

**(2015) 01 CAL CK 0062**  
**In the Calcutta High Court**  
**Case No : Writ Petition No. 17289 (W) of 2008**

Nikhil Chandra Roy

APPELLANT

Vs

Union of India and Others

RESPONDENT

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**Date of Decision :** 16-01-2015

**Acts Referred:**

Constitution of India, 1950 — Article 12, 14, 226

**Citation :** (2015) 01 CAL CK 0062

**Hon'ble Judges :** Tapabrata Chakraborty, J

**Bench :** Single Bench

**Advocate :** Ashim Kumar Ganguly, for the Appellant

**Final Decision :** Disposed off

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## Judgement

Tapabrata Chakraborty, J.—This writ application has been preferred challenging the entire disciplinary proceeding including the charge-sheet dated 28th January, 2006, the Enquiry Report dated 8th September, 2006, the order of punishment dated 29th March, 2007 and the order of Appellate Authority dated 3rd January, 2008.

2. A brief review of the relevant facts would suffice. Upon completion of 15 years of unblemished service in Indian Army, the petitioner retired and thereafter he was appointed to the post of Security Guard in the Kolkata Terminals, Budge Budge-II of Hindustan Petroleum Corporation Ltd. (hereinafter referred to as HPCL). In the midst of such service, a show-cause notice dated 26th April, 2005 was issued to the petitioner seeking explanation of an alleged unauthorised absence from duty after a period of 15 days. The petitioner replied to the said show-cause notice and almost 10 months thereafter, the petitioner was issued a charge-sheet dated 28th January, 2006 alleging unauthorised absenteeism of 291 days from January, 2003 to December, 2005 and asking the petitioner to file a written explanation. The petitioner replied to the same by a representation which was received by the competent authority on 11th February, 2006. Subsequent thereto, by a memorandum dated 15th April, 2006 the petitioner

was intimated, inter alia, about the appointment of an Enquiry Officer, who in turn fixed the enquiry on 12th July, 2006 in which the petitioner duly appeared and no further date was fixed for the enquiry. Thereafter, by a memorandum dated 25th July, 2006, the petitioner was communicated a summation report prepared by the Presenting Officer. The petitioner was also communicated an Enquiry Report by a memorandum dated 8th September, 2006 to which the petitioner replied on 18th October, 2006. A further representation was made by the petitioner on 19th October, 2006. The Disciplinary Authority thereafter issued the order of punishment discharging the petitioner from the services of HPCL as per the Certified Standing Orders of HPCL (hereinafter referred to as the CSOs). Aggrieved by the said order of punishment, the petitioner preferred an appeal on 31st May, 2007. As the said statutory appeal was kept pending, the petitioner approached this Court with an application under Article 226 of the Constitution of India being W.P. No. 20825 (W) of 2007 and the same was disposed of directing the Appellate Authority to consider and dispose of the petitioner's appeal dated 31st May, 2007, in accordance with law, by passing a reasoned order, within a period of 4 weeks from the date of communication of the order. Subsequent thereto, the petitioner's statutory appeal was dismissed by an order dated 3rd January, 2008.

3. The instant writ application was admitted with a direction towards exchange of affidavits on 12th January, 2009 and pursuant to the said order the affidavits have been exchanged by the respective parties.

4. Mr. Ganguly, learned advocate appearing for the petitioner submits that the proceedings stood vitiated at the very inception since the scope and ambit of the disciplinary proceeding as contoured in the show-cause notice was enhanced through the charge-sheet. In the show-cause notice dated 26th April, 2005 a disciplinary action was contemplated against the petitioner for an alleged period of unauthorised absence of 15 days but when such contemplation matured through issuance of a charge-sheet dated 28th January, 2006, the period of absence was enhanced to 291 days and as such the petitioner was deprived of an opportunity to deal with the enhanced period of absence at the show-cause stage and such denial of opportunity is a blatant instance of violation of the principles of natural justice.

5. He further submits that the person who issued the show-cause notice against the petitioner was also appointed as the enquiry officer, who held the enquiry only on 12th July, 2006 and from such sequence it is explicit that the authorities have proceeded in a biased manner and with an intent to penalize the petitioner.

6. Drawing the attention of this Court to the order of penalty, Mr. Ganguly submits that while imposing the punishment the disciplinary authority took into consideration an alleged period of absence of the petitioner from January, 2006 to December, 2006 which is not a part of the charge-sheet and such infirmity maligns the disciplinary proceeding.

