitioner *vide* letter no.3875 dated 06.03.2025 by Speed Post and e-mail, seeking the response of the petitioner on the Articles of Charge. Thereafter,



the petitioner responded to the aforesaid show-cause. After a lapse of approximately four months from the reply dated 22.04.2025, and during the pendency of the present writ petition, the General Administration Department passed a Resolution *vide* memo No.15354 dated 19.08.2025 (Annexure P/15) holding that the explanation submitted by the petitioner was “misleading” and not based on facts, and thereafter the respondent authorities initiated departmental proceedings against him under Rule 17 of the Bihar CCA Rules, 2005. By the aforesaid impugned Resolution, the Divisional Commissioner, Bhagalpur was appointed as Conducting Officer and the District Magistrate, Katihar was directed to nominate a senior officer as Presenting Officer. Aggrieved, the petitioner challenged the said resolution by filing *I.A. No.02 of 2025*.

11. Thereafter, the petitioner came to know that the Union Public Service Commission had scheduled a meeting of the Selection Committee slated for 08.10.2025 for inducting Bihar Administrative Services officers into the Indian Administrative Services cadre. Apprehending that his name would be passed over on account of the suspension and the pendency of disciplinary proceedings, the petitioner filed *I.A. No.03 of 2025, inter alia*, praying for impleadment of the



U.P.S.C. as respondent No.4 to the present writ petition and for an appropriate order to be passed directing the U.P.S.C. to consider his candidature on provisional basis or alternatively, withhold the final publication of the notification. The petitioner also placed reliance on the procedural circular issued by the Government of Bihar i.e. letter no.2763 dated 26.02.2014 prescribing time-lines for completion of departmental proceedings, and letter issued by the Chief Secretary *vide* letter No.23061 dated 21.12.2022 incorporating the directions passed by this Court in *State of Bihar v. Sagar Kumar Roy, L.P.A. No.1203 of 2019* reported as *2022 SCC OnLine Pat 7449*.

12. This Court *vide* order 07.10.2025 had directed that the case of the petitioner be considered by the U.P.S.C. in its meeting scheduled on 08.10.2025 for appointment to the I.A.S. on a provisional basis, subject to the outcome of the present *lis*. Notwithstanding the same, the departmental enquiry pursuant to Resolution no.15354 dated 19.08.2025 was set down for hearing before the Conducting Officer at Bhagalpur.

13. After the meeting of the Selection Committee of the U.P.S.C. held on 08.10.2025, the name of the petitioner did not figure in the selected list. Aggrieved thereby,



the petitioner has filed Miscellaneous Jurisdiction Case No.3699 of 2025 (in C.W.J.C. No.2732 of 2025) and Miscellaneous Jurisdiction Case No.3700 of 2025 (in C.W.J.C. No.10493 of 2024) seeking contempt action against the concerned officers for alleged non-compliance of the order dated 07.10.2025 passed by this Court.

14. On 17.01.2026, the petitioner filed *I.A. No. 04 of 2025* praying for stay of the ongoing departmental enquiry being conducted by the Divisional Commissioner, Bhagalpur.

15. By letter No.1615 dated 22.01.2026, the Under Secretary, General Administration Department, directed the Director, Information and Public Relations, Bihar to publish a press release in two leading daily newspapers, calling upon the petitioner to join his suspension headquarters at Bhagalpur within fifteen days, and to cooperate in the departmental enquiry, failing which rule-based further action would be taken. The said press release recites that the petitioner has remained continuously absent since 29.04.2023 and that he has not joined his suspension headquarters at Bhagalpur. Further, he has remained absent in the departmental proceeding.

16. In the aforesaid background, the petitioner has principally challenged the initiation of the disciplinary



proceedings and the suspension of the petitioner.

17. Mr. Santosh Kumar, learned Senior Counsel appearing for the petitioner, at the outset, has taken this Court through the entire chronology of correspondences, the medical history of the petitioner, the impugned Resolutions, the memo of charge and the proceedings before the enquiry officer, and has assailed each of the impugned actions being unsustainable in the eyes of law.

