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

+ **W.P.(C) 6531/2017**

SHAHID HUSSAIN

.....Petitioner

Through: Mr. T.D. Yadav, Advocate.

versus

GOVT OF NCT OF DELHI AND ORS

.....Respondents

Through: Mrs. Avnish Ahlawat, SC (GNCTD)
with Mrs. Tania Ahlawat, Mr. N.K.
Singh, Ms. Aliza Alam and Mr.
Mohnish Sehrawat, Advocates.

CORAM:

HON'BLE MR. JUSTICE SANJEEV NARULA

ORDER

22.04.2026

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1. This petition assails two orders arising out of disciplinary proceedings instituted against the Petitioner. The first is the order dated 22nd January, 2013 passed by the Vice-Chairman, Delhi Agricultural Marketing Board [“DAMB”], acting as the disciplinary authority, whereby the Petitioner was dismissed from service. The second is the order dated 2nd April, 2014 passed by the Secretary-cum-Commissioner (Development), Government of NCT of Delhi [“GNCTD”], whereby the Petitioner’s appeal was rejected and the penalty was upheld.

Factual Background

2. The Petitioner was initially engaged on 14th July, 1987 as a Peon on daily wages. The Respondents state that he was appointed on a regular basis in Agricultural Produce Marketing Committee, Najafgarh [“APMC”] with



effect from 3rd March, 1996. It is, however, not in dispute that by the year 2002 he stood posted at Fish, Poultry & Egg Marketing Committee, Gazipur [“FP&EMC”] and was working in the cadre of Gateman/Peon.

3. The controversy arises from the Petitioner’s absence from duty with effect from 15th February, 2003. According to the Respondents, the Petitioner absented himself without “*prior intimation/sanction*” and did not report back despite repeated directions. The Respondents rely on a Show Cause Notice [“SCN”] dated 4th April, 2003, a memorandum dated 17th February, 2004, a further communication dated 28th August, 2004, another memorandum dated 16th January, 2005, and a public notice published on 16th July, 2005 in newspapers calling the Petitioner to resume duty.

4. The Petitioner does not dispute that he remained away from duty. His case is that such absence was occasioned by serious illness. The Counter Affidavit records that, *vide* letter dated 15th September, 2004, DAMB was informed that he remained ill from 15th March, 2003 to 14th September, 2004 and was undergoing treatment at MMG Hospital, Ghaziabad.

5. On 18th November, 2005, DAMB issued a charge-sheet memorandum under Rule 14 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965 [“CCS (CCA) Rules”] proposing a disciplinary inquiry against the Petitioner. The said memorandum stated that the Petitioner had remained “*unauthorisedly absent from duty*” since 15th February, 2003, thereby violating the CCS (Leave) Rules, 1972 [“CCS (Leave) Rules”] and the CCS (Conduct) Rules, 1964 [“CCS (Conduct) Rules”].

6. It is stated that the Petitioner submitted a reply on 9th December, 2005. The Respondents, in their Counter Affidavit, do not dwell upon the contents of the said reply, but narrate the sequence of events by stating that



the Petitioner had, at the relevant time, taken the position that he was suffering from illness and was undergoing treatment at MMG Hospital, Ghaziabad. Also, the earlier communications sent to the Petitioner had returned undelivered with the remark “*the address is incomplete*”.

7. The record thereafter reflects a somewhat convoluted sequence of events. According to the Respondents, the Petitioner submitted an application on 13th March, 2006 along with medical material covering the period up to 5th December, 2005, which indicated that he had been found fit to resume duty with effect from 6th December, 2005. As no material was furnished for the subsequent period, DAMB called upon him to explain his medical condition and thereafter issued a memorandum dated 10th August, 2006 requiring submission of medical/fitness certificates. The Petitioner, in his reply dated 22nd August, 2006, stated that even on 6th December, 2005, while on his way to the office, he again developed acute pain, returned to the hospital, remained under bed rest till 12th April, 2006, and thereafter continued under medical advice till October, 2006. The Respondents also acknowledge that certificates were produced indicating fitness with effect from 13th April, 2006 and again with effect from 26th October, 2006, though their case is that the Petitioner did not report at his place of posting.