7. Placing reliance upon the document at page 38 of the writ application, he submits that the petitioner was granted leave for the period from 6th May, 2005 to 29th May, 2005. Subsequent thereto, the petitioner met with an accident in the 3rd week of July, 2005.

8. According to him, the authorities did not take into consideration the documents pertaining to the petitioner's ailments which were issued by the respondents and were in their custody. In support of such contention, reliance has been placed upon the documents in annexure P5 of the writ application, particularly the documents at pages 38 to 45.

9. He further submits that the petitioner duly replied to the charge-sheet and the enquiry report but the same was not taken into consideration and the authorities proceeded only on the basis of a letter dated 12th July, 2006, which has been referred to in the summation report. The said summation report has been drawn up in a proforma and the blanks therein have been filled up and the same does not contain any reasoning in support of the alleged charges.

10. According to Mr. Ganguly, the said letter dated 12th July, 2006 was obtained by the authorities misleading the petitioner and that as such no weightage can be granted to the said letter. No witnesses were examined and no documents were exhibited and the proceedings were concluded on a single date, being 12th July, 2006 and from such sequence it would be explicit that the respondents have proceeded in hot haste and have concluded the proceedings only on the basis of the letter dated 12th July, 2006 obtained by misleading the petitioner.

11. It has also been argued on behalf of the petitioner that the Appellate Authority did not take into consideration the fact that for an alleged absence of 319 days, one Shri Mohan Chandra Mondal, similarly situated with the petitioner, was awarded a lesser punishment of "reduction to a lower stage in the scale" whereas the petitioner has been discharged for a lesser period of alleged unauthorised absence of 291 days and that such action is discriminatory.

12. In support of his arguments, Mr. Ganguly has relied upon the following judgments:

a) Bhagat Ram Vs. State of Himachal Pradesh and Others, AIR 1983 SC 454 : (1983) LabIC 662 : (1983) 2 LLJ 1 : (1983) 1 SCALE 864 : (1983) 2 SCC 442 : (1983) 2 SLJ 323 .

b) Krushnakant B. Parmar Vs. Union of India (UOI) and Another, (2012) 132 FLR 1023 : (2012) 2 JT 352 : (2012) 2 SCALE 545 : (2012) 3 SCC 178 : (2012) 2 SLJ 19 : (2012) AIRSCW 1633 : (2012) 2 Supreme 254 .

c) Asim Kumar Hajrah Vs. The State of West Bengal and Others, (2014) 1 CALLT 413 .

d) Lakshmi Precision Screws Ltd. Vs. Ram Bahagat, AIR 2002 SC 2914 : (2002) 95 FLR 43 : (2002) 6 JT 162 : (2002) LabIC 2968 : (2002) 3 LLJ 516 : (2002) 5

SCALE 593 : (2002) 6 SCC 552 : (2002) 1 SCR 512 Supp : (2002) AIRSCW 3324 : (2002) 5 Supreme 315 .

e) Central Inland Water Transport Corporation Limited and Another Vs. Brojo Nath Ganguly and Another, AIR 1986 SC 1571 : (1986) 3 CompLJ 1 : (1986) LabIC 1312 : (1986) 2 LLJ 171 : (1986) 1 SCALE 799 : (1986) 3 SCC 156 : (1986) 2 SCR 278 : (1986) 2 SLJ 320 .

f) Commandant, Central Industrial Security Force -vs- R.S. Singh, reported in (2010) 1 CHN 80.

g) Ishwar Chandra Jayaswal Vs. Union of India (UOI) and Others, (2014) 1 SCALE 155 : (2014) 2 SCC 748 : (2014) 1 SCC(L&S) 377 : (2014) 3 SCJ 276 .

h) The Director General of Police and Others Vs. G. Dasayan, (1998) 1 AD 431 : AIR 1998 SC 2265 : (1998) 1 JT 259 : (1998) 1 SCALE 241 : (1998) 2 SCC 407 : (1998) SCC(L&S) 557 : (1998) 1 UJ 489 : (1998) AIRSCW 2164 : (1998) 1 Supreme 335 .

i) B.C. Chaturvedi Vs. Union of India and others, AIR 1996 SC 484 : (1995) 8 JT 65 : (1996) LabIC 462 : (1996) 1 LLJ 1231 : (1995) 6 SCALE 188 : (1995) 6 SCC 749 : (1995) 4 SCR 644 Supp : (1996) 1 UJ 80 .

