IN THE HIGH COURT OF MADHYA PRADESH

AT INDORE

BEFORE

HON'BLE SHRI JUSTICE VIVEK RUSIA

&

HON'BLE SHRI JUSTICE GAJENDRA SINGH

MISC. PETITION No. 318 of 2024

THE SENIOR GENERAL MANAGER (CELLULAR) THROUGH ITS AUTHORIZED OFFICER MR. MRUGESHKUMAR JAYANTILAL SHAH AND OTHERS

Versus

RAJAT SINGH

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Appearance:

Shri Vivek Nagar – learned counsel for the petitioners.

Shri L. C. Patne - learned counsel for the respondent.

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HEARD ON : 29.01.2025

DELIVERED ON : 26.03.2025

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O R D E R

Per : Justice Gajendra Singh

This Misc. Petition under Article 227 of the Constitution of India is preferred being aggrieved by the order dated 22.09.2023 in Original Application No.201/00749/2018 by the Central Administrative Tribunal,

Jabalpur Bench Circuit Sittings : Indore (Annexure-P/1) whereby setting aside the punishment of removal of respondent from service, the matter has been remitted back to the disciplinary authority for passing the order afresh in accordance with the leave rules seeking following reliefs:-

> *"This Hon'ble Court be pleased to issue a writ of certiorari to call for the record pertaining to the order passed in O.A. No. 749/2018 passed by Hon'ble Central. Administrative Tribunal Jabalpur Bench Circuit Sitting At Indore, M.P. and after perusal of the same be pleased quash the order dt. 22-9-2023.*
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> *Allow this petition with costs.*
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> *Any other and further relief, as may be deemed fit may be granted to the petitioner".*

02. Facts of the case in brief are that respondent (applicant before the Central Administrative Tribunal) was initially appointed as Junior Telecom Officer in the BSNL in the year 2003. He submitted an application dated 22.01.2007 before Assistant General Manager, Telecom Ahmedabad seeking permission to join Master of Science Programme in advanced IT with specialization in advanced networking and Telecommunication from International Institute of Information Technology, Pune by pursuing MS course in advance networking and telecommunications scheduled to be held w.e.f. 26.02.2007 intending to join the course at his own cost and leave without pay for study period i.e. w.e.f. 26.02.2007 to 30.06.2008.

The application for grant of leave without pay was rejected vide order dated 24.02.2007 treating the same to be a case of study leave on the ground that the respondent/applicant had not completed 5 years continuous service from the date of his appointment with probation period. The respondent/applicant submitted another application on 30.06.2007 and proceeded ahead in a bonafide belief of sanctioning of his earlier application for grant of extra ordinary leave for study purpose in the institute under full knowledge of his superior authorities. To the utter surprise, the applicant came to receive a letter dated 19.10.2007 from Sub Divisional Engineer (NIB), Ahmedabad alleging unauthorized absence from duty by the respondent/applicant and calling upon him to resume his duties forthwith failing which disciplinary action shall be taken against him.

03. The respondent/applicant in response to the letter clarified on 08.01.2008 that before joining the course, he applied for extra ordinary leave through proper channel for study purpose by furnishing all the minutes detail of the course to be pursued by him. Again letters were issued to the respondent/applicant 17.09.2008, and lastly on 13.10.2008 calling upon the respondent/applicant on 02.01.2008, 15.02.2008, 05.08.2008, to resume his duties forthwith failing which he was warned of

disciplinary action, which shall be taken against him for his alleged unauthorized absence from duty. The respondent/applicant was informed vide letter dated 18.03.2009 about non-grant of extra ordinary leave for study purpose by the competent authority. The respondent/applicant reported for duty on 01.07.2009 at the NIB, Ahmedabad and also submitted a certificate of Institute communicating the course study by him during his stay at the institute. Instead of appreciating the effort of respondent/applicant, he was issued with a memorandum dated 24.06.2009 by the General Manager (O), Ahmedabad proposing to hold a departmental enquiry against him under Rule 36 of BSNL CDA Rule, 2006 levelling two charges of unauthorized absence from to 24.06.2009. The Leve 01.10.2007 duty w.e.f. respondent/applicant submitted a detailed and exhaustive reply to the charge sheet. Being dissatisfied by the explanation so offered by the respondent/applicant, the disciplinary authority directed for holding of an enquiry under the provision of BSNL CDS Rules, 2006 by appointing enquiry officer and presenting officer to conduct the regular departmental enquiry against the respondent/applicant.