8. It is not in dispute that, on 26th October, 2006, the Petitioner approached DAMB with medical documents. According to the Respondents, his papers were returned and he was directed, by a memorandum of the same date, to report to FP&EMC, which he failed to do. The Petitioner, however, asserts that he repeatedly approached the office of DAMB as well FP&EMC, met officials, and was sent back and forth without any effective decision, despite attempting to submit joining reports along with medical



documents. He further claims to have approached the Chairman and submitted a written representation, but without any result. These assertions find place in his appeal dated 19th February, 2012 as well as in his reply to the inquiry findings dated 14th February, 2012.

9. The Petitioner again addressed a communication dated 21st December, 2009, stating that he was now fit to join duty. The Respondents maintain that no proper medical fitness certificate for the relevant period accompanied this request and that the competent authority did not permit him to resume duty.

10. On 31st May, 2010, DAMB issued an amended charge-sheet. The substance of the charge remained unchanged, namely unauthorised absence from 15th February, 2003 onwards. By orders dated 23rd August, 2010, an Inquiry Officer and a Presenting Officer were appointed. The first Inquiry Officer, Ms. Janak Juneja, later expressed her inability to proceed, whereupon Mr. R.L. Srivastava was appointed as the Inquiry Authority. The inquiry report dated 22nd December, 2011 records that notice was issued to the Petitioner on 25th July, 2011 at his permanent address; he did not appear on 9th August, 2011; and the matter was initially directed to proceed *ex parte*. It further records that the Petitioner thereafter contacted the Inquiry Officer, appeared on 2nd September, 2011, sought permission to participate, nominated a defence assistant, cross-examined the prosecution witnesses, led defence evidence, and filed a written brief on 14th December, 2011.

11. Four management witnesses were examined. Their evidence, in substance, was that the Petitioner had remained absent from duty from 15th February, 2003; repeated memoranda were issued; a public notice was published; he was repeatedly called upon to furnish his medical status; and when he approached DAMB in October 2006 he was directed to report to



FP&EMC. The Petitioner's defence before the Inquiry Officer was that he had been suffering from tuberculosis of the spine, had undergone treatment at MMG Hospital, Ghaziabad, had attempted to submit joining reports along with medical certificates both before DAMB and FP&EMC, and had again fallen ill thereafter. The report also notes that the Petitioner stated that he informed FP&EMC about his illness "*after six months*".

12. The Inquiry Officer submitted the report on 22nd December, 2011. The report rejected the Petitioner's objections regarding non-supply of documents and copies of witness statements, recording that the listed documents had already been supplied with the charge-sheet memorandum, that no additional documents were sought, and that the Petitioner had been afforded full opportunity to participate in the inquiry, including cross-examining witnesses and leading defence evidence. On merits, the Inquiry Officer concluded that the Petitioner had remained unauthorisedly absent from duty with effect from 15th February, 2003. Reliance was also placed on the fact that the Petitioner did not inform FP&EMC at the relevant time, admitted approaching the office after about six months, and even after the memorandum dated 26th October, 2006, did not establish that he had joined duty at his place of posting.

13. The Petitioner, thereafter, submitted his reply to the inquiry report on 14th February, 2012. In his reply, he reiterated that he had remained ill and had placed medical material before DAMB, had repeatedly attempted to resume duty, his joining papers had been returned, he had been made to move from one office to another, and the inquiry had proceeded without due regard to the medical evidence and without affording him a fair opportunity. He also relied upon departmental instructions dated 5th October, 1975 to



contend that, during disciplinary proceedings, if an employee reports for duty, he ought ordinarily be permitted to do so unless placed under suspension.

14. The disciplinary authority, by impugned order dated 22nd January, 2013, accepted the findings of the Inquiry Officer and imposed the penalty of dismissal from service. The order concluded that the Petitioner had failed to explain his absence from “15.02.03 onwards upto 23.08.2010”. It further observed that, although he claimed treatment at MMG Hospital, Ghaziabad, the same was not supported by “*documentary evidence*”. On that basis, the disciplinary authority held that the Petitioner had voluntarily remained absent for a prolonged period exceeding seven years and that the penalty of dismissal was warranted.

15. The appellate authority then rejected the Petitioner’s appeal by order dated 2nd April, 2014. The appellate authority held that the charge of unauthorised absence from 15th February, 2003 stood proved; the findings of the Inquiry Officer were consistent with the record; the Petitioner had disobeyed directions to rejoin duty; and such prolonged absence reflected lack of interest in service. The penalty of dismissal was, thus, affirmed.