18. Learned Senior Counsel for the petitioner submits that the absence of the petitioner from duty was the result of compelling circumstances of illness viz., Psychosomatic Disorder, under which it was not possible for him to report to duty. The petitioner is admittedly a long-standing patient who has previously undergone treatment at AIIMS, New Delhi and Medanta Hospital, New Delhi, where a Panel of Doctors at AIIMS, New Delhi conducted a detailed evaluation of his condition on 02.03.2017. The earlier spell of leave of more than four years for the same disease was duly regularized by the General Administration Department itself. The treating physician of the petitioner has, on every examination since 27.04.2023, consistently advised bed rest and strict vigilance.



19. It is the contention of the learned Senior Counsel that the petitioner has, with each leave-extension request, enclosed contemporaneous medical prescriptions of the treating physician. The medical condition is admitted by the respondents in their counter affidavit, wherein the respondents themselves do not view that the petitioner is making pretence of his illness.

20. Mr. Santosh Kumar, learned Senior Counsel, places strong reliance on the judgment of the Hon'ble Supreme Court in ***Krushnakant B. Parmar v. Union of India, (2012) 3 SCC 178***. It is the argument of the learned Senior Counsel that the case of the petitioner is *a fortiori* stronger than that of ***Krushnakant B. Parmar (supra)***, inasmuch as the instant petitioner had left headquarters only on duly sanctioned casual leave and had submitted prior applications with prescriptions for each extension thereto. It is further submitted that even the respondent State has admitted the *bona fides* of the illness of the petitioner.

21. Further the learned Senior Counsel for the petitioner has placed reliance on ***Chennai Metropolitan Water Supply & Sewerage Board v. T.T. Murali Babu***, reported as ***(2014) 4 SCC 108***, wherein the Hon'ble Supreme Court has



reaffirmed that it is obligatory on the part of the disciplinary authority to come to a conclusion that the absence is willful.

22. It is the categorical submission of the learned Senior Counsel that under the law settled by the Hon'ble Supreme Court in *Krushnakant B. Parmar (supra)*, the burden lies on the Disciplinary Authority to prove that the absence is willful, and without such a finding, the absence cannot amount to misconduct. It is submitted that, pertinently the Disciplinary Authority has not, at any stage, recorded a finding of willfulness, on the contrary, it has admitted the *bona fides* of the illness. It is therefore the submission of the learned Senior Counsel for the petitioner that the impugned Resolution of suspension dated 23.01.2025, the charge memo (*Prapatra-Ka*) dated 27.12.2023 and the Resolution dated 19.08.2025 are thus founded upon a non-existent foundation.

23. Mr. Santosh Kumar, learned Senior Counsel, submits that the only ground on which the Respondents have rejected the leave applications of the petitioner is that the applications were not in the prescribed format. Further, it is argued that the prescribed format requires the date of resumption of duty, which cannot be filled in a case of serious medical treatment wherein strict vigilance under the physician



has been advised. The petitioner has expressly undertaken in his reply dated 24.06.2023 to submit the form in the prescribed format upon resumption of duty, for *post-facto* regularization under Rule 180 of the Bihar Service Code.

24. Learned Senior Counsel submits that procedural defects and irregularities which are curable should not be allowed to defeat substantive rights or to cause injustice. It is emphasised by the learned Senior Counsel for the petitioner that procedure, a handmaiden to justice, should never be made a tool to deny justice or perpetuate injustice.

25. Mr. Santosh Kumar, learned Senior Counsel, further relies on *Chhel Singh vs. M.G.B. Gramin Bank, Pali & Ors.* reported as (2014) 13 SCC 166, wherein the Hon'ble Supreme Court has held that unless the medical reports are forged or fabricated, it is not open to the Inquiry Officer or the Disciplinary Authority to disbelieve the medical certificates issued by the Doctors without any valid reason. It is emphasized by the learned Senior Counsel that the medical prescriptions of the petitioner are of unimpeachable character, having been issued by the AIIMS, New Delhi and have not been controverted by the respondents.

