

**A.F.R.**

**Neutral Citation No. - 2023:AHC-LKO:45748**

**Reserved on: 20.02.2023**

**Delivered on: 14.07.2023**

**Court No. - 5**

**Case :-** WRIT - A No. - 2000264 of 2000

**Petitioner :-** Dr. S.C. Asthana

**Respondent :-** State Of U.P. Through Principal Secy. Medi.And  
Hel. And Anothe

**Counsel for Petitioner :-** S.K. Kalia,Chinmay Mishra,Gaurav  
Mehrotra,S.E.Chitambar,Shikha Sinha

**Counsel for Respondent :-** C.S.C.

**Hon'ble Irshad Ali,J.**

1. Heard Sri Gaurav Mehrtora, learned counsel for the petitioner and learned Additional C.S.C. for the respondent - State.
2. By means of present writ petition, the petitioner has prayed for issuance of a writ, order or direction in the nature of mandamus commanding the respondents to release the senior scale of Rs.3000-4500/- to the petitioner with effect from 1984, time scale of Rs.3700-5000/- w.e.f. 1990 after completing 16 years of service with a further prayer to release all promotions of the petitioner upto the post of Joint Director with effect from his juniors have been promoted. A further prayer has been made to issue a writ, order or direction in the nature of certiorari quashing the order dated 25.04.1996 awarding censure entry and punishment to the petitioner and order dated 09.12.1998, whereby leave of the petitioner has been rejected.
3. Brief facts giving rise to the present writ petition are as under:

<b>Sr. No.</b>	<b>Relevant Facts of the Case</b>
<b>a.</b>	The petitioner was appointed on the post of Medical Officer on 21.08.1974 in Provincial Medical and Health Services on ad-hoc basis.
<b>b.</b>	In the year 1975, the petitioner appeared before the U.P. Public Service Commission and his appointment was approved by the Commission.
<b>c.</b>	The petitioner moved a representation in the year 1976 to the Government for being enrolled / registered in the panel of experts of Foreign Assignments Scheme of Govt. of India.
<b>d.</b>	On 29.06.1978, the petitioner's candidature for being impaneled in the panel of experts in Foreign Assignment Scheme was accepted and he was registered as an Expert and an agreement between the petitioner and authorities of Gongola, State of Nigeria was entered into.
<b>e.</b>	On 27.01.1981, a no-objection certificate was issued by the Additional Director (Administration) for the purpose of passport relating to the petitioner's stay in Nigeria.
<b>f.</b>	On 11.02.1981, the petitioner was sanctioned earned leave for 15 days.
<b>g.</b>	On 16.02.1981, the petitioner was relieved from Unnao.
<b>h.</b>	On 18.03.1981, the petitioner proceeded to Nigeria after informing the Director.
<b>i.</b>	On 16.10.1984, a letter was issued to the Superintendent of Hospital at Unnao by the State Government stating that the petitioner should submit his joining in PHMS within one month.
<b>j.</b>	On 09.11.1984, family of the petitioner received the

	letter dated 16.10.1984.
<b>k.</b>	On 17.11.1984, wife of the petitioner sent a letter to the petitioner at Nigeria informing about the said letter and requested to the Joint Director for grant of time.
<b>l.</b>	On 10.01.1985, the petitioner on receipt of information, returned back from Nigeria and submitted his joining, which was accepted but he was not given posting.
<b>m.</b>	On 20.03.1985, the State Government wrote a letter to the Director stating that the petitioner may be posted as Medical Officer in any district.
<b>n.</b>	On 12.04.1985, the petitioner was posted in Health Directorate at Lucknow as Medical Officer (Reserved Duty).
<b>o.</b>	On 15.04.1985, the petitioner joined his posting place at Directorate.
<b>p.</b>	On 07.07.1988, the State Government directed the Director (Administration) that since the period of petitioner's stay in Nigeria has been regularized, the amount of GPF, Insurance and Pension contribution for the said period be got deposited from the petitioner.
<b>q.</b>	On 07.10.1989, the Joint Director informed the Government that the petitioner had deposited the amount of GPF & GIS.
<b>r.</b>	On 31.08.1990, the petitioner was served with a charge - sheet.
<b>s.</b>	On 10.09.1990, the petitioner submitted his reply to the said charge - sheet.
<b>t.</b>	On 28.10.1991, the petitioner was served a show cause notice to explain his unauthorized absence.
<b>u.</b>	On 26.11.1991, the petitioner filed a writ petition bearing No.7628 (S/B) of 1991 against the said show