Petitioner’s Contentions

16. During proceedings, Mr. T.D. Yadav, counsel for the Petitioner, fairly narrowed the controversy. He submits that the Petitioner must not necessarily be reinstated in service. However, even assuming the disciplinary finding is not displaced in its entirety, the case calls for reconsideration of the penalty. He emphasises that the Petitioner had put in a long span of service with no prior misconduct. The case does not involve moral turpitude, dishonesty or pecuniary loss, and the Petitioner would be



content even with substitution of the penalty by a lesser major penalty.

17. Mr. Yadav submits that even on merits, the charge of ‘*unauthorised absence*’ is not made out. The Petitioner was suffering from tuberculosis of the spine, and was undergoing treatment at MMG Hospital, Ghaziabad, which position was communicated to DAMB from time to time along with medical certificates. In these circumstances, the absence could not have been treated as unauthorised at all, and the finding of misconduct is unsustainable.

18. The departmental authorities approached the case in a mechanical manner. The record itself reflects prolonged medical treatment and the Respondents’ have acknowledged medical certificates for certain periods. The Petitioner consistently asserted his readiness to rejoin duty as soon as he was medically fit, and on more than one occasion he physically approached DAMB and FP&EMC with joining papers and medical documents. The authorities failed to undertake meaningful scrutiny of the periods for which medical documentation was provided and instead treated the entire span from 15th February, 2003 onwards as one continuous period of misconduct.

19. The inquiry stands vitiated on account of procedural irregularities and violation of principles of natural justice. The relied-upon documents were not furnished, copies of witness statements were not supplied to enable an effective defence, and the inquiry was not conducted in accordance with the requirements of Rule 14 of the CCS (CCA) Rules. Although the Petitioner was later permitted to participate in the proceedings, the earlier lapses caused prejudice, and the disciplinary authority merely adopted the inquiry report while the appellate authority affirmed the same without independent application of mind.

20. The Respondents acted contrary to the applicable departmental



instructions, including the instruction dated 5th October, 1975, inasmuch as the Petitioner was not permitted to rejoin duty even when he expressed readiness to do so during the pendency of the proceedings. In such circumstances, the Petitioner cannot be faulted for non-joining.

21. In any event, the penalty of dismissal from service is grossly disproportionate. Even if some lapse is assumed on part of the Petitioner, the extreme penalty of dismissal is not warranted, particularly having regard to the length of service, the nature of the post, and the consistent plea of medical illness.

Respondents' Contentions

22. Mrs. Avnish Ahlawat, SC (GNCTD) appearing for the Respondents, opposes this petition. She contends that the Petitioner remained unauthorisedly absent from 15th February, 2003 and failed to report back despite repeated directions. Several memoranda and communications were issued, including an SCN, subsequent reminders, and even a public notice in newspapers, calling upon him to resume duty, but to no avail. The Petitioner did not inform DAMB in time regarding his absence and failed to furnish complete and satisfactory medical material covering his period of absence. Even on occasions when the Petitioner was declared fit, he did not report for duty at his place of posting and continued to remain absent.

23. Mrs. Ahlawat further submits that the disciplinary proceedings were conducted in accordance with law and the requirements of Rule 14 of the CCS (CCA) Rules. Reliance is placed upon the inquiry report to contend that the Petitioner was initially proceeded *ex parte* on account of non-appearance but was subsequently permitted to participate in the inquiry; was allowed to engage a defence assistant, cross-examine the prosecution



witnesses, lead defence evidence, and submit a written brief. All relied-upon documents were supplied along with the charge-sheet, and the plea of non-supply of documents or witness statements is incorrect and an afterthought.

24. Mrs. Ahlawat also contests the Petitioner's reliance on departmental instructions regarding permission to rejoin duty during the pendency of disciplinary proceedings. In that regard, it is submitted that the competent authority did not consider it appropriate to permit the Petitioner to resume duty, having regard to his conduct and prolonged absence. In any case, adequate opportunity was nevertheless afforded to the Petitioner to defend himself in the inquiry.