26. It is the next submission on behalf of the



petitioner that all matters relating to leave of Government servants are governed by the Bihar Service Code and no provision of the Code authorizes suspension of an employee who is on medical leave and who is regularly communicating his health condition duly supported by medical prescriptions to the concerned authorities. It is not in dispute that the Rule 180(b) of the Code further empowers the authority to regularize leave *post-facto*.

“180. (a) In special circumstances and when no other leave is under these Rules admissible, extraordinary leave may be granted. Such leave is not debited against the leave account. No leave-salary is admissible during such leave.

(b) The authority empowered to sanction leave may grant extraordinary leave in combination with, or in continuation of, any leave that is admissible, and may commute retrospectively period of absence without leave into extraordinary leave.

Note 1.- The State Government may for special reasons dispense with the condition that extraordinary leave may be granted only when no other leave is by Rule admissible, provided that a Government servant cannot be compelled to take extraordinary leave when leave with allowances is admissible to him.



Note 2.- The power of commuting period of absence without leave into extraordinary leave under sub-rule (b) is absolute; in other words, such commutation is permissible even when other leave was admissible to Government servant at the time his absence without leave commenced.”

27. So far as the reliance on Rule 152 of the Bihar Service Code, by the Respondents it is the submission of the learned Senior Counsel that the said Rule entitles the leave-sanctioning authority to refuse or revoke leave only when the exigencies of public service, so require. It is categorically emphasized by the learned Senior Counsel that the Respondents, in the present case, have never invoked Rule 152 and have never declared any exigency, moreover the respondents have never refused or revoked the leave of the petitioner. The rule cannot, therefore, be invoked retrospectively to convert duly-communicated medical leave into unauthorized absence.

28. The next submission of the learned Senior Counsel is that Rule 9(1)(a) of the Bihar CCA Rules, 2005, permits suspension only when a disciplinary proceeding against the Government servant is contemplated or is pending. Pertinently, on 23.01.2025, when the suspension order was passed, neither was a disciplinary proceeding pending nor was



one validly contemplated, as such it is the submission of the learned Senior Counsel that the suspension of the petitioner is not sustainable. It is emphasized on behalf of the petitioner that the Articles of Charge was, only formally framed by the General Administration Department and sent to the petitioner by Letter No.1939 dated 31.01.2025, i.e., eight days after the suspension. Even the resolution under Rule 17 of the Bihar CCA Rules, 2005 initiating departmental proceedings *vide* resolution No.15354 came on 19.08.2025 only, that is, nearly seven months after suspension. Therefore it is the categorical submission of the learned Senior Counsel for the petitioner that the prolonged and indefinite suspension of the petitioner is not sustainable in view of the judgment of the Hon'ble Supreme Court in the case of ***State of Tamil Nadu through Secretary to Govt (Home) vs. Promod Kumar, IPS*** reported as ***(2018) 17 SCC 677***.

29. It is further submitted that the impugned Resolution of suspension was passed 23.01.2025, i.e., nineteen months after the first reply submitted by the petitioner and thirteen months after the second reply of the petitioner. The departmental proceedings were initiated by Resolution dated 19.08.2025, i.e., approximately twenty-five months after the



first reply. It is emphasized that the delay is unexplained and the respondent authorities have themselves have come out with a Circular dated 26.02.2014 prescribing time-lines, which has been flouted.

30. Reliance is placed on *Amresh Shrivastava v. State of M.P.*, reported as **2025 SCC OnLine SC 693**, wherein it has been held that if there is an unexplained and inordinate delay in initiating departmental proceedings, despite the alleged misconduct being within the knowledge of the department, the benefit must go to the employee.

31. *Per contra*, learned Senior Counsel for the respondents has, opposed the writ petition and prayed for its dismissal in *limine*. It is submitted that the respondent authorities have duly initiated departmental proceeding against the petitioner, which is yet to conclude and therefore, the present writ petition is premature. A mere charge-sheet/show-cause notice does not give rise to a cause of action. The remedy of the petitioner, if any, lies within the departmental forum, where he must place his defence before the enquiry officer. Reliance is placed on the judgment of the Hon'ble Supreme Court in *Union of India vs. Upendra Singh, (1994) 3 SCC 357*, wherein it has been held that a mere charge-sheet or show-cause notice does



not give rise to any cause of action, because it does not amount to an adverse order which affects the rights of any party unless the same has been issued by a person having no jurisdiction to do so.