	cause notice. The writ petition was dismissed as premature.
<b>v.</b>	On 22.11.1993, the petitioner was provided inquiry report.
<b>w.</b>	On 16.06.1995, the petitioner submitted detailed reply to the charges levelled against him in the charge sheet / show cause notice.
<b>x.</b>	On 25.04.1996, an adverse entry was awarded to the petitioner.
<b>y.</b>	In the month of May, 1996, the petitioner made representation against the said adverse remark.
<b>z.</b>	On 04.07.1996, the petitioner's representation was rejected.
<b>aa.</b>	On 09.07.1997, petitioner's juniors were promoted but his name was not considered for the promotion.
<b>ab.</b>	On 24.10.1997, the State Government directed the Director General, Medical Health and Family Welfare to provide Annual Confidential Reports (ACR) from 1989 - 90 & 1994-95.
<b>ac.</b>	On 25.10.1997, the said ACR was made available to the Government.
<b>ad.</b>	On 29.01.1998, a decision for giving the petitioner time scale of Rs.3700-5000/- was communicated to the petitioner.
<b>ae.</b>	In May, 1998, the petitioner made representation for his promotion and other service benefits.
<b>af.</b>	On 09.07.1998, the petitioner's juniors were granted notional promotion to the post of Joint Director.
<b>ag.</b>	On 09.12.1998, the petitioner was informed that it was not possible to sanction the leave between the period 16.01.1981 to 09.04.1985.

<b>ah.</b>	Being aggrieved by the act and action of the respondents in not sanctioning the said leave and not granting promotion to the petitioner, the present writ petition has been filed before this Court.
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4. Submission of learned counsel for the petitioner is that in compliance of Government Order dated 09.11.1984, the petitioner came back from Nigeria and joined his duties and the State Government vide order dated 07.07.1988 had regularized the foreign assignment period of the petitioner, therefore, the petitioner should not be punished.

5. He next submitted that the respondents in arbitrary and illegal manner instituted a disciplinary proceeding against the petitioner for the charge of unlawful absence from duties during his foreign assignment period and a censure entry was awarded to the petitioner in pursuance of the disciplinary proceeding.

6. He further submitted that the DGME has erred in law while awarding censure entry to the petitioner in view of the fact that on the one hand the State Government has regularized the foreign assignment period of the petitioner and on the other hand censure entry was awarded to him in pursuance to the disciplinary proceeding.

7. He next submitted that while awarding the punishment to the petitioner of censure entry, the year to which the entry relates has not been mentioned and arbitrarily one increment of the petitioner has been stopped without clarifying that whether it is permanent or temporary.

8. He further submitted that the petitioner was entitled to promotion in senior scale after completing 10 years service i.e. Rs.3000-4500/- and time scale of Rs.3700-5000/- after

completing 16 years of service but the same has not been provided to him.

9. He next submitted that character roll of the petitioner for the year 1989 - 1995 has not been submitted and subsequently all the annual character roll entries upto year 1997 were made available to the State Government due to which promotion of the petitioner for higher post could not be considered.

10. He lastly submitted that the respondents are under legal obligation to consider the promotion of the petitioner and to provide the other benefits to him and the order dated 09.12.1998 refusing to grant the leave is absolutely arbitrary as the said leave was applied by the petitioner before leaving for Nigeria and the petitioner has also deposited the amount pension and gratuity etc. as was calculated by the respondents in May, 1998. In support of his submissions, he placed reliance upon the judgments in the case of **Dinesh Kumar Verma Vs. State of U.P. and others; Writ A No.20837 of 2020** decided vide judgment and order dated **24.03.2022, Union of India and another Vs. S.C. Parashar; (2006) 3 SCC 167** and **Krushnakant B. Parmar vs. Union of India and another; (2012) 3 SCC 178**.

