

(2022) 09 MP CK 0062
In the Madhya Pradesh High Court
Case No : Writ Petition No.3406 Of 2015

Pankaj Tiwari

APPELLANT

Vs

Union Of India And Others

RESPONDENT

Date of Decision : 13-09-2022

Acts Referred:

Constitution Of India, 1950 — Article 20(3), 226
Central Civil Services (Classification, Control And. Appeal) Rules, 1965 — Rule 2(a),
2(e), 14, 29(1), 35
Central Civil Services (Leave) Rules, 1972 &Mdash; Rule 25
Persons With Disabilities (Equal Opportunities, Protection Of Right And Full
Participation) Act, 1995 &Mdash; Section 2(i), 33, 47
Mental Healthcare Act, 2017 — Section 91

Citation : (2022) 09 MP CK 0062

Hon'ble Judges : Gurpal Singh Ahluwalia, J

Bench : Single Bench

Advocate : Prashant Sharma, S.S. Kushwaha

Final Decision : Dismissed

Judgement

Gurpal Singh Ahluwalia, J

1. This petition under Article 226 of the Constitution of India has been filed seeking the following reliefs:-

(i) Impugned orders Annexuure P/1 dated 18-05-2015 and dated 28-05-2015 Annexure P/2 may kindly beset aside.

(ii) It may beheld that entire departmental enquiry conducted against the petitioner during the period of his serious mental ailment (Major Depression), vitiates in law therefore, petitioner is entitled for all benefits w.e.f. 15-09-2007 till impugned order is passed however, with interest @ 18% per annum.

(iii) Petitioner may also be directed to reinstate in service with all consequential benefits including arrears, salary/back-wages and consideration of his case for his promotion with all consequential benefits.

(iv) Any other relief which this Hon'ble court deem fit and proper be also allowed.

2. The facts necessary for disposal of the present petition in short are that the petitioner was working as Assistant Commandant, CRPF. He was appointed by order dated 7/9/2005. In the month of July, 2007 he applied for earned leave of 40 days, which was duly sanctioned from 2/7/2007 to 10/8/2007. At the relevant time, the petitioner was posted as Company Commander, A & C/78 Battalion at Jammu. He had sought for earned leave on the ground that his mother was not well, as her mother had met with a road accident. Accordingly, he proceeded for 40 days earned leave. When the mother of the petitioner started to recover, the fiancé of his sister died in another road accident. When the petitioner was trying to overcome these two incidents, the family life of the petitioner got disrupted, as a property dispute arose and several differences with his father surfaced immediately. It is the claim of the petitioner that this property dispute turned to be a havoc for the petitioner resulting in complete breakdown with the sequence of eventualities. Being the elder son, all responsibilities to console and bear the unsteamable trauma was on the petitioner. He applied for extension of leave by 45 days, but sanction was granted only for 35 days. Because of two road accidents including the property dispute with his father, the mental condition of the petitioner started deteriorating and he became mentally disabled. Since the petitioner was not feeling mentally fit, therefore, he applied for extension of leave and the same was granted w.e.f. 11/8/2007 to 14/9/2007. On 7/9/2007 the petitioner was medically examined by a private doctor, namely, Dr. Anil Dohare. Treatment was prescribed and the petitioner was kept under observation for a period of 10 days. After re-examination, the petitioner was declared medically unfit and a certificate to that effect was issued on 17/9/2007. On 16/9/2007, 17/11/2007 and 4/3/2008 the petitioner sent applications with aforesaid medical unfit certificate and requested the authorities to extend the leave. Thereafter, the petitioner consulted the aforesaid doctor on 3/10/2007, 4/11/2007, 5/12/2007, 5/1/2008, 6/3/2008, 7/6/2008, 8/10/2008, 6/1/2009, 17/3/2009, 25/3/2009, 1/4/2009, 16/4/2009, 27/4/2009, 6/5/2009, 15/5/2009 and 22/5/2009 respectively. On 6/3/2009 the petitioner was asked by the authorities to report in the GC Hospital, Gwalior, which is a hospital controlled and regulated by the CRPF. The said letter was received by the petitioner on 23/3/2009. On the very next day, i.e. on 24/3/2009, the petitioner reported in GC Hospital, from where he was referred to Gwalior Mansik Arogyashala, as the mental treatment is not available in the GC Hospital, Gwalior. It is claimed by the petitioner that the petitioner was already taking treatment from the medical practitioner of Gwalior Mansik Arogyashala, however, in compliance of the said reference, the petitioner reported in Gwalior Mansik Arogyashala where he was again treated by Dr. Anil Dohare and prescribed a month's treatment. GC Hospital Gwalior also endorsed the said treatment and also recommended for grant of commuted leave to the petitioner. On 27/4/2009, the petitioner again went to Gwalior Mansik Arogyashala and Dr. Anil Dohare continued with the treatment. On 27/4/2009 the said treatment was further endorsed by GC Hospital Gwalior, however, at that

