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WA-261-2024

IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR

BEFORE

HON'BLE SHRI JUSTICE VIVEK RUSIA

&

HON'BLE SHRI JUSTICE PRADEEP MITTAL

ON THE 20th OF FEBRUARY, 2026WRIT APPEAL No. 261 of 2024*AJAY SINGH VERMA**Versus**THE STATE OF MADHYA PRADESH AND OTHERS*

Appearance:

Shri Mahendra Pateriya & Shri Vishal Pateriya - Advocates for the petitioner.

Shri Ritwik Parashar - Government Advocate for the respondent/State.

Reserved on: 06.2.2026
Pronounced on: 20.02.2026

ORDER

Per. Justice Vivek Rusia

The appellant has filed this Writ Appeal under section 2(1) of Madhya Pradesh Uchchaya Nyaylaya (Khand Nyaypeeth Ko Appeal) Adhiniyam, 2005, against the order dated 13.7.2023 passed by the writ court, by which the writ Court has dismissed the Writ Petition No.9910/2017 filed by the appellant against the order of his termination from service, as also against the order of dismissal of the appeal.

2. Facts of the writ appeal, in a nutshell, are as follows :-



The appellant was initially appointed as a Constable on 19.04.1999, and later in 2014, he was promoted to Head Constable. He was posted in Chowki Pandiwada, Police Station Bamhni since 07.03.2014. On 23.09.2014 at about 6.00 A.M, all of a sudden his health condition became serious therefore, he requested the In-Charge of Police Chowki Pandiwada to permit him to go to the hospital, who, looking at his serious condition, granted him 8 hours' permission to get himself checked up. Accordingly, 'Ravangi' of the appellant was shown at 06.10 Hrs. on 23.09.2014 in Roznamcha Sanha No.427 to go to hospital. This fact is mentioned in the preliminary enquiry report contained in the letter of the Station House Officer, Police Station Tikariya District Mandla dated 18.01.2016. In the meantime, the Superintendent of Police, Mandla issued a transfer Order No.Pua/Man/Steno/534/2014 dated 22/09/2014, whereby the appellant was transferred from Police Chowki, Pandiwada Police Station, Bamhni to Police Station Niwas. This transfer order dated 22/09/2014 showed the appellant's Ravangi from Pandiwada at 16.10 Hrs. behind the back of the appellant vide Roznamacha Sanha No.439 for submitting his joining in Police Station Niwas, ignoring the very important fact that the appellant had not returned on duty and had not submitted his "Aamad" at Police Chowki Pandiwada, his Ravangi cannot be shown. The appellant's ailment continued from 23.09.2014 to 08.04.2015. On 09.04.2015 at 11.00 AM, he submitted his joining along with all medical documents, which were recorded in 'Roznamcha Sanha' No.316 dated and at the time of joining,

3. The matter relating to the alleged unauthorised absence of the



appellant from 22.09.2014 to 09.04.2015 without any intimation was sent to the Superintendent of Police Mandla vide letter No.436/16 dated 09.03.2016. Again, on 21.12.2015 at 17.24 Hrs. the Appellant proceeded on 3 days' casual leave and his 'Ravangi' was shown in 'Roznamcha Sanha' No.16 dated 21.12.2015 (Ex.P-4), but he did not return after availing 3 days casual leave. Therefore, he was marked absent, and on 26.12.2015 at 10.10 AM, he was shown absent on casual leave vide Roznamcha Sanha No.007 dated 26.12.2015 (Ex.P-5). Thus, it is alleged that from 26.12.2015, the appellant continuously remained absent from duty. Therefore, the Superintendent of Police, Mandla, issued an order dated 26.12.2015 for initiating a preliminary enquiry, whereupon the In-charge Police Station, Tikariya, submitted a preliminary inquiry report vide letter dated 18.01.2016. The Superintendent of Police, Mandla issued charge-sheet dated 06.04.2016. The appellant submitted his reply to the charge sheet, which was not found to be satisfactory. Therefore, departmental enquiry was initiated, and by the impugned order dated 10.08.2016, the appellant was punished with termination from service and the period of leave (197 days + 118 days) total of 315 is treated as dies non under the head of "No work No pay".