32. It is the submission of the learned Senior Counsel for the respondents that this Court exercising writ jurisdiction under Article 226 of the Constitution, is not an appellate forum to review the merits of disciplinary action.

33. Learned Senior Counsel for the State has submitted that the disciplinary authority as on the date of suspension of the petitioner had duly received the Articles of charge framed by the District Magistrate, Katihar vide letter dated 27.12.2023 together with his opinion dated 13.07.2024 reaffirming the unauthorized absence. It is emphasized by learned Senior Counsel for the State that the grave nature of the charge, that is, continued unauthorised absence from 29.04.2023, well over eighteen months as on the date of suspension, together with the contemplation of regular departmental proceedings under Rule 17 squarely attracted Rule 9(1)(a) of the Bihar CCA Rules, 2005 and therefore, the suspension of the petitioner was not in contravention of the CCA Rules.



34. Adverting to the Bihar Service Code, learned Senior Counsel for the respondents submits that the Bihar Service Code permits leave only when applied for in the prescribed form which is then sanctioned by the competent authority and accepted by the said authority. In the present case, the petitioner has failed to make a proper application in the prescribed format and as such, his leave beyond the sanction casual leave was never approved and the petitioner has remained on unauthorized absence.

35. It is submitted by the learned counsel for the respondents that the petitioner admittedly never applied for earned leave in the prescribed format and he only sent informal e-mails. Further, the District Magistrate, Katihar has no power to grant earned leave to a Senior Deputy Collector and the competent authority for grant of earned leave for a Senior Deputy Collector, is the General Administration Department.

36. Learned Senior Counsel for the respondents submits that the fixation of suspension headquarters at the office of the Divisional Commissioner, Bhagalpur is the prerogative of the Disciplinary Authority and cannot be challenged as a matter of right. Further, it is submitted that the petitioner cannot insist on a particular place of headquarters as a matter of right.



Furthermore, it is emphasized that though the petitioner has failed to join the suspension Headquarter yet, he has been drawing the subsistence allowance.

37. It is argued by learned Senior counsel for the respondents that the petitioner being a senior administrative officer occupies a sensitive administrative position and his prolonged absence cripples the administration

38. I have considered the rival submissions advanced by the parties and have meticulously perused the materials brought on record.

39. At the outset, this Court is conscious of the well-settled principle of service jurisprudence that this Court, while exercising its powers under Article 226 of the Constitution of India, cannot act as an appellate forum over disciplinary authorities and does not, ordinarily, undertake re-appreciation of evidence or substitute its own conclusion for that of the competent authority. This Court has only to examine whether the action is by a competent authority, whether the procedure prescribed has been followed and whether the principles of natural justice have been observed.

40. From the perusal of the records, it is clear that the petitioner has not only challenged the initiation of the



disciplinary proceedings, but has also challenged his continued and unending suspension.

41. Therefore, the core question that must be addressed in this matter is whether the absence of the petitioner from headquarters from 29.04.2023 constitutes willful and unauthorized absence justifying suspension and initiation of disciplinary proceedings, or whether it is absence brought about by compelling circumstances of *bona fide* illness. The locus classicus on the subject is ***Krushnakant B. Parmar (supra)*** wherein the Hon'ble Supreme Court has held as under:-

“16. *In the case of the appellant referring to unauthorised absence the disciplinary authority alleged that he failed to maintain devotion to duty and his behaviour was unbecoming of a government servant. The question whether “unauthorised absence from duty” amounts to failure of devotion to duty or behaviour unbecoming of a government servant cannot be decided without deciding the question whether absence is wilful or because of compelling circumstances.*

17. *If the absence is the result of compelling circumstances under which it was not possible to report or perform duty, such absence cannot be held to be wilful. Absence from duty without any application or prior permission may amount to unauthorised absence, but it does not always mean wilful. There may be different eventualities*



due to which an employee may abstain from duty, including compelling circumstances beyond his control like illness, accident, hospitalisation, etc., but in such case the employee cannot be held guilty of failure of devotion to duty or behaviour unbecoming of a government servant.