11. On the other hand, learned Additional CSC submitted that petitioner's application was forwarded to Ministry of Home, Government of India vide letter dated 21.06.1978 with the rider that in case of selection, he has to resign from his original position and there will be no lien available to him. He submitted that the petitioner was granted no objection certificate for arranging the passport for Nigeria with the condition that before moving to Nigeria, he will get necessary instruction in regard to relieving, however, he, without resigning from his original

position and without permission, he departed for Nigeria and no sanction of leave was available to petitioner to depart for Nigeria, therefore, he was directed to re-join his duties under PMHS cadre within one month.

**12.** He next submitted that a show cause notice was issued to the petitioner for unauthorized absence from duties in view of the fact that the petitioner went to Nigeria will his own will ignoring the instructions / directions issued to him.

**13.** He further submitted that petitioner's application to regularize the unauthorized absence from duty has been rejected by the State Government vide Government Order dated 09.12.1998 and on being found guilty of unauthorized absence orders, adverse entry was made in his service book.

**14.** He next submitted that petitioner's candidature for promotion from Class-II to Class-I post was forwarded to the State Government, wherein, his name found place at Sr. No.890, however, the departmental selection committee did not find him suitable due to pendency of departmental inquiry, therefore, his case was not considered for grant of promotion.

**15.** He further submitted that for petitioner's foreign service i.e. 16.04.1981 to 09.01.1985 no leave was granted and there being no reason to relax the leave rules, it was not possible to sanction his leave. He submitted that pay scale of Rs.3700-5000/- was wrongly granted to the petitioner vide order dated 29.01.1998, which was cancelled vide order dated 30.10.2002.

**16.** He next submitted that the petitioner did not fulfill 10 year's regular and continuous service, as required by the Government Orders issued from time to time, therefore, time scale of Rs.3000-4500/- was not sanctioned to him. He submitted

that petitioner is not liable to get any relief from this Hon'ble Court and the writ petition is liable to the dismissed.

**17.** In reply, learned counsel for the petitioner submitted that letter dated 21.06.1978 was never communicated to the petitioner and he was not informed about the said condition that on joining to Nigeria, there will be no lien available to him. He submitted that order dated 11.02.1981 has not been denied by the respondents, whereby earned leave was sanctioned to the petitioner. He also submitted that the application dated 18.03.1981, moved by the petitioner has also not been denied by the respondents, whereby he informed to the respondents about his joining at Nigeria.

**18.** He next submitted that the petitioner was duly relieved from service from the post of Physician, District Hospital, Unnao, as he handed over the charge vide letter dated 16.02.1981 before proceeding to Nigeria.

**19.** He submitted that petitioner's service at Nigeria is deemed to have been regularized and continued in view of the fact that the State Government vide order dated 07.07.1988 has regularized the period of 16.04.1981 to 09.01.1985 - the period during which the petitioner remained on foreign assignment, as vide order dated 07.07.1988, the petitioner was required to deposit the amount of GPF, insurance and Pension Contribution for the said period, which has been duly deposited by the petitioner and the said fact has not been denied by the petitioner, therefore, there was no occasion for issuing charge sheet dated 31.08.1990.



20. He further submitted that the petitioner has never been communicated any order to the effect that he was not found suitable for promotion from Class - II to Class - I post.

21. I have considered the submissions advanced by learned counsel for the parties and perused the material on record as well as the case laws cited by learned counsel for the petitioner.