time Dr. P.K. Achari was posted as Chief Medical Officer, who advised the petitioner not to come to GC Hospital because of lack of mental treatment facility and directed the petitioner to continue with the treatment in Gwalior Mansik Arogyashala. Accordingly, under the orders of the aforesaid CMO, the petitioner continued to consult the medical practitioner of Gwalior Mansik Arogyashala till 29/3/2010. Since the mental condition of the petitioner was not good and he was passing through major depression for more than 45% disability and was unable to know about the good and bad about himself and under such compelling circumstances, he himself submitted resignation on 10/9/2008 and again on 26/4/2010. On receiving the aforesaid resignation, the respondents directed the petitioner to hand over the said letter personally to DIG, Group Center, CRPF, Gwalior. The letter of resignation was handed over by the petitioner in person. However, no decision was taken on the said resignation. On the contrary, a charge-sheet dated 23/8/2012 was issued. Under the compelling circumstances, the petitioner also wrote certain letters to the respondents. The petitioner was not mentally fit and the language and reason of these letters may not be appropriate and good enough like an ordinary mentally fit person. Since the resignation of the petitioner was submitted in a mentally unfit condition, therefore, it was not accepted and no orders were passed. The petitioner submitted his joining on 3/9/2013. The said joining was submitted by the petitioner on the basis of above fitness certificate issued by Dr. Anil Dohare. The petitioner was directed to appear in Composite Hospital Guwahati, which is being run, controlled and administered by the respondent/force. The petitioner, accordingly, did so on 18/9/2013 and on a reference made by the Unit, the petitioner was medically examined by CRPF Board of Medical Officers. On medically examining, the Board of respondents reported that the petitioner is in major depression / disorder and accordingly, six months' treatment was prescribed by the Board of respondents. The petitioner was also directed to undergo monthly checkup and home town posting was also recommended. Again on 2/4/2004 the respondents sent the petitioner for review health certificate in Composite Hospital Hyderabad, which is also a hospital run, controlled and administered by the force. Again the petitioner underwent the medical treatment and checkup, where the petitioner was shown to be in major depression. The petitioner was again prescribed six months' treatment. However, he was advised to remain on duty without firearm. Thus, it is submitted that the charge-sheet was issued on 23/8/2012 in a hurry without waiting for the petitioner to recover. The enquiry officer was appointed. On 28/4/2013 the petitioner submitted an application requesting the respondents to grant one more opportunity to defend him in the pending enquiry. On 13/5/2013 the petitioner was not medically fit and he was coming within the definition of disabled person under the Persons with Disabilities (Equal Opportunities, Protection of Right and Full Participation) Act, 1995 (in short "Act, 1995"). He applied for extension on 13/5/2013 through fax. The respondents accepted the same and directed the petitioner to appear on 31/5/2013 with a stipulation that otherwise, the departmental enquiry will be proceeded ex parte. On 31/5/2013 the petitioner appeared before the enquiry

officer. Whatever questions were asked by the respondents, were beyond the understanding of the petitioner and under the ill mental condition the answers were given by the petitioner. It is claimed that even today the petitioner does not know that what were the queries made by the enquiry officer and what were the replies given by the petitioner. It is claimed that ultimately the respondents conducted a departmental enquiry without receiving any reply of the petitioner and in spite of having full knowledge that the petitioner is not mentally fit, the enquiry report against the petitioner was submitted with the finding that all the charges levelled against the petitioner are proved. The petitioner was declared mentally fit on 3/11/2014 by a Medical Board constituted by CRPF. Thereafter, the petitioner submitted a representation on 24/11/2014 to IGP (Personnel) CRPF pointing out that he was under major depression and was not in a condition to defend himself during the enquiry, therefore, he requested to drop all the charges against him. However, the respondents failed to take notice of petitioner's plea and served a notice dated 2/1/2015 quoting the advice of UPSC to remove him from service on the matter and accordingly, the petitioner was again called upon to submit his reply. The petitioner submitted his reply to the said notice pointing out all the aforesaid facts, however, the respondents turned down the said representation of the petitioner and passed order dated 18/5/2015 thereby removing the petitioner from service.

3. The respondents filed their return and submitted that the petitioner has been imposed major penalty under Rule 14 of CCS (CCA) Rules, 1965 vide Presidential Memorandum No.D.IX.37/2008-CRC, dated 23/08/2012, in which three Articles of Charges have been framed. All these documents have been received by the petitioner on 22/09/2012, however, the petitioner did not submit any written statement of defence in response to Memorandum dated 23/08/2012, hence, the departmental enquiry was set in motion by appointing Shri R.D. Jeany 2-I/C (now Commandant - 143 Bn. CRPF) as enquiry officer and Shri K. Sonny Singh (Dy. Commandant) as presenting officer vide presidential order dated 22.01.2013. The Enquiry Officer conducted the Departmental Enquiry in accordance with the laid down instructions. In spite of giving reasonable opportunity, the petitioner neither engaged any defence assistant nor he chose to file any reply. However, the defence documents produced by the petitioner have been taken into consideration by the E.O. The petitioner was given reasonable opportunities to defend his case at every stage during the course of departmental enquiry. In the departmental enquiry, statements of all 04 listed PWs have been recorded. All the fifteen prosecution exhibits have been taken into account in the enquiry by the EO. In the report, Enquiry Officer has held that Articles of Charge I & II stand "Proved" and Article-III stands "partially proved". The report of Enquiry Officer was examined and DG, CRPF, has agreed with the report of the Enquiry Officer. The report of E.O. has been accepted by the Disciplinary Authority. Accordingly, copy of Enquiry Officer's report was served to Shri Pankaj Tiwari, Assistant Commandant (petitioner) vide letter dated 14/03/2014 with the direction to submit representation, if any, on the Enquiry Officer's report within fifteen days