18. **In a departmental proceeding, if allegation of unauthorised absence from duty is made, the disciplinary authority is required to prove that the absence is wilful, in the absence of such finding, the absence will not amount to misconduct.**
19. *In the present case the inquiry officer on appreciation of evidence though held that the appellant was unauthorisedly absent from duty but failed to hold that the absence was wilful; the disciplinary authority as also the appellate authority, failed to appreciate the same and wrongly held the appellant guilty.*
20. *The question relating to jurisdiction of the court in judicial review in a departmental proceeding fell for consideration before this Court in M.V. Bijlani v. Union of India [(2006) 5 SCC 88: 2006 SCC (L&S) 919] wherein this Court held: (SCC p. 95, para 25)*

“25. It is true that the jurisdiction of the court in judicial review is limited. Disciplinary proceedings, however, being quasi-criminal in nature, there should be some evidence to prove the charge. Although the charges in a departmental proceeding are not required to be proved like a criminal trial i.e. beyond all



reasonable doubt, we cannot lose sight of the fact that the enquiry officer performs a quasi-judicial function, who upon analysing the documents must arrive at a conclusion that there had been a preponderance of probability to prove the charges on the basis of materials on record. While doing so, he cannot take into consideration any irrelevant fact. He cannot refuse to consider the relevant facts. He cannot shift the burden of proof. He cannot reject the relevant testimony of the witnesses only on the basis of surmises and conjectures. He cannot enquire into the allegations with which the delinquent officer had not been charged with.”

21. *In the present case, the disciplinary authority failed to prove that the absence from duty was wilful, no such finding has been given by the inquiry officer or the appellate authority. Though the appellant had taken a specific defence that he was prevented from attending duty by Shri P. Venkateswarlu, DCIO, Palanpur who prevented him to sign the attendance register and also brought on record 11 defence exhibits in support of his defence that he was prevented to sign the attendance register, this includes his letter dated 3-10-1995 addressed to Shri K.P. Jain, JD, SIB, Ahmedabad, receipts from STD/PCO office of telephone calls dated 29-9-1995, etc. but such defence and evidence were ignored and on the basis of irrelevant fact and surmises the inquiry officer held the appellant guilty.*



22. *Mr P. Venkateswarlu, DCIO, Palanpur; who was the complainant and against whom the appellant alleged bias refused to appear before the inquiry officer in spite of service of summons. Two other witnesses, Shri Jivrani and Shri L.N. Thakkar made no statement against the appellant, and one of them stated that he had no knowledge about the absence of the appellant. Ignoring the aforesaid evidence, on the basis of surmises and conjectures, the inquiry officer held the charge proved.*

23. *Though the aforesaid facts were noticed by the appellate authority but ignoring such facts giving reference of extraneous allegations which were not the part of the charge, it dismissed the appeal with the following uncalled for observation:*

“The appellant even avoided the basic training required for the job and asked JAD, Ahmedabad to send all the training papers for his training at IB Training School, Shivpuri (Madhya Pradesh) to his residence at Ahmedabad. ‘An untrained officer is of no worth to the department’.”

24. *In the result, the appeal is allowed. The impugned orders of dismissal passed by the disciplinary authority, affirmed by the appellate authority; the Central Administrative Tribunal and the High Court are set aside. The appellant stands reinstated.” (emphasis supplied)*

42. Further, the Hon’ble Supreme Court in the

case of ***Chennai Metropolitan Water Supply & Sewerage Board v. T.T. Murali Babu (supra)*** has held as under:-