4. Being dissatisfied with the order of termination, the appellant preferred an appeal before the Inspector General of Police, Balaghat Range, who by order dated 09.11.2016 dismissed the appeal. Thereafter, appellant preferred Mercy Appeal before the Director General of Police, Madhya Pradesh, Bhopal, which too had been dismissed by the order dated 07.04.2017. Being aggrieved by the order of termination and dismissal of the



above appeals, the appellant filed a Writ Petition before the writ court, which too has been dismissed by the learned Single Judge vide impugned order. Hence, the present Writ Appeal.

Submissions of the Appellant

5. Learned counsel for the appellant submitted that the respondent authorities have totally disregarded the vital fact that the appellant had a sufficient number of official leaves i.e. more than 410 days to his credit, and the same could have been adjusted from the period of his absence. The termination order is contrary to the Madhya Pradesh Police Manual, which provides that the Police Department should be compassionate in cases of absence from duty and that termination orders should not be passed. The punishment of termination from service is grossly disproportionate to the allegations against the appellant, and at best, a minor penalty could have been imposed for his absence from duty, which was duly informed. In support of his case, learned counsel for the appellant relied on the judgment of the Apex Court in the case of **Krushnakant B. Parmar v. Union of India & Anr, 2012 (3) SCC 178**, to contend that the disciplinary authority failed to prove that the absence was wilful and the same amounts to misconduct. It is further contended that 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 of the appellant was wilful. Therefore, the act of the respondent in passing the order of termination is clearly arbitrary and illegal. The orders of the appellate authorities are without application of mind & proper appreciation of material



available on record, and hence, the same deserve to be turned down. In consonance with the same, the writ court order deserves to be set aside.

6. Learned counsel of the Appellant contends that the absence was necessitated by ill-health, for which medical certificates were later produced and "Amad" (joining) was duly recorded in the 'Roznamcha Sanha' (Annexure A-4). Furthermore, the Appellant has brought on record additional evidence via Order 41 Rule 27 CPC (obtained through RTI), which proves his cooperation in the departmental enquiries and prior permission for movement. The primary legal challenge rests on the grounds of proportionality, double jeopardy (treating leave as "Leave Without Pay" and simultaneously terminating), and the failure to follow DGP Circulars (Annexures P-16 & P-18), which discourage termination for subordinate ranks in such circumstances.

7. Shri Pateria, learned counsel, further submits that the Hon'ble Single Judge failed to consider that the Appellant's return to duty was officially recorded in 'Roznamcha Sanha' No. 316 dated 09.04.2015. Additional records obtained via RTI prove that the Appellant participated in the enquiry and left the station only with due permission. These documents, now filed under Order 41 Rule 27 CPC, negate the charge of "unauthorised" absence.

8. It is further submitted that the Appellant maintains that there was no "wilful" or "intentional" absence. The absence was a direct result of a physical ailment. While there was a procedural lapse in not submitting



written applications during the treatment, the superior officers were verbally informed. A procedural delay in submitting medical certificates (provided upon joining) does not equate to grave misconduct.

9. It is further submitted that the punishment of termination is grossly disproportionate to the alleged misconduct of overstaying medical leave. The charges do not involve moral turpitude, corruption, or serious dereliction of duty. As per the Madhya Pradesh Police Manual, the extreme penalty of dismissal/termination should not ordinarily be imposed on Constables/Head Constables for such lapses; it should be imposed as a last resort.

10. It is further submitted that the Disciplinary Authority (Respondent No. 4) acted with a pre-determined mind by taking into account the Appellant's entire past service record and old minor punishments to justify termination. This "cumulative" consideration of past records, without specific notice to the Appellant, is legally impermissible and indicates bias.

11. The Department has already treated the period of absence as "Leave Without Pay" (Annexure A-6). Having already "regularised" the absence by deducting pay, imposing the additional ultimate penalty of termination for the same period amounts to Double Jeopardy and is a manifest overreach of disciplinary power. Even otherwise, there was sufficient leave available in his account, which could have been adjusted during his period of absence.