from the date of receipt of the report. The petitioner submitted his representation on 16/04/2014 and the representation has been examined. It has been found that no new facts have emerged in the representation submitted by the petitioner and accordingly, the case was moved to MHA for seeking advice of UPSC. The UPSC vide their letter dated 17/11/2014 has advised that ends of Justice would be met in this case if the penalty of "Removal from Service" is imposed on the petitioner. The said advice of UPSC and copies of Government of India OM dated 06/01/2014 and 05/03/2014 have been served upon the petitioner vide letter dated 02/01/2015 with a direction to submit his representation, if any, within 15 days from the date of its receipt to the disciplinary authority. Subsequently, the petitioner submitted his representation dated 10/02/2015 and 12/02/2015 in which the petitioner has clarified his stand. The representation was duly considered and examined and it has been found that the petitioner has not brought out any new fact/cogent reason which may warrant reconsideration. The disciplinary authority after examining the advice tendered by the UPSC, agreed with the advice of Commission and accordingly, penalty was imposed vide order dated 18/05/2015. The said order was received by the petitioner in person on 28/05/2015 and accordingly, the petitioner has been struck off from the strength of force w.e.f.28/05/2015 vide DIG, GC, CRPF, Gwalior order No.G.II-1/2015-EC-VIII dated 28/05/2015. Being aggrieved by the order of removal from services, the petitioner has filed the present petition. It is further submitted that the petitioner reported at GC, CRPF hospital, Gwalior on 24/03/2009 for further treatment as directed by 78 Bn. CRPF because as per the contention of the petitioner he was under major depression. He was further referred to Mental Hospital Gwalior on the same date by GC, CRPF Hospital Gwalior where the petitioner was permitted 30 days medical rest from 25/03/2009 to 23/04/2009, however, on expiry of above medical rest period, the petitioner neither reported for duty in 78 Bn. on due date i.e. 24/04/2009 nor at GC Hospital, CRPF Gwalior for further medical review. Accordingly, directions were issued to him by Commandant, 78 Bn. vide letter No.L.II-1/2010-ST-78 dated 13/06/2009, 12/03/2010, 12/06/2010, 26/11/2010 and 19/11/2010 to report for duty forthwith failing which disciplinary action as deemed proper would be initiated against him. However, the petitioner failed to adhere to the lawful orders of the competent authority and absented himself from duties w.e.f.24/4/2009 willfully without prior sanction / permission of competent authority. The petitioner was a gazetted officer in a disciplined force and being a senior member of disciplined force he was required to maintain high discipline, but he failed to ensure receipt of the letters/lawful orders of his controlling authority & in spite of clear directions issued by the authority competent, he overstayed from leave w.e.f.15/09/2007 to 23/03/2009, i.e. near about 556 days and again for 1707 days (w.e.f. 24/04/2009 to 31/05/2013) without any proper explanation in this regard and without prior permission/sanction of leave. The petitioner reported to the Enquiry Officer on 31/05/2013 at his own while departmental enquiry was being conducted against him. However, the petitioner failed to prove his innocence by producing documentary evidence in this regard

nor any explanation in this regard could be given by him. Hence, the plea of disability as defined under Section 2(i) of the Act, 1995 taken by the petitioner in Subject Matter in Brief is devoid of substance as the Act, 1995 came into force w.e.f.01/01/1996, but the Central Government, vide Ministry of Social Justice and Empowerment, Notification No.16-27/2001-N1.1, dated 28/03/2002, has exempted all combatant personnel of Armed Forces from the provisions of Section 47 of the Act, 1995. Section 47 of the Act, 1995 mandates that no establishment shall dispense with, or reduce in rank an employee who acquires a disability during his service. Besides, Ministry of Social Justice & Empowerment vide its notification No.16-39/2002-NLI, dated 10/09/2002 has exempted all combatant personnel of Central Para Military Forces (namely CRPF/BSF/ITBP/CISF & Assam Rifles) from the application of Sections 33 & 47 of the Act, 1995. Hence, the plea taken by the petitioner in this regard is devoid of merits and is having no substance at all. It is further submitted by the respondents that as far as regularization of his absent period 2263 days as dies non is concerned, the petitioner was OSL w.e.f.15/09/2007 to 23/03/2009 for 556 days and again absented from duties w.e.f. 24/04/2009 to 31/05/2013 for 1707 days (Total 556 + 1707 2263 days). The above period has been regularized as dies non. As per Rule 25 of CCS (Leave) Rules 1972, it is the statutory power of the competent leave regularizing authority to regularize the period of unauthorized absence in respect of the petitioner. Hence, the contention of the petitioner that the period of 2263 days has been declared as dies non, which is again a double penalty imposed upon the petitioner for similar cause, is not tenable. It is further submitted by the respondents that it is also important to mention here that the petitioner has not availed the remedy available to him under Rule 29 (1) of CCS (CCA) Rules, 1965 whereby the President, either on his or its own motion or otherwise may confirm, modify or set aside the orders. Hence, the petitioner could have very well filed the review petition within the stipulated period to the President against the Presidential Order dated 18/05/2015, however, he failed to do so and knocked the doors of this Court directly. Hence, the present petition is liable to be dismissed only on the ground of availability of alternative remedy available to him.