“23. We have quoted in extenso as we are disposed to think that the Court in *Krushnakant B. Parmar case (2012) 3 SCC 178* has, while dealing with the charge of failure of devotion to duty or behaviour unbecoming of a government servant, expressed the aforestated view and further the learned Judges have also opined that there may be compelling circumstances which are beyond the control of an employee. That apart, the facts in the said case were different as the appellant on certain occasions was prevented to sign the attendance register and the absence was intermittent. Quite apart from that, it has been stated therein that it is obligatory on the part of the disciplinary authority to come to a conclusion that the absence is wilful. On an apposite understanding of the judgment *Krushnakant B. Parmar case (2012) 3 SCC 178* we are of the opinion that the view expressed in the said case has to be restricted to the facts of the said case regard being had to the rule position, the nature of the charge levelled against the employee and the material that had come on record during the enquiry. It cannot be stated as an absolute proposition in law that whenever there is a long unauthorised absence, it is obligatory on the part of the disciplinary authority to record a finding that the said absence is wilful even if the employee fails to show the compelling circumstances to remain absent.

24. In this context, it is seemly to refer to certain other authorities relating to unauthorised absence and the view expressed by this Court. In State of



Punjab v. P.L. Singla (2008) 8 SCC 469 the Court, dealing with unauthorised absence, has stated thus: (SCC p. 473, para 11)

“11. Unauthorised absence (or overstaying leave), is an act of indiscipline. Whenever there is an unauthorised absence by an employee, two courses are open to the employer. The first is to condone the unauthorised absence by accepting the explanation and sanctioning leave for the period of the unauthorised absence in which event the misconduct stood condoned. The second is to treat the unauthorised absence as a misconduct, hold an enquiry and impose a punishment for the misconduct.”

25. Again, while dealing with the concept of punishment the Court ruled as follows: (P.L. Singla case (2008) 8 SCC 469, SCC pp. 473-74, para 14)

“14. Where the employee who is unauthorisedly absent does not report back to duty and offer any satisfactory explanation, or where the explanation offered by the employee is not satisfactory, the employer will take recourse to disciplinary action in regard to the unauthorised absence. Such disciplinary proceedings may lead to imposition of punishment ranging from a major penalty like dismissal or removal from service to a minor penalty like withholding of increments without cumulative effect. The



extent of penalty will depend upon the nature of service, the position held by the employee, the period of absence and the cause/explanation for the absence.”

26. *In Tushar D. Bhatt v. State of Gujarat [(2009) 11 SCC 678, the appellant therein had remained unauthorisedly absent for a period of six months and further had also written threatening letters and conducted some other acts of misconduct. Eventually, the employee was visited with order of dismissal and the High Court had given the stamp of approval to the same. Commenting on the conduct of the appellant the Court stated that he was not justified in remaining unauthorisedly absent from official duty for more than six months because in the interest of discipline of any institution or organisation such an approach and attitude of the employee cannot be countenanced.*
27. *Thus, the unauthorised absence by an employee, as a misconduct, cannot be put into a straitjacket formula for imposition of punishment. It will depend upon many a factor as has been laid down in P.L. Singla [State of Punjab v. P.L. Singla, (2008) 8 SCC 469 : (2008) 2 SCC (L&S) 719].” (emphasis supplied).*

43. From the afore-quoted judgments, it is clear that mere absence of a Government servant from his duty does not *ipso facto* amounts to misconduct and the absence must be shown to be willful and deliberate. In the present case, the petitioner has amply established before the concerned



authorities by way of his applications accompanied with supporting contemporaneous medical prescriptions that he is a long-standing patient of psychosomatic disorder and has been undergoing treatment at multiple hospitals including AIIMS, New Delhi.

44. From the records, it is clear that the initial casual leave was duly approved by the competent authority and only thereafter, the petitioner had proceeded for leave. However, the petitioner was thereafter, advised by his doctor for complete bed rest and strict vigilance towards his health. Therefore, it is clear that the petitioner has at every stage informed the concerned authorities regarding his medical conditions with supporting documents.

45. The documents submitted by the petitioner along with his applications for grant of leave are of unimpeachable character and have remained un-controverted by the respondents. It is noted that the bona fide illness of the petitioner is no longer in dispute since at paragraph no.28 of the counter affidavit, the respondents themselves have stated that they do not view that the petitioner is making pretence of his illness.