j) Management of Coimbatore District Central Co-operative Bank Vs. Secretary, Coimbatore District Central Co-operative Bank Employees Association and Another, (2007) 114 FLR 236 : (2007) 5 JT 628 : (2007) 2 LLJ 724 : (2007) 6 SCALE 45 : (2007) 4 SCC 669 : (2007) 5 SCR 430 .

k) Shri Bhagwan Lal Arya Vs. Commissioner of Police Delhi and Others, AIR 2004 SC 2131 : (2004) 2 CTC 301 : (2004) 101 FLR 193 : (2004) 3 JT 384 : (2004) 3 SCALE 356 : (2004) 4 SCC 560 : (2004) SCC(L&S) 661 : (2004) 3 SCR 1 : (2004) 2 SLJ 460 : (2004) AIRSCW 2288 : (2004) 2 Supreme 677 .

l) Union of India and others Vs. Giriraj Sharma, AIR 1994 SC 215 : (1994) 1 LLJ 604 : (1994) 3 SCC 755 Supp .

13. Mr. Mehta, learned advocate appearing for the respondents submits that the writ application is not maintainable as there exists an alternative remedy and that the petitioner being an workman ought to have approached the competent authority under the Industrial Disputes Act. In support of such contention, Mr. Mehta relies upon the following judgments:

a) The Workmen of Firestone Tyre and Rubber Co. of India (Pvt.) Ltd. Vs. The Management and Others, AIR 1973 SC 1227 : (1973) 26 FLR 359 : (1973) 1 LLJ 278 : (1973) 1 SCC 813 : (1973) 3 SCR 587 .

b) Khushal Shamraoji Randive -vs- Garden Reach Ship Builders and Engineers Ltd. and Ors., reported in 1997 (1) CLT 508.

14. Placing reliance upon a letter dated 12th July, 2006, he argues that the petitioner has admitted the charges and that as such the disciplinary authority

has rightly issued the order of punishment discharging the petitioner from his services. He has further relied upon the answers given by the petitioner to the questions put to him by the Presenting Officer on 12th July, 2006 on the basis of the letter issued by the petitioner on 12th July, 2006. Let the said documents be kept on record.

15. Placing reliance upon the averments made in the affidavit-in-opposition, Mr. Mehta submits that the petitioner did not give any reply to the show-cause notice and that even after receipt of the charge-sheet the petitioner did not amend himself and remained absent for a further period of 103 days and that the enquiry was conducted in strict consonance with the CSOs, after proper analysis of the evidence on record, both oral and documentary.

16. In answer to the petitioner's argument as regards extension of dissimilar treatment, Mr. Mehta submits that Mohan Chandra Mondal was a general service assistant and the duties and responsibilities of the said Shri Mondal are not similar to the duties and responsibilities of the petitioner, who was appointed as a Security Guard.

17. According to Mr. Mehta, the medical documents and prescriptions annexed to the writ application at pages 39 to 67 were not produced during the enquiry and that the petitioner duly participated in the enquiry proceeding without any protest and he did not produce any witness but the enquiry officer granted an opportunity of hearing to the petitioner and in the backdrop of the said sequence of facts it cannot be alleged by the petitioner that there has been violation of the principles of natural justice.

18. He further submits that the admission is the best evidence and on the basis of such admission and as the petitioner could not produce any document to establish that the absence was not intentional, the punishment order was rightly issued. The petitioner deserves no sympathy since the totality of the facts would reveal that he had no sense of responsibility and being aware about the difficulties which would be faced by the employer for his long absence, the petitioner proceeded on unauthorised leave.

19. In support of his contentions to the effect that judicial review is not akin to adjudication on merit by reappreciating the evidence as an appellate authority, Mr. Mehta has relied upon the following judgments:

c) Union of India Vs. K.V. Jankiraman, etc. etc., AIR 1991 SC 2010 : (1991) 63 FLR 767 : (1991) 3 JT 527 : (1991) 2 LLJ 570 : (1991) 2 SCALE 423 : (1991) 4 SCC 109 : (1991) 3 SCR 790 .

d) State Bank of India and Others Vs. Narendra Kumar Pandey, (2013) 2 ABR 787 : (2013) 2 AD 8 : AIR 2013 SC 904 : (2013) 136 FLR 704 : (2013) 1 JT 409 : (2013) LabIC 957 : (2013) 2 LLJ 1 : (2013) 1 LLN 349 : (2013) LLR 211 : (2013) 1 SCALE 385 : (2013) 2 SCC 740 : (2013) 1 SCC(L&S) 459 : (2013) 1 SCT 745 : (2013) 114 SLJ 331 .