4. The petitioner filed his rejoinder and claimed that the contention of the respondents that the petitioner did not file any reply and also not engaged any defence assistant is incorrect. The reply was filed by the petitioner. In view of Section 91 of Mental Health Act, it was for the department to provide defence assistant. No opportunity of hearing was given. When the departmental enquiry was in progress, the petitioner was suffering from serious major depression / disorder and, therefore, he further submitted that the petitioner had reported in GC, CRPF Hospital, Gwalior where he was advised by Dr. P.K. Achari to directly take medical care from Gwalior Medical Hospital, which is a Mental Specialty Hospital. He was instructed to send all the documents directly to Commandant, 78th Battalion and CRPF.

5. So far as non-issuance of acknowledgment of letters dated 13/6/2009,

12/3/2010, 12/6/2010, 26/11/2011 and 19/12/2011 are concerned, it was admitted that the petitioner has received all the above-quoted letters and they were duly replied, but the petitioner was not in a position to work due to serious mental ailment. The claim of the respondents that they are exempted from the provisions of the Act, 1995 is false. By memorandum dated 25/2/2015 the situation has been clarified and submitted that in the light of office memorandum dated 25/2/2015 issues relating to leave or absence of government servant, who has acquired disability while in service, is required to be dealt with in the light of provisions of Section 47 of the Act, 1995. With regard to alternative remedy, it is submitted that since the order in question has been passed in the name and under the orders of Hon'ble the President of India, therefore, he has no alternative remedy. The allegation of the respondents that the petitioner has relied upon some forged documents to substantiate his contention is false. Regular information was given about the treatment which was being taken by the petitioner. The requirement of personal appearance of the petitioner by tendering his resignation has also been disputed.

6. The respondents filed their additional return and claimed that every opportunity was given to the petitioner to defend himself in the departmental enquiry. It was once again reiterated that the petitioner had taken treatment as an outdoor patient from Dr. Anil Dohare at his private hospital from 15/9/2007 to 22/5/2009 and during this period of OSL, the petitioner was never admitted in the hospital even for a single day and he took treatment from the private clinic at his home. Dr. A.K. Dohare has issued a medical certificate mentioning that after careful personal examination of the case, certified that Shri Pankaj Tiwari, 78th Battalion, CRPF is suffering from depression and he found that period of absence from duty of 30 days from 25/3/2009 to 23/4/2009 is absolutely necessary for restoration of his health and advised rest from 25/3/2009 to 23/4/2009. It is claimed that after expiry of the said medical rest period, the petitioner did not report for duty on due date, i.e. 24/4/2009, either at GC Hospital, Gwalior for medical review or at 78th Battalion, CRPF. It is submitted that Dr. P.K. Achari had never instructed the petitioner to take further specialized medical care at Gwalior Medical Hospital, which is a Specialty Hospital for mental diseases. The petitioner continued his treatment at his own wish as an OPD patient on 27/4/2009, 15/5/2009, 3/6/2009, 22/6/2009, 20/7/2009, 10/8/2009, 2/9/2009, 21/9/2009, 28/10/2009, 23/11/2009, 27/1/2010, 26/2/2009 and 29/3/2010, which is prejudicial to good order of a disciplined force like CRPF. The petitioner had replied order dated 15/7/2009 and sent a copy of the same to various dignitaries on 21/7/2009. The petitioner has failed to prove his innocence by producing documentary evidence in this regard, hence, the plea of disability as provided under Section 2(i) of the Act, 1995 is not acceptable. With regard to availability of alternative remedy, the respondents have relied upon Rule 29 (1) of Central Civil Services (Classification, Control and Appeal) Rules, 1965. It is submitted that after the medical leave period was over on 23/4/2009, the petitioner did not report on 24/4/2009 and accordingly, the letters were issued to him at his last

known address on 13/6/2009, 12/3/2010, 12/6/2010, 26/11/2011 and 19/12/2011, but these letters were received back undelivered with the remark of the Postal Authority that "the addressee left". Being a responsible officer, he should have informed his whereabouts to the Postal Authorities / his Controlling Officer and ensure receipt of those letters.

7. Heard the learned counsel for the parties.

8. Before addressing to the question as to whether the provisions of Act, 1995 would apply to the present case or not, it is necessary to find out as to whether the petitioner was suffering from any mental ailment or not ?

9. It is not out of place to mention here that the earlier the petitioner was appearing in person and on 01/04/2021 he argued the matter personally. On the basis of his arguments, following order was passed:-

Gwalior, Dated : 01-04-2021

(Final Hearing Case)

The petitioner is present in person.