25. On the question of punishment, she argues that the misconduct established against the Petitioner is grave and warrants the penalty imposed. Prolonged unauthorised absence in public service reflects lack of discipline and disinterest in service, and that retaining such an employee would be detrimental to the functioning of the department. The disciplinary authorities have considered the material on record and passed reasoned orders, and no interference is called for in exercise of Article 226 of the Constitution.

Issues for Consideration

26. In light of the foregoing, the following issues arise for consideration:

- (i) Whether the disciplinary proceedings stand vitiated on account of denial of reasonable opportunity, including the objection relating to non-supply of relied-upon documents and witness material.
- (ii) Whether the finding that the Petitioner remained unauthorisedly absent from duty with effect from 15th February, 2003 suffers from illegality, perversity, or non-application of mind, particularly in the context of the medical documents supplied to authorities and the Petitioner's case



that he made attempts to rejoin duty but was not permitted to do so.

(iii) Even if the finding of misconduct is not liable to be interfered with in exercise of judicial review, whether the penalty of dismissal from service is liable to be interfered with on the ground of disproportionality.

(iv) If interference is warranted only on the question of penalty, what should be the nature and extent of relief, particularly when the Petitioner does not press for reinstatement and seeks reconsideration of punishment.

Analysis

27. At the outset, the limits of judicial review in matters arising out of departmental enquiries must be kept firmly in view. As observed by the Supreme Court in ***B.C. Chaturvedi v. Union of India & Ors.***¹, judicial review is not an appeal from a decision but a review of the manner in which the decision is made. The Court is concerned not with the correctness of the conclusion reached, but with ensuring that the delinquent employee has received fair treatment in accordance with law. It does not reappreciate the evidence or substitute its own findings for those of the disciplinary authorities, which are the sole judge of facts. Interference is warranted only where the enquiry is conducted in violation of principles of natural justice or statutory rules, where the finding is based on no evidence, or where the conclusion is such as no reasonable person could have reached.

28. The same restraint extends, though in a distinct manner, to the question of punishment. As is evident from the decisions of ***Om Kumar & Ors. v. Union of India***² and ***B.C. Chaturvedi***, the choice of penalty lies primarily within the domain of the disciplinary authority, and the Court, in

¹ (1995) 6 SCC 749.

² (2001) 2 SCC 386.



exercise of judicial review, does not ordinarily substitute its own view on the quantum of punishment. The scope of interference is limited to cases where the decision suffers from illegality, takes into account irrelevant considerations or ignores relevant factors, or where the punishment imposed is so disproportionate as to shock the conscience. In such a situation, the normal course is to remit the matter to the disciplinary authority for reconsideration, though in exceptional cases the Court may mould the relief.

29. Tested on the above standard, the Petitioner's challenge to the inquiry, taken as a whole, does not warrant invalidation of the disciplinary proceedings in their entirety. The inquiry report shows that although the Petitioner did not appear at the initial stage, he was subsequently permitted to participate in the proceedings. He was allowed to engage a defence assistant, to cross-examine the prosecution witnesses, to make his statement in defence, and to file a written brief. The report further records the Inquiry Officer's view that the listed documents had already been supplied with the charge-sheet and that no further documents were sought. On the record, the Court is unable to hold that the enquiry was vitiated for want of reasonable opportunity.

30. Nor can it be said that the finding of '*unauthorised absence*' is unsupported by evidence. The Respondents' case does not rest on a solitary accusation; rather, it is supported by a sequence of notices and memoranda issued over time, beginning with the SCN dated 4th April, 2003, followed by memoranda dated 17th February, 2004, 28th August, 2004, and 16th January, 2005, the newspaper publication dated 16th July, 2005, and the subsequent memoranda dated 10th August, 2006 and 26th October, 2006. The inquiry report also records the Petitioner's own statement in general examination



that he informed FP&EMC only after about six months. This material was sufficient to enable the department to conclude that the Petitioner had remained absent without prior sanction/permission for leave.

31. That, however, does not conclude the matter. Two salient features emerging from the record cannot be overlooked. First, the Petitioner's defence, from the outset, was not a mere denial of absence; it was that he had remained away on account of a serious spinal ailment, described in the record as tuberculosis of the spine, and that he was under treatment at MMG Hospital, Ghaziabad. Second, the Respondents' own record does not support a complete rejection of this medical case. On the contrary, it acknowledges the submission of medical certificates for substantial periods, the furnishing of medical documents on 26th October, 2006, and certificates indicating fitness with effect from 6th December, 2005, 13th April, 2006, and again 26th October, 2006. The Petitioner has consistently maintained this position in his reply to the inquiry findings, in appeal, and in this petition.