e) State of Gujarat Vs. R.G. Teredesai and Another, AIR 1969 SC 1294 : (1969) LabIC 1547 : (1969) 2 SCC 128 : (1970) 1 SCR 251 .

f) Union of India (UOI) Vs. H.C. Goel, AIR 1964 SC 364 : (1964) 9 FLR 161 : (1964) 1 LLJ 38 : (1964) 66 PLR 305 : (1964) 4 SCR 718 .

g) Managing Director, ECIL, Hyderabad, Vs. Karunakar, etc. etc., AIR 1994 SC 1074 : (1993) 6 JT 1 : (1994) 1 LLJ 162 : (1993) 3 SCALE 952 : (1993) 4 SCC 727 : (1993) 2 SCR 576 Supp : (1993) 3 SLJ 193 .

20. In support of his arguments to the effect that unauthorised absence or overstayal of leave is an act of indiscipline, Mr. Mehta has relied upon the following judgments:

h) New India Assurance Co. Ltd. Vs. Vipin Behari Lal Srivastava, AIR 2008 SC 1525 : (2008) 2 CLT 855 : (2008) 117 FLR 570 : (2008) 3 JT 149 : (2008) 2 LLJ 317 : (2008) 2 SCALE 727 : (2008) 3 SCC 446 : (2008) 1 SCC(L&S) 778 : (2008) AIRSCW 1629 .

i) Bharat Coking Coal Limited -vs- Ramesh Prasad Shrivastav, reported in (2006) 3 CHN 482 (Para 9).

21. In support of his contentions to the effect that the doctrine of proportionality cannot be invoked when the misconduct stands proved and that the writ court also cannot interfere with the quantum of punishment and that the same should not be disturbed unless shockingly disproportionate, Mr. Mehta relies upon the judgment delivered in the case of Lucknow K. Gramin Bank and another -vs- Rajendra Singh, reported in [2013 (139) FLR 290].

22. In reply, Mr. Ganguly submits that the judgment delivered in the case of The Workmen of M/s. Firestone Tire and Rubber Co. of India P. Ltd. (Supra) is distinguishable on facts and the judgment delivered in the case of Khushal Shamraoji Randive (Supra) has no manner of application in the instant case as the respondents have acted in derogation to the principles of parity and in violation of the provisions of Article 14 of the Constitution of India. The judgment delivered in the case of - K.V. Jankiraman (Supra), pertains to the seal cover procedure which has no manner of application in the instant case. There is no dispute over the proposition of law as laid down in the judgments delivered in the case of State Bank of India and Ors. (Supra), State of Gujarat (Supra), Union of India (Supra), Managing Director, ECIL, Hyderabad, etc. (Supra) and Lucknow K. Gramin Bank (Supra) but the said judgments are distinguishable on facts and are not applicable to the instant lis. The judgments delivered in the case of New India Assurance Co. Ltd. (Supra) and Bharat Coking Coal Limited (Supra) are not applicable to the facts of the instant case inasmuch as the respondents in the instant case have proceeded on the basis of a letter by which it was alleged that the petitioner has admitted the charges.

23. I have heard the learned advocates appearing for the respective parties and I have considered the materials on record.

24. It would be necessary to first deal with the objection of availability of an alternative remedy to the petitioner. It is settled law that mere existence of an alternative remedy does not oust the jurisdiction of the Writ Court. At least in four situations a Court of Writ would be justified in entertaining a writ petition despite availability of an alternative remedy. One of such situations is when the action impugned in the writ petition is violative of the principles of natural justice. The rule of exhaustion of alternative remedy, being a rule of discretion rather than a rule of compulsion, in an appropriate case, the court would be justified in exercising its discretion.

25. Mr. Mehta has argued that the breach of service condition is within the contractual field and that as such the writ application is not maintainable since the writ petitioner comes within the definition of workman under the Industrial Disputes Act, 1947. Such contention, however, does not have any force since the instant writ application has been filed challenging non-performance of the constitutional and statutory obligations entrusted to HPCL which is an authority under Article 12 of the Constitution of India. Appointment to a post under the State or its instrumentality, is required to be dealt with as per public element assuring equality, which is a genus of Article 14 and all other concomitant rights emanating therefrom are species to make the right to life, real and meaningful. Reference in this connection may be made to the decision delivered in the case of Smt. Nipa Dhar (Nee Ghosh) -vs- National Aviation Company of India Ltd. and Ors., reported in (2011)2 WBLR (Cal) 793.