Shri S.S. Kushwah, Counsel for the respondents. During the course of arguments, this Court found that certain arguments which are being advanced by the petitioner are not mentioned in the writ petition such as:

(1) During the course of arguments, it was submitted by the petitioner that since his Parents met with an accident, therefore, he came back after taking earned leave of 45 days. However, in the writ petition it is mentioned that his MOTHER had met with an accident and there is no reference to his father who is also a Government employee.

(2) During the course of arguments, when a question was put to the petitioner as to whether his father was on medical leave or not, then he submitted that at present he is not in a position to state that his father was ever on medical leave or not.

(3) It is submitted by the petitioner that the accident took place near Khandwa where the car of the father of the petitioner had touched a tree but fairly conceded that neither his father nor his mother sustained any grievous injury.

(4) There is nothing in the writ petition to show the place of posting of his father at the time of so called accident.

(5) There is no explanation that when the accident took at Khandwa then why the petitioner was staying at Gwalior?

(6) During the course of arguments it was submitted by the petitioner that he had lost his mother at the age of 10 and he further stated that the mother who has sustained injury in the road accident is his step mother. However, this fact has also not been clarified in the writ petition.

(7) It is submitted by the petitioner that after the accident of his parents he had lost his mental wellness and was not in a position to understand anything. However, during the course of arguments it was submitted that after the accident of his parents, he was looking after his step siblings. This fact has also not been mentioned in the writ petition.

(8) In the letter dated 6.3.2009 (Annexure P/9) written by Commandant 78th Battalion, CRPF, it is mentioned that the petitioner had made an application dated 10.2.2009 with a request for posting him to a nearest CRPF Battalion. The copy of application dated 10.2.2009 is not on record. It has also not been explained that on one hand the petitioner is claiming that he was not able to understand anything and on the other hand he was making a request to post him in a nearby place.

(9) It is submitted by the petitioner that his family had huge property but his step mother was insisting that the petitioner should relinquish his share and his father and step mother had sold the entire property. There is no whisper of such a submission made by the petitioner.

(10) The petitioner has not filed any document to show that his parents have ever met with an accident.

At this stage, the petitioner was informed that in absence of or in the light of the contrary pleadings, his arguments will not be considered at all.

Under these circumstances, the petitioner prays for a week's time to file necessary application for amendment along with supporting documents.

Time granted.

As prayed, list this case on 15.4.2021 in the list of Final Hearing Cases.

10. It appears that the petitioner on his own filed application (I.A. No.5354/2021) for amendment which reads as under:-

THE HON'BLE HIGH COURT OF M.P. BENCH AT GWALIOR

Class of case :
W.P. No. 3406/2015

Petitioner/Appellant/Applicant :
Pankaj Tiwari

Versus

Respondent/ Non-applicant :
Union of India & Others

Application for amendment as per Hon'ble High court order dated 01.04.2021

May it please, this Hon'ble Court,

The Humble Application of Applicant Most respectfully submits as under-

1. That, petitioner filed a petition Under Article 226 Constitution of India WP-3406/2015, before this Hon'ble Court,

2. That, petitioner prays to file necessary amendment along with supporting documents,

3. That the petitioner had applied for 40 day's earned leave from 02.07.2007 to 10.08.2007 on telephonic information of mother's accident. On reaching the parents place found both the mother and father along with children injured and taking rest and treatment (medication). petitioner had not aware about the accident place, treating hospital, fathers leave and all other issues. Petitioner's father had told about the incident then and that only he knows. That time Conditions also showed that something happened like accident. And petitioner had not felt any necessity to find out the issue or doubting on father. petitioner had stated that mother's accident in writ petition as per the leave application but parent (father included) is the correct word as I saw and realized on ground. Petitioner is pledging guilty on mentioned word and humbly requesting to the Hon'ble high court to read parent in place of mother. However 40 days and 35 days leave extension is sanctioned and undisputed not included in department's charge of unauthorized absence. Only 15.09.2007 to 28.05.2015 period is related to my case, and departmental decisions and procedure also done at that duration.

4. That the petitioner only helped and supported to the family members as anybody will do. Petitioner had already stated that during the leave time he had felt mental discomfort, depression and sleeplessness then his cousin taken him to Gwalior and observed the behavior. She found that petitioner had needed to consult the psychiatrist then treatment started.

Hon'ble court has quoted the application dated 10.02.2009, through petitioner had prayed for posting near to treatment place. Department had stopped petitioner's salary and he has no money to fulfill his daily basic need and medicines expenses. Petitioner is submitting the copy of said application. Petitioner's mental status, understanding capability and intellect only can be defined by the specialized, treating doctor or Crpf medical board (all available findings already enclosed).

5. That the petitioner's grandmother had made a registered property will in favor of petitioner along with his minor step brother on 17.08.2000, petitioner's father was one of the witnesses on that will. Petitioner had signed the relinquish deed against the will on 22.10.2008. Relinquishment from approx 3-4 crore rupee property clearly shows the mental status of the petitioner. All the property related to the grandmother's will have been sold out after relinquishment. (Copy enclosed)

Rest other family issues are not the part of my petition and case category is also

the disciplinary proceedings-17128. However petitioner has filed the RTI application for information regarding the admission details of parents in june 2007 at the district hospital khandwa on 05.04.2021 and will submit the reply after receiving. May kindly be read along with the synopsis submitted on 19.03.2018 please.