22. To resolve the controversy involved in the matter, relevant paragraphs of the judgments relied upon by learned counsel for the petitioner are being quoted below:

a) **Dinesh Kumar Verma (Supra):**

*" 9. As noted above, the punishments, major and minor; both have been inflicted upon the petitioner and this, according to learned counsel for the petitioner, is held to be impermissible by the Apex Court in the case of Union of India and another vs. S.C. Parashar (Supra). Paragraph 12, in this regard, has specifically been placed reliance upon, of which the relevant extract is reproduced hereunder :-*

*"12.....Whereas reduction of timescale of pay with cumulative effect is a major penalty within the meaning of clause (v) of Rule 11 of the CCS Rules, loss of seniority and recovery of amount would come within the purview of minor penalty, as envisaged by clauses (iii) and (iii)(a) thereof. The disciplinary authority, therefore, in our opinion acted illegally and without jurisdiction in imposing both minor and major penalties by the same order. Such a course of action could not have been taken in law."*

b) **Union of India and another (Supra):**

*"12. The penalty imposed upon the respondent is an amalgam of minor penalty and major penalty. The respondent has been inflicted with three penalties : (1) reduction to the minimum of the time-scale of pay for a period of three years with cumulative effect; (2) loss of seniority; and (3) recovery of 25% of the loss incurred by the Government to the tune of Rs.74,341.89p., i.e., Rs.18,585.47p. on account of damage to the Gypsy in 18 (eighteen) equal monthly instalments. Whereas reduction of time-scale of pay with cumulative effect is a major penalty within the meaning of clause (v) of Rule 11 of the CCS Rules, loss of seniority and recovery of amount would come within the purview of minor penalty, as envisaged by*

*clause (iii) and (iii)(a) thereof. The Disciplinary Authority, therefore, in our opinion acted illegally and without jurisdiction in imposing both minor and major penalties by the same order. Such a course of action could not have been taken in law. "*

**c) *Krushnakant B. Parmar (Supra):***

*"16. In the case of appellant referring to unauthorised absence the disciplinary authority alleged that he failed to maintain devotion of 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 can not 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 absence of such finding, the absence will not amount to misconduct."*

**23.** In the case of **Dinesh Kumar Verma (Supra)**, the claim petition was filed assailing the order of punishment dated 23.01.2019, whereby three punishments were imposed upon the petitioner. First punishment was related to withholding of 03 increments with cumulative effect. A censure entry was imposed by way of second punishment and thirdly, the integrity of the petitioner was also withheld. Learned tribunal, upon exchange of pleadings and after hearing learned counsel for the parties, allowed the claim petition only to the extent of striking down the punishment of withholding the integrity. In the said case,

Division Bench of this Court recorded the finding that disciplinary proceedings held by the State authorities by and large do not adhere to the well settled principles of law in the matter of holding inquiry. The Court held that this amounts to a dereliction of duty embodied under U.P. Government Servant (Discipline and Appeal) Rules, 1999. The irregularities in the enquiry leave enough scope for indiscipline and the guilty go unpunished in all those cases, where the procedural violations shield their misconduct. The discrepancies also prolong the disciplinary action contrary to the objects of service jurisprudence. The dormant role on the part of the State not to have a trained staff for disciplinary enquiry cannot be viewed lightly in every case. The disciplinary action must culminate into reformation and discipline and for the reasons recorded above, the writ petition was allowed and the punishment order dated 23.01.2019 was set aside. However, liberty was granted to the disciplinary authority to proceed with the inquiry from the stage of reply submitted by the petitioner in response to the charge sheet issued to him.

**24.** In the case of **Union of India and another (Supra)**, it has been held that the penalty imposed upon the respondent is an amalgam of minor penalty and major penalty. The respondent has been inflicted with three penalties: (1) reduction to the minimum of the timescale of pay for a period of three years with cumulative effect; (2) loss of seniority; and (3) recovery of 25% of the lost incurred by the Government to the tune of Rs.74,341.89p. i.e. Rs.18,585.47p. on account of damage to the Gypsy in 18 (eighteen) equal monthly installments. Whereas reduction of timescale of pay with cumulative effect is a major penalty within the meaning of clause (v) of Rule 11 of the CCS Rules, loss of seniority and recovery of amount would come

within the purview of minor penalty, as envisaged by clauses (iii) and (iii)(a) thereof. The disciplinary authority, therefore, in our opinion acted illegally and without jurisdiction in imposing both minor and major penalties by the same order. Such a course of action could not have been taken in law. In the result, the appeal was allowed and direction was issued for modification of the order of High Court holding that the punishment, which could have been imposed upon the respondent herein was reduction of pay for a period of three years with cumulative effect and, thus, if his case is considered for promotion after the said period, no further direction is required to be issued and the directions issued by the High Court were set aside to the effect:

*"The petitioner shall be entitled to the seniority on the basis of DPC which was held on 7-4-1997 when his immediate junior was promoted to the rank of Second-In-Command. The petitioner shall also be entitled to all consequential benefits which stood denied due to punishment of loss of seniority",* and direction was issued that the punishment shall be reduction of pay to the minimum of the timescale of pay for a period of three years with cumulative effect.

**25.** In the case of **Krushnakant B. Parmar (Supra)**, the appellant, who was working as Security Assistant, was proceeded departmentally on 02.09.1996. On receipt of charge sheet, the appellant denied the allegation by his reply dated 07.10.1996 and also alleged bias against his controlling officer - Mr. P. Venkateswarlu with specific stand that he was prevented by him from signing the attendance register and to attend the office. He also explained the reasons of his absence for certain period for which he had applied for leave. During pendency of departmental proceedings, the appellant was transferred to another place,

which was challenged by him before Central Administrative Tribunal alleging bias against his superior officer. The CAT vide order dated 15.11.2000 set aside the order by holding that "the order of transfer is vitiated due to malice in law and fact", which was affirmed by the Gujarat High Court on 17.08.2001. After about seven years the inquiry officer submitted a report on 28.04.2003 and held that the charge has been proved against the appellant beyond all reasonable doubt holding him guilty of violating Rules 3(1)(ii) and 3(1)(iii) of the Central Civil Service (Conduct) Rules, 1964.

The appellant challenged the order of dismissal before the CAT, which by its order dated 04.05.2004 refused to entertain the application and allowed the appellant to avail alternative remedy of appeal. Accordingly, the appellant preferred an appeal on 17.05.2004 before the Director, Intelligence Bureau highlighting the lapses committed by the inquiry officer, and also alleged bias against the controlling officer who prevented him from performing the duty and to sign the attendance register. The appellate authority without discussing the aforesaid objections rejected the appeal by order dated 30.11.2011 and observed that *"the undersigned has come to the same conclusion that the appellant should have been discharged from service under the Temporary Service Rules when the first instance of indiscipline on his part was noticed"* and held that the charge against the appellant - Sri K.P. Parmar that he remained absent unauthorizedly has been established beyond doubt and therefore, directed that *"the undersigned, being the competent appellate authority hereby rejects the appeal dated 17.05.2004 submitted by Shri K.B. Parmar against order of the disciplinary authority dated 02.12.2003 both on account of being time - barred as well*

*as having no merit and confirms the penalty of removal from service on the said Sri K.B. Parmar vide order dated 02.12.2003".*

The order of punishment and the appellate order in Original Application No.619 of 2004 before the Central Administrative Tribunal, which was dismissed by the order and judgment dated 28.09.2005 and affirmed by the Gujarat High Court. In the said case, Hon'ble Apex Court allowed the appeal and the impugned orders of dismissal passed by the disciplinary authority, affirmed by the appellate authority; the Central Administrative Tribunal and the High Court were set aside. The appellant was directed to be reinstated in service and taking into consideration the fact that the charged officer has suffered a lot since the proceeding was drawn in 1996 for absence from duty for a certain period, the disciplinary proceeding was not remitted to the disciplinary authority for any further action and keeping in view the fact that the appellant has not worked for a long time, it was directed that the appellant be paid 50% of back wages.