26. Having regard to the facts and circumstances of the present case, in my view, since the issue of violation of the principles of natural justice is involved in the instant lis and as there has been a violation of the principle of parity through conferment of a lesser punishment upon a person similarly situated with the petitioner and as by the punishment imposed, the petitioner is deprived of his right to livelihood, the petitioner can certainly approach the Writ Court notwithstanding the availability of an alternative remedy. I therefore do not propose to relegate the petitioner to the alternative remedy.

27. The undisputed facts are that the charge-sheet does not stand supported with any statement of imputation. No list of documents to be relied upon by the respondents and no list of witnesses have been enclosed in the charge-sheet. The enquiry officer held the enquiry only on 12th July, 2006 and after conclusion of such enquiry the summation report was filed by the Presenting Officer by filling up the blanks in a pro forma. The enquiry was concluded on a single date placing reliance upon a document signed by the petitioner on 12th July, 2006 itself but the said document was also not marked as an Exhibit.

28. The scope and ambit of the disciplinary action as contemplated in the show-cause was enhanced through issuance of a charge-sheet alleging unauthorised absence of 291 days and the consequential denial of opportunity to the petitioner to deal with the allegation of the period of absence on and from May, 2003 till April, 2005 at the show-cause stage constitutes violation of the principles of

natural justice and the enhancement of the period of alleged absence constitutes an error in the decision making process.

29. The petitioner was misled and the letter of alleged admission of charges dated 12th July, 2006 was extracted from the petitioner and the enquiry officer proceeded on the basis that the petitioner has pleaded guilty of all the charges. The leave applications at page 38 and page 45 of the writ application, which are documents in the custody of the HPCL authorities, have not been taken into consideration and the petitioner was found to be guilty of the charges of habitual negligence and habitual absence for more than 21 consecutive days.

30. The Disciplinary Authority has also proceeded on the basis that the petitioner has admitted the charges of unauthorized absence. A perusal of the order of punishment further reveals that the Disciplinary Authority has taken into consideration a period of absence of 103 days for the period from June, 2006 to December, 2006. The said period of absence admittedly does not feature in the charge-sheet and thus it is clear that the Disciplinary Authority has travelled beyond the charges and has penalized the petitioner in a manner impermissible in law.

31. The contents of the charge-sheet reveal that except in the months of September, 2004, October, 2004, November, 2004, September, 2005, October, 2005 and November, 2005 there was no absence of more than 21 consecutive days. The petitioner, however, was even allowed to resume his duties after such period of absence and an instance thereof would be explicit from the document at page 38. There is no discussion whatsoever in the enquiry report and in the order of punishment that the petitioner lost lien on appointment and there is also no discussion as to whether the said period of absence and the other periods of absence indicated in the charge-sheet were over and above the period of leave to which the petitioner is entitled to in terms of the provisions of Clauses 16 to 21 of the said CSOs. Such lack of consideration constitutes an error in the decision making process.

32. A perusal of the answers given by the petitioner to the questions put by the Presenting Officer reveal that authorities extracted a letter of admission of charges from the petitioner on 12th July, 2006, i.e., on the date the enquiry was concluded. The alleged charges against the petitioner have not been proved. The only basic evidence whereupon reliance was placed by the enquiry officer was a purported letter of the petitioner signed and obtained by the respondents on the sole date of enquiry, i.e., on 12th July, 2006. The said letter was not marked as an Exhibit and was not even proved. There was neither any direct or indirect evidence and the tenor of the report demonstrates that the enquiry officer had made up his mind to find the petitioner guilty. In this context it needs to be pointed out that the person who issued the show-cause notice also conducted the enquiry. The said sequence of facts supports the petitioner's contention to the effect that the respondents have proceeded with a pre-meditated intent to penalize the petitioner and such biased attitude of the respondents maligns the

entire proceeding and there is no transparency in the decision making process.