32. This aspect assumes significance because, as held by the Supreme Court in ***Krushnakant B. Parmar v. Union of India & Anr.***³, the question whether absence from duty constitutes misconduct cannot be decided without first determining whether such absence was wilful or occasioned by compelling circumstances. The Court drew a clear distinction between unauthorised absence and wilful absence, observing that mere absence without prior permission may be unauthorised, but does not *ipso facto* amount to misconduct. Where the absence is the result of circumstances under which it was not possible for the employee to report for or perform duty, such absence cannot be treated as wilful. It was emphasized held that,



in a departmental proceeding founded on absence from duty, the disciplinary authority is required to establish that the absence was wilful; in the absence of such a finding, the charge of misconduct cannot be sustained. The enquiry, therefore, must address not merely the factum of absence, but whether the absence was wilful in the sense contemplated by the applicable Rules.

33. In the present case, the authorities did not undertake that exercise with the care in line with the established jurisprudence and the record. The dismissal order states, in sweeping terms, that the Petitioner had failed to explain his absence from 15th February, 2003 up to 23rd August, 2010, and that his assertion of treatment at MMG Hospital was “*not supported by any documentary evidence*”. This conclusion sits uneasily with the Respondents’ own record, which refers to medical certificates, fitness certificates, treatment at MMG Hospital, and submission of medical documents on 26th October, 2006. Even the Counter Affidavit acknowledges that the Petitioner had, at different stages, produced medical documents. Once that position emerges from the record itself, it was not open to the disciplinary authority to treat the entire period as though no documentary support existed at all.

34. The inquiry report suffers from a similar over-compression of the record. While it correctly notes that the Petitioner did not inform the office at the outset and that he failed to establish that he had actually resumed duty at FP&EMC after the memorandum dated 26th October, 2006, it does not stop there. The report does not separately examine the distinct periods for which medical documents were admittedly produced, nor does it address whether the absence, viewed phase-wise, remained wholly wilful despite the

³ (2012) 3 SCC 178.



medical material. It does not consider whether the real lapse lay in narrower aspects, such as failure to regularise leave in accordance with the applicable rules, failure to report at the proper place of posting after being found fit, or continued non-compliance despite repeated directions.

35. There is another feature which also merits notice. The Petitioner's case throughout has not been that he remained wholly untraceable or beyond reach. His consistent stand has been that he repeatedly approached officers of DAMB, went to the establishment of FP&EMC, tendered joining papers along with medical documents, and was sent from one office to another without any effective administrative resolution. That account may or may not merit acceptance in full, but it required reasoned consideration; it could not be brushed aside in general terms. The appellate order merely states that the Petitioner's submissions were "*too feeble to prove his innocence*", while the disciplinary order proceeds in similarly broad language. This does not reflect the degree of reasoned scrutiny expected in a matter culminating in dismissal from service after protracted proceedings.

36. At the same time, the Petitioner cannot carry the argument to the point of complete exoneration. This is not a case where the medical record wholly answers the charge. The record still contains material of some weight against him. He admittedly did not obtain prior sanction before absenting himself. The inquiry report records his own statement that he informed FP&EMC only after about six months. DAMB repeatedly called upon him to report for duty. Even on the Respondents' own showing, the medical certificates relied upon by the Petitioner indicated fitness to resume duty on more than one occasion. Yet, the record does not establish that he in fact resumed duty at the office where he was posted. The memorandum dated



26th October, 2006 specifically required him to report at FP&EMC, and the consistent stand is that he failed to do so. On this aspect, the Petitioner does not furnish a satisfactory explanation.

37. The Court is, therefore, unable to accept the submission that the finding of misconduct must be set aside in its entirety. The position, in the Court's view, is more nuanced. The finding that the Petitioner remained absent from duty without due authority cannot be characterised as perverse. What can, however, be said with justification is that the authorities dealt with the misconduct in an unduly broad and undifferentiated manner. They did not sufficiently segregate medically supported periods from unexplained periods; nor did they meaningfully examine whether the medical material, even if insufficient to justify the entire absence, nonetheless explained a substantial part of it. Equally, they did not adequately engage with the Petitioner's case that he had, at intervals, attempted to return to duty. These shortcomings may not dislodge the core finding of unauthorised absence, but they bear directly on the degree of culpability and the proportionality of the penalty imposed.