12. Lastly, it is also submitted that the learned Single Judge failed to assign reasons for discarding the precedents and Police Manual cited by the



Appellant. The Court overlooked that the Appellant had sufficient leave balance to his credit, yet the authorities chose the most "harsh and unfair" route instead of converting medical leave into commuted leave. Hence, in light of the above, it is prayed that the Writ Appeal be allowed, the order of the learned Single Judge be set aside, and the Appellant be reinstated with all consequential benefits.

Submission of the Respondent

13. Learned counsel for the respondent submitted that the appellant was a habitual delinquent and he had been visited with 30 minor and 2 major penalties, out of which 14 penalties were in respect of unauthorised absence only. In a short span of 16 years of service, he remained unauthorisedly absent for 634 days. Despite repeated opportunities having been granted, he had shown no improvement in his conduct. By referring to the records, learned counsel submitted that it is an admitted fact that the appellant remained absent for a total period of 315 days, without any prior permission/intimation. Furthermore, a bare perusal of the appellant's ailment-related medical documents clearly evinces that it was not such that he could not have informed the authorities even through the post. It is a well-settled position of law that the grant of a medical certificate itself does not confer a right to avail leave upon the government servant. The decision to accept the same or not is at the discretion of the competent authority, which is to be exercised after taking into consideration the totality of the facts and circumstances of any case. It is also putforth that the authorities, after



conducting full fledged departmental enquiry, on the basis of the evidence on record, came to the conclusion that the appellant is a habitual delinquent and is unfit to continue to render services in a highly disciplined force like the police, as all other means of his correction have failed. Therefore, the orders of the authorities as well as the writ court are just and proper. Learned counsel further argued that it is a settled legal position that the orders impugned are not liable to be interfered with for the reason that the same have been passed by the competent authority after following due procedure. To buttress his submission, he has relied on the judgment of the Apex Court in the case reported in *Union of India vs. P. Gunasekaran*, (2015) 2 SCC 610, wherein principles regarding judicial review of disciplinary proceedings have been reiterated. and it has been held thus:-

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

- (a) the enquiry is held by a competent authority,*
- (b) The enquiry is held according to the procedure prescribed in that behalf;*
- (c) There is a violation of the principles of natural justice in conducting the proceedings;*
- (d) The authorities have disabled themselves from reaching a fair conclusion by some considerations*



extraneous to the evidence and merits of the case;

(e) The authorities have allowed themselves to be influenced by irrelevant or extraneous considerations;

(f) The conclusion, on the very face of it, is so wholly arbitrary and capricious that no reasonable person could ever have arrived at such conclusion.

(g) The disciplinary authority had erroneously failed to admit the admissible and material evidence;

14. We have heard rival submissions of learned counsel for the parties and perused the record.

Appreciations and Conclusion

15. The main contention of the appellant is that though the appellant was not absent but without willfull as he became sick and later on joined the duties with medical documents. While on duty, he became sick, and before leaving the police station, he made an entry in the daily register ('Rojnamcha'), and after returning again, he made an entry in it, which is evident from the photocopy of the daily register ('Rojnamcha') filed along with this Writ Appeal . Therefore, there was no wilful absenteeism from duty on his part; the punishment of dismissal from service ought not have been imposed upon him, especially when the punishment of Dies-non has already been imposed upon him and leaves were available on his record. It is further submitted that, considering his past misconduct and punishment, this time he has been punished with dismissal from service; otherwise, he would have been awarded a lesser punishment.

16. It is correct that the appellant remained absent for a considerable



period, which is 197 days. Even if he was suffering from a disease like T.B., the same was not of such a nature that his movements from home were restricted. If he remained admitted in the hospital during the entire period of absence, either he or his family members could have informed the police department about his long absence due to illness. He was served with the notices by the department, but he did not respond, hence he admittedly committed the misconduct which has been found established in the Departmental Enquiry. Hence, we are not inclined to interfere with finding recorded in the Departmental Enquiry or the punishments imposed on him.