Petitioner is submitting the citations related to the case-

1. 2013 SCC(7)182.(Geetaben ratilal patel vs. district primary education officer)
2. 2013 SCC (7) 243. (Anil kumar mahajan vs. Union of India)
3. 2009 SCC(15)620 (Coal India Ltd. & ors vs, mukul kumar chaudhary)
4. (2003) 4 SCC 524 (kunal singh vs union of india & anr)
5. (2012) 3 SCC 178 (krushnakant b. parmar vs. union of india & anr)
6. AIR 1983 SC (Bhagatram v. state of H.P.)
7. (1987) 4 SCC (Ranjit thakur v. Union of India)
8. WP No. 448/2004 (Shankarlal chorsiya vs kedar Prasad gupta) MP High Court
9. WP © No. 2208/2005 (swarnamai sarma vs. state of Assam Ors.) Gauhati High Court
10. (State bank of india and Ors. Vs. Ashok Kr. Das) 02.02.2007, Gauhati High Court
11. OA. No.375/2011 (Mrs. Shobha prakash chaudhary vs. UOI.) CAT. Bombay Bench.
12. OA. No. 3705/2012 (Shri Ramesh chander vs General manager) CAT, New delhi Bench.
13. OA No. 143/2013 (Mrs yogita swaroop vs UOI) CAT. New delhi Bench.

FOR RELIEF

14. 2014 SCR(4)875(Tapas kumar paul vs. BSNL)
15. 2013 SCRI9/01 (Deepali gundu sarvase vs kranti junior adhyapak vidyalaya)D.ed.

-That the petitioner also quoting the related law, sections, rules violated by the department-

1. constitution of India--*Article 20(3)
2. The Mental health act 1987-
- * sec.81, * sec.90, * sec.91.(submitted with synopsis page 18-20)
3. The person with disabilities (equal opportunities, protection of rights and full

participation) act-1995-

* objects and reasons of enactment of the act defined by Hon'ble Apex court (present in citations).

* sec. 2b(1) vii & q (submitted with synopsis page 12-13) * sec.47 (present in citations).

4. Medical manual of central reserve police force 1998-

* page 108 to 110 (submitted with synopsis page 21-24)

5. Medical attendance rules 35 addition 2013-(submitted with synopsis page 14-17)

* rule-2(a) note 4, *rule-2(e) note 1 & 2 * appendix-V

Prayer

It is therefore prayed that this Hon'ble Court may kindly be pleased to allow amendment application and take all documents on record which is filed by the petitioner in petition in the interest of justice.

Petitioner

Pankaj Tiwari

11. However, the said application was withdrawn by the petitioner by order dated 12/04/2022.

12. It is submitted by the counsel for the petitioner that certain admissions made by the petitioner before this Court on 01/04/2021 as well as certain admissions made by him in I.A. No.5354/2021 cannot be considered as the scope of this Court is confined to the documents which were available to the departmental authorities and various admissions made by the petitioner before the Court on 01/04/2021 as well as in his application for amendment, i.e., I.A. No.5354/2021 may not be taken into consideration.

13. First question for consideration is as to whether the petitioner was suffering from any mental ailment or not ?

14. It appears that the petitioner was posted in Jammu & Kashmir. He applied for grant of leave on the ground that his mother has met with an accident. Thereafter, he started claiming that since the property dispute arose in the family, therefore, he has lost his mental balance and he was taking treatment from Dr. Anil Dohare who was also posted in Mansik Arogyashala, Gwalior. From the various certificates filed by the petitioner, it is clear that the petitioner was taking treatment from Dr. Dohare in his private capacity. Merely because Dr. Dohare was posted in Mansik Arogyashala would not mean that the petitioner was taking treatment in the hospital. The petitioner has not filed the record of the Mansik Arogyashala to show that he was ever treated in hospital. Every

Government hospital maintains the record of patients examined on every day but no such document was filed. Even otherwise, it is not the case of the petitioner that he ever took treatment in the Mansik Aarogyashala. It appears that in the meanwhile, the petitioner was transferred to Nagaland. However, the petition is completely silent about the said fact. The petitioner appeared before the I.G. (Medical) / Medical Superintendent, Composite Hospital, CRPF, Guwahati on 18/09/2013 and following previous history was given by him:-

Patient referred as a FUC of MDD with history of OSL since 15/09/2007 till 03/09/2013. Multiple family stress as per patient. Patient was under treatment from private psychiatrist. At present, patient is stable and off medication. Major depression disorder (FUC) in remission.