46. At this stage, it would be apposite to refer to



a decision of the Hon'ble Supreme Court in the case of **Chhel Singh** (*supra*) wherein it has been held as under:-

“10. After giving our careful consideration to the facts and circumstances of the case and the submission made by the learned counsel for the parties, we are of the view that the Division Bench was wrong in setting aside the order of reinstatement. The Division Bench has accepted that the inquiry stood vitiated by disallowing the request of the appellant to summon the rest of the five witnesses. For the said reason, the Division Bench has not interfered with such part of the finding and order passed by the learned Single Judge whereby the impugned order of termination dated 17-10-1994 and the appellate authority order dated 26-12-1994 were quashed. The order of termination being quashed by the High Court, in absence of any observation and grounds to refuse the reinstatement, the appellant automatically stood reinstated. Without reinstatement in service, the question of further inquiry does not arise. There was no occasion for the Division Bench of the High Court to direct further inquiry without reinstatement of the appellant.

xxxx

12. From a plain reading of the charges we



find that the main allegation is absence from duty from 11-12-1989 to 24-10-1990 (approximately 10½ months), for which no prior permission was obtained from the competent authority. In his reply, the appellant has taken the plea that he was seriously ill between 11-12-1989 and 24-10-1990, which was beyond his control; he never intended to contravene any of the provisions of the service regulations. He submitted the copies of medical certificates issued by doctors in support of his claim after rejoining the post. The medical reports were submitted after about 24 days. There was no allegation that the appellant's unauthorised absence from duty was wilful and deliberate. The inquiry officer has also not held that the appellant's absence from duty was wilful and deliberate. It is neither a case of the disciplinary authority nor the inquiry officer that the medical reports submitted by the appellant were forged or fabricated or obtained for any consideration though he was not ill during the said period. In absence of such evidence and finding, it was not open to the inquiry officer or the disciplinary authority to disbelieve the medical certificates issued by the doctors without any valid reason and on the ground of 24 days' delay.



13. *In view of the observation made above, the order passed by the Division Bench of the High Court cannot be upheld. We, accordingly, set aside the impugned judgment and order dated 10-5-2012 passed by the Division Bench of the High Court in M.G.B. Gramin Bank v. Chhel Singh [M.G.B. Gramin Bank v. Chhel Singh, Civil Special Appeal (Writ) No. 850 of 2009, decided on 10-5-2012 (Raj)] and upheld the order passed by the learned Single Judge dated 31-3-2009 in Chhel Singh v. M.G.B. Gramin Bank [Chhel Singh v. M.G.B. Gramin Bank, WP (C) No. 1702 of 1995, order dated 31-3-2009 (Raj)] . The respondents are directed to implement the direction and order dated 31-3-2009 [Chhel Singh v. M.G.B. Gramin Bank, WP (C) No. 1702 of 1995, order dated 31-3-2009 (Raj)] issued by the learned Single Judge within four weeks from the date of the receipt of the copy of this judgment.”*

(emphasis supplied)

47. Therefore, the absence of the petitioner from the service in view of the contemporaneous medical prescriptions submitted by him clearly establishes compelling circumstances under which he was prevented from attending his duties and cannot be characterized as willful absence. It is noted that in the past also, the petitioner had availed the leave for a



long period which was duly regularized by the respondents. Moreover, the insistence by the respondent authorities that the petitioner must always apply for earned leave in a prescribed format is not appealing to this Court since the petitioner was admittedly under a serious medical condition and it is settled law that procedural defects and irregularities which are curable in nature should not be allowed to defeat substantive rights or cause and perpetuate injustice. Therefore, in the considered opinion of this Court, the defect of submitting applications in prescribed formats is at best a curable procedural irregularity which in view of genuine illness of the petitioner should not be an absolute obstacle.