38. That brings the Court to the question of punishment. On this aspect, the Petitioner's case stands on firmer ground.

39. In ***Chennai Metropolitan Water Supply and Sewerage Board & Ors. v. T.T. Murali Babu***⁴, the Supreme Court cautioned that, in exercise of jurisdiction under Article 226, a writ court does not act as an appellate authority over the findings or the punishment imposed in disciplinary proceedings, and must refrain from extending misplaced sympathy in matters of proved misconduct. The decision emphasises that unauthorised



absence over a considerable period reflects indiscipline and a lack of responsibility, and that interference with the quantum of punishment is not warranted unless the penalty imposed shocks the conscience of the Court. At the same time, the Court also made it clear that the question of punishment cannot be reduced to a rigid or straitjacket formula, but depends upon a variety of factors, including the nature of service, the position held, the length of absence, and the explanation offered. The principle, therefore, is not that sympathy may override discipline, but that proportionality, though of limited application, remains available where the punishment is found to be grossly disproportionate to the misconduct established.

40. The decision in *Shri Bhagwan Lal Arya v. Commissioner of Police, Delhi & Ors.*⁵ is especially instructive in this context. There, the Supreme Court therein expressly upheld the validity of the disciplinary enquiry and declined to interfere with the findings of misconduct, noting that the enquiry had been conducted in accordance with the rules and principles of natural justice. The Court, however, proceeded to examine whether the penalty of removal from service was commensurate with the nature of the proved misconduct. Emphasising on the governing service rules therein, it held that removal could be imposed only in cases of grave misconduct or continued misconduct indicating incorrigibility and complete unfitness for service, and that a single instance of absence on medical grounds, supported by applications for leave and medical certificates, could not, by any stretch, be characterised as such. The absence of any material to show habitual absenteeism, coupled with the medical explanation on record, led the Court

⁴ (2014) 4 SCC 108.

⁵ (2004) 4 SCC 560.



to conclude that the punishment of removal was highly excessive and disproportionate.

41. That conclusion, however, turned on a factual matrix where the medical evidence was duly supported, leave had in fact been sanctioned, and the employee could not be described as a habitual absentee. The present case stands on a less favourable footing for the Petitioner. Nevertheless, the principle that emerges remains of relevance: where absence is consistently attributed to illness, where some medical material is placed on record, where there is no demonstrable history of continued misconduct indicating incorrigibility, and where the disciplinary authority has not addressed whether the misconduct rises to the level contemplated for the extreme penalty under the governing rules, the question of punishment warrants close scrutiny on the touchstone of proportionality.

42. In the present case, several mitigating features emerge from the record:

42.1. There is no material on record indicating any prior punishment or earlier established misconduct. The Respondents describe the Petitioner as a “*habitual absentee*” in their Counter Affidavit, but that expression appears to be directed essentially at the episode in question itself. It is not supported by any prior charge, penalty, or service record reflecting repeated indiscipline before 2003. For assessing penalty, that distinction assumes significance.

42.2. The Petitioner was not holding a post involving financial responsibility, custody of records, confidential functions, or a position of institutional trust in the conventional sense. He was serving as a Gateman/Peon. This does not dilute the requirement of discipline; however,



it bears upon the choice between the severest civil consequence and a lesser major penalty. This is not a case involving embezzlement, fraud, fabrication, corruption, or moral turpitude. At its core, it concerns prolonged absence, accompanied by a medical explanation that may be imperfect but cannot be dismissed as wholly implausible.

42.3. This is not a case in which illness surfaced as an afterthought at the writ stage. The medical narrative runs through the departmental record itself. The Respondents' own case acknowledges the Petitioner's reliance on treatment at MMG Hospital, Ghaziabad, and that medical documents were furnished at different stages. The case against the Petitioner is not that he fabricated illness altogether; rather, it is that he failed to regularise his absence in accordance with the rules, failed to keep the Respondents duly informed in a timely manner, failed to furnish complete supporting material for the entire period, and failed to resume duty at the proper place of posting despite being declared fit on certain occasions. That distinction is material when the authority turns to the question of penalty.