15. Thus, on 18/09/2013 the petitioner was not found suffering from any depression and was also not found on any medication. However, the petitioner was advised monthly check up at Unit hospital. Hometown posting was suggested to be considered for his better progress and review was directed after six months with behaviour report. This observation was made on the basis of history disclosed by petitioner but the hospital on examination did not find any abnormality. It appears that on 18/09/2013 itself, the petitioner had reported for joining. Thereafter, on 03/11/2014, the petitioner was examined at Composite Hospital, CRPF, New Delhi and it was opined that he is fit for duty and is not on any medication and it was also advised to be sent to the nearest CH with behavioral report, if any behaviour abnormality is seen. Thus, whenever the petitioner was medically examined at Guwahati or at New Delhi, every time it was found that he was not on medication and he was fit for duty. From the enquiry report, it is clear that preliminary hearing was held on 03/04/2013, however, the petitioner did not appear. During the course of enquiry, all the listed documents and prosecution witnesses issued by the Director General vide confidential letter dated 23/08/2012 were produced. Accordingly, the petitioner was given another opportunity to attend the preliminary hearing on 15/05/2013 with clear stipulation that ex parte proceedings will be conducted in case if he fails to participate in the proceedings. In the meanwhile, one registered letter was received from the petitioner requesting for giving him another date vide letter dated 28/04/2013 which was received by the enquiry officer on 06/05/2013. Thereafter, another letter was received from the petitioner requesting for extension up to 30/05/2013 and thereafter, the petitioner reported on 31/05/2013 for preliminary hearing. The preliminary hearing was scheduled on 31/05/2013 which was attended by the petitioner. Accordingly, memorandum of charges and its annexures were handed over to the petitioner to his understanding and it was asked that as to whether he would like to engage defence assistant, but he straightaway declined stating that he does not require any defence assistant. Copies of memorandums of charges along with annexures – I, II, III and IV containing articles of charge, imputation of misconduct, list of documents (Sr. No. 1 to 15) and list of witnesses (Sr. No.1 to 4) respectively issued by Director General vide letter dated 23/08/2012 were provided to the

petitioner after obtaining his signatures. The petitioner also admitted that he has received the copy of letter dated 22/01/2013 and 24/01/2013, by which the enquiry officer and presenting officer were appointed. A plea of not guilty was made and the case was fixed for 03/06/2013 as per the convenience of the petitioner. The prosecution witnesses namely P. Epao and Saji T. were examined in the presence of the petitioner. The petitioner was granted opportunity to cross-examine them, but he refused to do so. The petitioner was also given liberty to inspect all the documents, but he again declined. Copies of prosecution statements were provided to the petitioner after obtaining a token of receipt. The next date of hearing was fixed on 17/06/2013. The petitioner also appeared on the said date and in his presence, the evidence of prosecution witness M.S. Francise was recorded. The petitioner was given opportunity to cross-examine the prosecution witnesses, but he declined. He was again granted opportunity to inspect the documents, but he again declined. Copy of statement of prosecution witnesses was supplied to the petitioner after obtaining a token of receipt and since the prosecution witness R. Duidang, Commandant was not present, therefore, the case was fixed for 15/07/2013. On 07/08/2013 statement of prosecution witness R. Duidang was recorded in the presence of the petitioner. The petitioner was given opportunity to cross-examine him, but he refused to do so. Thus, regular hearing started from 03/04/2013 to 10/08/2013 at the office of Commandant, 143 Battalion, Manipur. The petitioner produced certain documents in his defence, i.e., medical documents of treatment issued by Dr. Anil Dohare, Neuro Psychiatric, 30 days medical rest order by GC CRPF Hospital dated 25/03/2009 and medical certificate issued by Medical Officer, Mansik Arogyashala, Gwalior dated 17/09/2007. No witness in defence was produced. The statement of the petitioner was also recorded and after concluding the enquiry, the enquiry report dated 23/12/2013 was prepared and charges No. I and II were found fully proved, whereas charge No. III was found partially proved. Since the petitioner had also made a specific statement that because of multiple family stress, he was under mental pressure as is evident from medical certificate issued by G.C. Hospital, Guwahati, therefore, it cannot be said that any explanation given by the petitioner before this Court on 01/04/2021 cannot be considered. The petitioner has not filed any document to show that his family had suffered any accident. He has not filed any document to show that his family members were undergoing any treatment for the injuries sustained by them. Although it is the claim of the petitioner that at the instance of his step mother, the property of the petitioner was sold, but no document has been filed to show that the father of the petitioner had ever sold any property which had fallen to the share of the petitioner. Although the petitioner has already withdrawn I.A. No.5354/2021, application for amendment in the writ petition, but in the said application, the petitioner had filed "Will" executed in his favour by one Kaushalya Bai and a relinquishment deed. "Will" so relied upon by the petitioner appears to be a registered document, however, the relinquishment deed relied upon by the petitioner is not a registered document. Counsel for the petitioner was suggested to address on the question as to whether a share can be

relinquished by executing an unregistered relinquishment deed or not, then he fairly conceded that it cannot be done. However, counsel for the petitioner insisted that since the petitioner was suffering from major depression, therefore, the departmental enquiry is bad. The only reason assigned by the petitioner for suffering from major depression was that his property was sold by his father. When the petitioner can file relinquishment deed along with an application for amendment, i.e., I.A. No.5354/2021 which was subsequently withdrawn, then in order to substantiate his contention that his property was sold by his father, he could have filed copy of the sale deed, however, the same was not done by the petitioner. It is well established principle of law that if a party is in possession of best evidence and if the said evidence is withheld, then this Court can draw an adverse inference. In order to claim that the petitioner was suffering from major depression, the petitioner has heavily relied upon the certificate issued by Dr. Anil Dohare which was issued by him in his personal capacity and not as a Medical Officer of Mansik Arogyashala, Gwalior. Why the petitioner did not take his treatment from Dr. Anil Dohare in Mansik Arogyashala, Gwalior has not been clarified. The petitioner has also not filed copies of any medicine receipts to show that he was ever taking medicines. When the petitioner was medically examined at Guwahati and New Delhi, it was found that he is not on any medication and he is fit for duty.