33. The CSOs are applicable to all the employees under HPCL and that the instances of misconduct as incorporated in the said CSOs are not distinguishable on a yardstick of nature of duties. The instance of imposition of a lesser punishment of "reduction to a lower stage in the scale" upon Shri Mohan Chandra Mondal for unauthorised absence of 319 days and the imposition of a harsher punishment of discharge from service upon the petitioner for an alleged unauthorised absence of 291 days, is clearly arbitrary and violative of the provisions of Article 14 of the Constitution of India. The respondents have practised discrimination and such action of the respondents is violative of the principles of parity. Reference in this connection may be made to the decision delivered in the case of *Rajendra Yadav Vs. State of M.P. and Others*, (2013) 2 AD 653 : (2013) 116 CLT 589 : (2013) 137 FLR 239 : (2013) 2 JT 627 : (2013) 2 SCALE 416 : (2013) 3 SCC 73 : (2013) 1 SCC(L&S) 476 : (2013) 2 SCT 732 : (2013) 2 SLJ 120 .

34. It goes without saying that when a person is discharged from service, the person so dismissed has a substantial stake in the matter. The person loses his job and also loses the means of earning his livelihood. So when a person loses his livelihood, Courts are entitled to insist to ensure that such loss of livelihood can be based only on a procedure which is just, fair and reasonable without even a tinge of malafide motive. Such reasonable and fair procedure would demand that the guilt of the delinquent employee should be judged on the basis of charges levelled against him and not on the basis of materials which are not a part of the charges. Unfortunately, this has not been done in the instant case. Therefore, the action of the Disciplinary Authority is not based on a fair procedure.

35. Neither the Inquiring Authority nor the Disciplinary Authority nor the Appellate Authority did come to any positive finding that the absence was wilful. Mere absence from duty without application or prior permission is unauthorized absence but it does not ipso facto become wilful and unauthorized absence.

36. The judgment delivered by the Hon"ble Supreme Court, in the case of *Krushnakant B. Parmar Vs. Union of India (UOI) and Another*, (2012) 132 FLR 1023 : (2012) 2 JT 352 : (2012) 2 SCALE 545 : (2012) 3 SCC 178 : (2012) 2 SLJ 19 : (2012) AIRSCW 1633 : (2012) 2 Supreme 254 specifically observed inter alia as follows:

"16. 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."

37. Records do not reveal that the enquiry officer, the disciplinary authority and the appellate authority did come to any positive finding to the effect that the petitioner's absence was wilful and in the backdrop of the said infirmities in the

proceedings, the respondents could not have imposed the severe punishment of discharge from service against the petitioner and such punishment is disproportionate to the charges framed against the petitioner. The petitioner is a married person having a family and the punishment as imposed affects the livelihood of the petitioner and his family.

38. The petitioner is not a habitual absentee and he has not caused any monetary loss. There is also no allegation of moral turpitude against the petitioner and he does not have a prior record of any misconduct and he is not likely to be a menace or threat or danger to his employer and there is a possibility of reformation. Weightage ought to have been granted to the said mitigating factors for the purpose of imposition of penalty.

39. Measure, magnitude and degree of misconduct needs to be taken into consideration to determine and to weigh the proportion. If the award of punishment is grossly, in excess of the allegations made, it cannot claim immunity and makes itself amenable for interference under the limited scope of judicial review. Regard being had to the facts involved, I am of the opinion that the doctrine of proportionality is invocable in the instant case and the order of discharge from service needs to be substituted as "reduction to a lower stage in the scale". In my opinion, such punishment will be a sufficient corrective measure for the petitioner and will also meet the ends of justice in the facts of the present case.

40. Furthermore, the acts of misconduct of the said Shri Mohan Chandra Mondal and the petitioner herein are almost same. The action of the Disciplinary Authority imposing a comparatively lighter punishment of "reduction to a lower stage in the scale" upon Mohan Chandra Mondal by an order dated 8th March, 2007, on an alleged charge of unauthorised absence of 319 days and imposing a harsher punishment of discharge from service upon the petitioner for a lesser period of alleged unauthorised absence, is arbitrary and is violative of the principles of parity.

41. Accordingly, the order of punishment dated 29th March, 2007 issued by the Disciplinary Authority and the order dated 3rd January, 2008 issued by the Appellate Authority are set aside.

42. Instead of discharge from service, this Court substitutes the punishment as "reduction to a lower stage in the scale" with effect from the date of imposition of the punishment of discharge from service and directs the respondents to reinstate the petitioner with all continuity of service and to grant all consequential benefits thereto, within a period of eight weeks from the date of communication of this order. The petitioner shall, however, not be entitled to any backwages.

43. With the above observations and directions, the writ application is disposed of.

44. There shall, however, be no order as to costs.

45. Urgent Photostat certified copy of this judgment, if applied for, be given to the parties, as expeditiously as possible, upon compliance with the necessary formalities in this regard.