17. So far as the contention of the appellant's counsel that an adequate number of various types of leaves were available in his accounts, which could have been adjusted in the absence period. In police services or in any other government services, it is not the right of employees or officers to go on leave without permission from the superior authorities and expect the superior authorities to adjust their period of absence from available leaves in the record. As per service rules, it is mandatory for an employee to take leave or permission from the superior officer and thereafter move from working place. It is not acceptable for any police officer to remain absent as per his request and later request for adjustment of leave. If this system is given approval by the court, it would disturb the entire discipline in the police department. Therefore, such contention of Shri Pateria, learned counsel, cannot be accepted, hence rejected.

18. So far as the contention of learned counsel, that the punishment



is shocking disproportion, hence this court may interfere with the punishment. It is settled that the court should not interfere in the matter of punishment and rather should have remanded the matter back to the department to award the appropriate punishment. In this present case, after considering the entire material brought on record, the writ court was of the considered opinion that the punishment of dismissal from service is appropriate. As per the chargesheet, the appellant was sent three notices dated 23.01.2015, 10.3.2015 and 26.03.2015 for reporting on duty, but he reported only on 9.4.2015 after 197 days of absence.

19. The important fact which has not been considered by the department and the writ court was that the appellant was initially appointed as a Constable on 19.04.1999, and in 2014, he was promoted to Head Constable. Therefore, any punishment given to him, whether minor or major, adverse confidential reports etc.had already been taken into consideration by the department before promoting him to the post of head constable; therefore, now those adverse records could not have been taken into consideration for awarding the punishment of dismissal from service. After becoming a Head Constable, he became sick in the same year. On 03.09.2014 at about 6.00 A.M, all of a sudden his health condition became serious; therefore, he requested the In-Charge of Police Chowki Pandiwada to permit him to go to the hospital, who, looking at his serious condition, granted him 8 hours' permission to get himself checked up. Accordingly, 'Ravangi' of the appellant was shown at 06.10 Hrs. on 23.09.2014 in Roznamcha Sanha No.427 to go to the hospital. Hence, it is not the case that



he left the place of duty without informing SHO and did not return till the charge sheet was issued to him. After joining the duty again, made entries in the daily Diary. The appellant has filed a photocopy of the daily diary to show the above entries in it. The appellant has also filed information supplied to him about 400 leaves available in his service record. The promotion given to him in 2014 had wiped out all his past record, which could not have been considered for awarding major punishment of dismissal from service. The appellant had already been awarded a punishment of dies non and "no work no wages" for 197 days.

20. In the case of *Coal India Ltd. v. Mukul Kumar Choudhuri* reported in (2009) 15 SCC 620, the Supreme Court of India discussed the concept of judicial review in the matter of Departmental Enquiry while dealing with the matter of unauthorised absence from duty for six months, and held thus:-

“19. The doctrine of proportionality is, thus, well-recognised concept of judicial review in our jurisprudence. What is otherwise within the discretionary domain and sole power of the decision-maker to quantify punishment once the charge of misconduct stands proved, such discretionary power is exposed to judicial intervention if exercised in a manner which is out of proportion to the fault. Award of punishment which is grossly in excess to the allegations cannot claim immunity and remains open for interference under limited scope of judicial review.

20. One of the tests to be applied while dealing with the question of quantum of punishment would be: Would any reasonable employer have imposed such punishment in like circumstances? Obviously, a reasonable employer is expected to take into consideration measure, magnitude and degree of misconduct and all other relevant circumstances and exclude irrelevant matters before imposing punishment.



21. In a case like the present one where the misconduct of the delinquent was unauthorised absence from duty for six months but upon being charged of such misconduct, he fairly admitted his guilt and explained the reasons for his absence by stating that he did not have intention nor desired to disobey the order of higher authority or violate any of the Company's rules and regulations but the reason was purely personal and beyond his control and, as a matter of fact, he sent his resignation which was not accepted, the order of removal cannot be held to be justified, since in our judgment, no reasonable employer would have imposed extreme punishment of removal in like circumstances. The punishment is not only unduly harsh but grossly in excess to the allegations.”

After so stating the two-Judge Bench proceeded to say that one of the tests to be applied while dealing with the question of quantum of punishment is whether any reasonable employer would have imposed such punishment in like circumstances taking into consideration the major, magnitude and degree of misconduct and all other relevant circumstances after excluding irrelevant matters before imposing punishment.