16. Be that as it may.

17. It is well established principle of law that this Court cannot substitute its findings to the findings recorded by the Enquiry Officer. Since the matter was argued heavily on the ground that the findings recorded by the Enquiry Officer are based on no evidence, therefore, the factual aspect has been taken into consideration. The Supreme Court in the case of Apparel Export Promotion Council Vs. A.K. Chopra reported in (1999) 1 SCC 759 has held as under:-

16. The High Court appears to have overlooked the settled position that in departmental proceedings, the disciplinary authority is the sole judge of facts and in case an appeal is presented to the appellate authority, the appellate authority has also the power/and jurisdiction to reappraise the evidence and come to its own conclusion, on facts, being the sole fact-finding authorities. Once findings of fact, based on appreciation of evidence are recorded, the High Court in writ jurisdiction may not normally interfere with those factual findings unless it finds that the recorded findings were based either on no evidence or that the findings were wholly perverse and/or legally untenable. The adequacy or inadequacy of the evidence is not permitted to be canvassed before the High Court. Since the High Court does not sit as an appellate authority over the factual findings recorded during departmental proceedings, while exercising the power of judicial review, the High Court cannot, normally speaking, substitute its own conclusion, with regard to the guilt of the delinquent, for that of the departmental authorities. Even insofar as imposition of penalty or punishment is concerned, unless the punishment or penalty imposed by the disciplinary or the

departmental appellate authority, is either impermissible or such that it shocks the conscience of the High Court, it should not normally substitute its own opinion and impose some other punishment or penalty. Both the learned Single Judge and the Division Bench of the High Court, it appears, ignored the well-settled principle that even though judicial review of administrative action must remain flexible and its dimension not closed, yet the court, in exercise of the power of judicial review, is not concerned with the correctness of the findings of fact on the basis of which the orders are made so long as those findings are reasonably supported by evidence and have been arrived at through proceedings which cannot be faulted with for procedural illegalities or irregularities which vitiate the process by which the decision was arrived at. Judicial review, it must be remembered, is directed not against the decision, but is confined to the examination of the decision-making process. Lord Hailsham in *Chief Constable of the North Wales Police v. Evans* [(1982) 3 All ER 141 HL] observed:

"The purpose of judicial review is to ensure that the individual receives fair treatment, and not to ensure that the authority, after according fair treatment, reaches, on a matter which it is authorized or enjoined by law to decide for itself, a conclusion which is correct in the eyes of the court."

The Supreme Court in the case of *Board of Directors, Himachal Pradesh Transport Corporation and another vs. K.C. Rahi* reported in (2008) 11 SCC 502 has held as under:-

6. That the respondent was served with a notice recorded by the Tribunal is finding of fact. In our view, therefore, the High Court has exceeded its jurisdiction by reversing the fact recorded by the Tribunal in exercise of its power under Article 226. Power under Article 226 is to interfere only when there is miscarriage of justice or an error of law on the face of the record but not to reappreciate the evidence recorded by the court of first instance.

The Supreme Court in the case of *United Bank of India Vs. Biswanath Bhattacharjee* by judgment dated 31.01.2022 passed in C.A.No.8258/2009 has held as under:-

"19. The bank is correct, when it contends that an appellate review of the materials and findings cannot ordinarily be undertaken, in proceedings under Article 226 of the Constitution. Yet, from H.C. Goel onwards, this court has consistently ruled that where the findings of the disciplinary authority are not based on evidence, or based on a consideration of irrelevant material, or ignoring relevant material, are mala fide, or where the findings are perverse or such that they could not have been rendered by any reasonable person placed in like circumstances, the remedies under Article 226 of the Constitution are available, and intervention, warranted. For any court to ascertain if any findings were beyond the record (i.e., no evidence) or based on any irrelevant or extraneous factors, or by ignoring material evidence, necessarily some amount of scrutiny is necessary. A finding of "no evidence" or perversity, cannot be rendered sans such

basic scrutiny of the materials, and the findings of the disciplinary authority. However, the margin of appreciation of the court under Article 226 of the Constitution would be different; it is not appellate in character.”

18. This Court is of the considered opinion that not only full and proper opportunity was given to the petitioner, but by that time he was already declared fit by the Medical Officers and under these circumstances, the Act, 1995 had no application at all. Furthermore, on one hand the petitioner was claiming that he was suffering from mental illness and on the other hand he had also made application for his posting at a place of his choice and had also tendered his resignation. Thus, it is clear that the petitioner was in full senses and for one reason or the other he was not interested to submit his joining at Nagaland. Since this Court while exercising its power under Article 226 of the Constitution of India cannot act as an appellate authority and in absence of any procedural flaw in the enquiry conducted by the enquiry officer, this Court is of the considered opinion that no case is made out warranting interference.

19. Accordingly, the petition fails and is hereby dismissed.