48. It is further noted that the petitioner stands suspended since 23.01.2025 i.e. for a period in excess of fifteen months and such indefinite and unending suspension of the petitioner is in teeth of the decision of the Hon'ble Supreme Court in the case of **Promod Kumar, I.P.S. (supra)**. Further, the administrative instructions contained in memo no.2763, dated 26.02.2014 issued by the General Administration Department, Government of Bihar clearly stipulates the time for concluding the disciplinary proceedings in a time-bound manner and therefore the same cannot go on indefinitely. The Hon'ble



Supreme Court in the case of *Ajay Kumar Choudhary vs. Union of India* reported as (2015) 7 SCC 291 has held as under:-

“21. We, therefore, direct that the currency of a suspension order should not extend beyond three months if within this period the memorandum of charges/charge-sheet is not served on the delinquent officer/employee; if the memorandum of charges/charge-sheet is served, a reasoned order must be passed for the extension of the suspension. As in the case in hand, the Government is free to transfer the person concerned to any department in any of its offices within or outside the State so as to sever any local or personal contact that he may have and which he may misuse for obstructing the investigation against him. The Government may also prohibit him from contacting any person, or handling records and documents till the stage of his having to prepare his defence. We think this will adequately safeguard the universally recognised principle of human dignity and the right to a speedy trial and shall also preserve the interest of the Government in the prosecution. We recognise that the previous Constitution Benches have been reluctant to quash proceedings on the grounds of delay, and to set time-limits to their duration. However, the imposition of a limit on the period of suspension has not been discussed in prior case law, and would not be contrary to the interests of justice. Furthermore, the direction of the Central Vigilance Commission that pending a criminal



investigation, departmental proceedings are to be held in abeyance stands superseded in view of the stand adopted by us.”

49. The cumulative effect of the facts of the case where an officer, whose *bona fide* illness is admitted and his medical record stands unimpeachable, is that the disciplinary proceeding should not have been initiated mechanically. Further, his previous spell of similar leave was duly regularized by the same authority and more importantly, his communications were continuous and contemporaneous. Furthermore, his explanations were neither formally rejected nor met with reasons. It is noted that the suspension of the petitioner has extended well beyond the threshold laid down by the Hon'ble Supreme Court in the case of ***Pramod Kumar, IPS (supra)*** and ***Ajay Kumar Choudhary (supra)***. Therefore, the foundation of wilfulness, which is the *sine qua non* of misconduct under Rule 3 of the Bihar Government Servants' Conduct Rules, 1976, is conspicuously absent. A defect of form in the leave application, where the substance of the application is genuine illness duly communicated with prescriptions, cannot, in law, be elevated into a sustainable charge of indiscipline, dereliction and unbecoming conduct.

50. For the foregoing reasons and discussions,



this writ petition is allowed. Accordingly, the memo no.1396 dated 23.01.2025, whereby the petitioner has been suspended; the memo of charge dated 27.12.2023 and the memo no.15354 dated 19.08.2025, whereby the disciplinary proceeding against the petitioner has been initiated, are hereby quashed and set aside. Consequently, the respondent authorities are directed to accept the joining of the petitioner forthwith and the petitioner shall be entitled to all consequential benefits in accordance with law.

51. So far as the prayer of the petitioner made in Interlocutory Application No.03 of 2025 is concerned, this Court had *vide* order dated 07.10.2025 directed the respondent -UPSC to consider his case for promotion in the meeting of the selection committee. However, from perusal of the minutes of the meeting of the selection committee, particularly at paragraph no.5.6, it appears that the case of the petitioner for induction in the I.A.S. cadre was not considered on account of imposition of punishment.

52. In the interest of justice, this Court deems it appropriate to direct the respondent authorities to consider the case of the petitioner in the next meeting of the selection committee for induction in the I.A.S. cadre afresh in accordance



with law including the Indian Administrative Service (Appointment by Promotion) Regulations, 1955. However, it is made clear that the aforesaid fresh consideration must be accorded to the petitioner uninfluenced by the penalties/punishments, which have been quashed and set aside hereinabove.

53. Pending interlocutory applications shall stand disposed of.

(Sandeep Kumar, J)

pawan/-

AFR/NAFR	N.A.F.R.
CAV DATE	18.03.2026
Uploading Date	19.05.2026
Transmission Date	