21. In one of the matters relating to unauthorised absence and the view expressed by the Apex court in *State of Punjab v. P.L. Singla*, reported in (2008) 8 SCC 469 held as under:-

“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.”



22. In *Krushnakant B. Parmar v. Union of India*, (2012) 3 SCC 178, the finding of unauthorised absence recorded by the inquiry officer or determination by the disciplinary authority, the question arose whether “unauthorised absence from duty” did tantamount to “failure of devotion to duty” or “behaviour unbecoming of a government servant”. It is observed 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 an 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.”

23. In the case of *Rajinder Kumar v. State of Haryana*, reported in (2016) 15 SCC 693, the Supreme Court of India has held as under:-

“3. It is not in dispute that the appellant had put in around fifteen years of service prior to his termination. The charge against the appellant was only of



unauthorised absence of short durations. The appellant had an explanation for his absence, that he was taking treatment in District Chest TB and Leprosy Centre, Kurukshetra, Haryana, for his chronic tuberculosis. It appears, on that count, the appellant pleaded for mercy before the inquiry officer. However, the disciplinary authority, by order dated 22-11-1994, passed an order dismissing the appellant from service. The operative portion of the order dated 22-11-1994 reads as follows:

“In the case in hand the absence from duty for 37 days on the part of the defaulter was not an isolated act. Even prior to this as mentioned earlier, there have been repeated acts of remaining absent from duty, and taking lenient view of the matter, the defaulter had been let off by the award of lesser punishment giving him an opportunity to reform. Despite giving an opportunity to reform himself he continued to remain absent from duty off and on. Such a misconduct from a member of disciplined force is not expected, who has about 15 years of service to his credit. He has thus proved himself to be incorrigible and thereby unfit to continue in service. Police service is a disciplined service and it requires to maintain strict discipline. Laxity in this behalf erodes discipline in the service causing serious effects in the maintenance of law and order.

I thus award Constable Rajinder Kumar, 343/KKR penalty of dismissal from service with immediate effect.

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6. It is not in serious dispute that the appellant is a serious patient of tuberculosis. According to the disciplinary authority as well as the appellate authority, the appellant became completely unfit for service in view of the background of the unauthorised absence on many occasions. Once a person is found unfit for service on account of intermittent and unauthorised absence for which the delinquent though has a reasonable explanation, no doubt, there is no point in continuing him in service either by reverting him or by imposing punishments like stoppage of increment, etc. But the question is whether dismissal is the only option in such situations where an employee is found unfit for service. We have no doubt in our mind that indiscipline of any sort cannot be tolerated at all in a disciplined force. However, in the factual background of the



appellant, which we have referred to above, the disciplinary authority or at least the appellate authority, should have considered whether a punishment other than dismissal would have been appropriate and whether dismissal is the only punishment available and appropriate in the circumstances. The fact that different punishments are prescribed under the Rules shows that there is a discretion vested in the competent authority to decide what should be the proper punishment taking note of the nature of misconduct, its gravity and its impact on the service. Having regard to the facts and circumstances of each case, the disciplinary authority has to take a proper decision on punishment."

24. Hence, the dismissal of service can be said to be excessive punishment only in respect of the charge of overstaying during the leave period. Therefore, it is a fit case for remanding the matter back to the disciplinary Authority for imposing appropriate punishment. Accordingly, the charge sheet, findings recorded by the Enquiry Officer and the decision to punish the appellant are upheld. The matter is remitted back to the Disciplinary Authority to impose adequate punishment, keeping in view the observations made and the case laws discussed above. It is important to mention that the appellant has been out of employment for more than a decade. Since it is a matter of police personnel and he is about to come back into the services after a gap of 10 years, while taking him back into the police services, the activities of the petitioner, his health condition, character verification and integrity during these intervening periods should also be taken into consideration. If any adverse material is found against the appellant which makes him unfit to be in the police services then the disciplinary authority shall have



discretion not to take him back into service by recording such reasons.

25. Therefore, appeal is partly allowed. No order as to cost.

(VIVEK RUSIA)
JUDGE

(PRADEEP MITTAL)
JUDGE

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