**26.** In the case in hand, the petitioner was appointed on the post of Medical Officer on 21.08.1974. He moved a representation in the year 1976 to the Government for being enrolled / registered in the panel of experts of Foreign Assignments Scheme of Govt. of India and the petitioner's candidature for being impaneled in the panel of experts in Foreign Assignment Scheme was accepted. On 27.01.1981, a no-objection certificate was issued by the Additional Director (Administration) for the purpose of passport relating to the petitioner's stay in Nigeria. On 11.02.1981, the petitioner was sanctioned earned leave for 15 days. On 18.03.1981, the petitioner proceeded to Nigeria after informing the Director. On

16.10.1984, a letter was issued to the Superintendent of Hospital at Unnao by the State Government stating that the petitioner should submit his joining in PHMS within one month. In pursuance thereof, on 10.01.1985, the petitioner, on receipt of information, returned back from Nigeria and submitted his joining, which was accepted but he was not given posting. Subsequently, on 07.07.1988, the State Government directed the Director (Administration) that since the period of petitioner's stay in Nigeria has been regularized, the amount of GPF, Insurance and Pension contribution for the said period be got deposited from him and in pursuance thereof, the petitioner Joint Director informed the State Government that the petitioner had deposited the amount of GPF and GIS.

**27.** Subsequently, on 31.08.1990, the petitioner was served with a charge sheet to which reply was submitted by him on 10.09.1990. On 28.10.1991, the petitioner was served with a show cause notice to explain his unauthorized absence. Copy of inquiry report was provided to the petitioner on 22.11.1993 and he submitted reply to the charges levelled against him in the charge sheet / show cause notice on 16.06.1995. On 25.04.1996, an adverse entry was awarded to the petitioner against which a representation was moved in May, 1996, which was rejected on 04.07.1996. On 09.07.1997, petitioner's juniors were promoted but his name was not considered for promotion. On 09.07.1998, juniors to the petitioner were granted notional promotion to the post of Joint Director and on 09.12.1998, the petitioner was informed that it was not possible to sanction the leave between the period 16.01.1981 to 09.04.1985.

**28.** A disciplinary proceeding was initiated against the petitioner for the charge of unlawful absence from duties during

his foreign assignment period and a censure entry was awarded to him in pursuance of the disciplinary proceeding and while awarding the punishment to the petitioner of censure entry, one increment of the petitioner has been stopped without clarifying that whether it is permanent or temporary.

**29.** The petitioner was relieved from service from the post of Physician, District Hospital, Unnao and he handed over the charge vide letter dated 16.02.1981 before proceeding to Nigeria. Petitioner's service at Nigeria is deemed to have been regularized and continued in view of the fact that the State Government vide order dated 07.07.1988 has regularized the period of 16.04.1981 to 09.01.1985 - the period during which the petitioner remained on foreign assignment, as vide order dated 07.07.1988, he was required to deposit the amount of GPF, insurance and Pension Contribution for the said period, which has been duly deposited by him and the said fact has not been denied by the respondents, therefore, there was no occasion for issuing charge sheet dated 31.08.1990.

**30.** The respondents erred in law while awarding censure entry to the petitioner in view of the fact that on the one hand the State Government has regularized the foreign assignment period of the petitioner and on the other hand censure entry was awarded to him in pursuance to the disciplinary proceeding.

**31.** The disciplinary proceedings held by the State authorities by and large do not adhere to the well settled principles of law in the matter of holding inquiry. This amounts to a dereliction of duty embodied under U.P. Government Servant (Discipline and Appeal) Rules, 1999. The irregularities in the enquiry leave enough scope for indiscipline and the guilty go unpunished in all



those cases, where the procedural violations shield their misconduct. The discrepancies also prolong the disciplinary action contrary to the objects of service jurisprudence. The dormant role on the part of the State not to have a trained staff for disciplinary enquiry cannot be viewed lightly in every case. The disciplinary action must culminate into reformation and discipline.

**32.** In a departmental proceeding, if allegation of unauthorized absence from duty is made, the disciplinary authority is required to prove that the absence is wilful and in absence of such finding, the absence will not amount to misconduct.

**33.** In view of reasons recorded above and judgments relied upon by learned counsel for the petitioner, the impugned orders dated 25.04.1996 awarding censure entry and punishment to the petitioner and order dated 09.12.1998, whereby leave of the petitioner has been rejected, are hereby quashed.

**34.** The writ petition succeeds and is **allowed**.

**35.** Consequences to follow.

**36.** No order as to costs.

**Order Date :- 14.07.2023**

Adarsh K Singh