42.4. The reasoning on penalty in both the disciplinary and appellate orders is notably sparse. The disciplinary authority states that dismissal would "*suffice*" because the Petitioner had voluntarily abstained from duty for more than seven years. The appellate authority observes that such absence reflects lack of interest in service and that retention of such an employee would be detrimental to discipline. What is absent is any real balancing exercise. There is no meaningful discussion of the periods supported by medical material, no consideration of whether a lesser major penalty would suffice, and no engagement with the Petitioner's length of service, absence of prior punishment, or the nature of the post held. The orders proceed as



though, once prolonged absence was established, dismissal followed almost as a matter of course.

42.5. The relief now pressed is both limited and significant. The Petitioner does not seek reinstatement. Mr. Yadav has fairly submitted that the Petitioner would be satisfied if the matter is remitted for reconsideration of punishment, including the possibility of a lesser terminal penalty. This submission materially alters the complexion of the case. The Court is not being asked to restore a stale employment relationship after many years; what is sought is a lawful and proportionate reconsideration of penalty.

43. Viewed in this light, the appropriate course becomes clear. This is not a fit case for interference with the finding of misconduct, which cannot be said to be unsupported by evidence or vitiated by procedural infirmity. At the same time, and in keeping with the limits of judicial review as explained in *B.C. Chaturvedi* and *Om Kumar*, this Court would not be justified in itself prescribing a substituted penalty. The proper course, therefore, is to leave undisturbed the finding that the Petitioner remained absent from duty without due authority, while setting aside the impugned orders insofar as they impose and affirm the penalty of dismissal, and to remit the matter to the competent authority for reconsideration of the quantum of punishment.

44. In directing such reconsideration, certain parameters must be indicated to ensure that the exercise does not become a mere reiteration of the earlier conclusion in different language. The competent authority shall consider, expressly and separately, the periods for which medical material exists on record; the fact that the Petitioner did not keep the department duly informed from the outset; the fact that he does not appear to have resumed duty at FP&EMC despite subsequent directions; the absence of prior proved



misconduct; the Petitioner's length of service; the nature of the post held; and the limited relief now pressed. The authority shall then determine whether dismissal alone is warranted or whether some other major penalty would adequately balance discipline with fairness.

45. One further aspect merits notice. The Petitioner has relied upon the governmental instruction dated 5th October, 1975 to contend that, during disciplinary proceedings, an employee who reports for duty should ordinarily be permitted to do so unless placed under suspension, without prejudice to the proceedings already initiated. This Court does not treat that instruction as determinative in the present case, since the factual controversy regarding the Petitioner's attempts to rejoin is neither simple nor wholly one-sided. Nevertheless, the instruction reinforces a broader principle: disciplinary control must not be exercised mechanically or without due regard to context. Even where misconduct is established, the administrative response must remain measured, fact-sensitive, and reasoned. On the present record, the decision on penalty falls short of that standard.

46. For the foregoing reasons, the present writ petition is allowed in part, in the following terms:

46.1. The finding that the Petitioner remained absent from duty without due authority is not interfered with.

46.2. The order dated 22nd January, 2013 passed by the disciplinary authority and the order dated 2nd April, 2014 passed by the appellate authority are set aside to the extent that they impose and affirm the penalty of dismissal from service.

46.3. The matter is remitted to the competent disciplinary authority for fresh consideration of the quantum of penalty. Such exercise shall be



completed within a period of twelve weeks from the date of this order, after affording the Petitioner an opportunity of personal hearing.

46.4. While reconsidering the question of penalty, the authority shall keep in view the observations made above and shall pass a reasoned and speaking order.

47. It is clarified that this Court has expressed no concluded view on the nature of the substituted penalty. That determination shall rest with the competent authority. It is further clarified that the reconsideration shall not be treated as a formality, but as a fresh exercise confined to the question of penalty.

48. Since the Petitioner does not seek reinstatement at this stage, no direction for rejoining, back wages, or continuity of active service is called for. The Petitioner's entitlement, if any, shall abide by the fresh order on penalty.

49. In the above terms, the petition is disposed of.

SANJEEV NARULA, J

APRIL 22, 2026/as