04. The hostile attitude of the enquiry officer resulted in mental illness at and the applicant got hospitalized for psychiatric treatmentat at the govt institute of psychiatric science, hospital and research centre, Ahmedabad

wherein he was diagnosed that he had been suffering from Paranoid Schizophrenia for which he was treated for 20 days i.e. w.e.f. 01.12.2012 to 20.12.2012. After conducting the departmental enquiry in a pre-determined manner and without affording him reasonable opportunity of hearing, vide impugned order dated 12.06.2012 (Annexure-P/18), the Senior General Manager (Cellular), Telecom. Ahmedabad has imposed upon the applicant major punishment of dismissal from service under Rule 33(B) (j) of BSNL CDA Rules, 2006. The applicant submitted representations dated 30.05.2016 to the authorities and thereafter on 28.06.2016 making a request for sympathetic consideration of his case for continuationof his service as JTO, however, vide impugned order dated 25.06.2016 and 22.07.2016 the claim of the applicant for reinstatement in service has been rejected by the petitioners department without assigning any reason. After that respondent submitted statutory appeal to the Principal General Manager, BSNL, Ahmedabad dated 02.08.2016 making a request for reinstatement in service followed by representation dated 21.02.2017, 28.03.2017 & 17.06.2017 but none of the endeavour made by the respondent to get himself reinstated at the hands of the petitioners yield any result. The appeal of the respondent/applicant has also been dismissed by the Appellate Authority i.e. Chief General Manager, BSNL, Gujrat

Circle, Ahmedabad vide order dated 28.03.2018.

05. Challenging the order of major penalty, an application was filed before the Central Administrative Tribunal (CAT) on 07.08.2018 that was 07.08.2018 that was registered as O.A.No.201/749/2018.

06. The application was contested by the present petitioners before the Tribunal by filing a detailed reply wherein they have stated that the present respondent alongwith other trainees were appointed on 18.12.2003 as JTO trainee (direct recruitment) and on 19.05.2006 has applied to Assistant General Manager (Admn) Ahmedabad and requested for permission for joining the training course at M/s Cranes Software Varsity, Banglore for six months and along with the application of request respondent has filed declaration of study and he himself agreed as per clause 4 of the declaration that, study permission is liable to be withdrawn at any time. Study leave rules has specifically mentioned, that grant of study leave shall be subject to a particular study and study tour should be approved by the competent authority to grant leave. The respondent without prior approval from petitioners by his own will remained absent from the job and without approval has left job for specific period. The respondent remained absent from his duties from 31.07.2007 to 30.06.2009 without prior permission of the department. Vide request dated 19.05.2006 he has requested for six

months leave for further studies but remained absent for long period of two years and after absence of continuous two years from his official duties, respondent has presented letter to SDE for resumption of his duties on 01.07.2009. The petitioners further submitted that request for six months leave for studies was duly rejected.

07. The respondent remained absent from his duties and resultantly letter dated 19.10.2007 from SDE (NIB) to join immediately to services was issued to the respondent. As the respondent did not resume his duties SDE (NIB) has issued letter to respondent on 05.08.2008 and again asked him to present the sanction of leave for study otherwise disciplinary action will be taken against him. Thereafter, dies non letter dated 17.09.2008 was issued by SDE (NIB) regarding his absence from 01.10.2007 to date of notice and same was duly intimated to his local address at Ahmedabad and permanent address of Bhopal and college address of Pune and it was received by the respondent. SDE (NIB) on 18.03.2009 has issued letter regarding dies non for unauthorized absence from duty without prior permission and also sent letter dated 29.01.2009 regarding non granting permission for study and again letter was written on 22.06.2009 regarding dies non for unauthorized absence from duty without prior permission and in reply dated 03.03.2009 respondent mentioned that he failed four papers

of previous semester and he will join in June 2009. The petitioners further submitted that respondent has got four and a half months' time to take approval but he has applied with petitioners on 27.06.2007 and he has also remained absent from hearings and did not cooperate with the petitioners. After completion of whole disciplinary proceedings against the respondent major penalty was imposed on respondent on 12.06.2012.

08. Tribunal recorded the findings that absence from duty without any application or prior permission may amount to unauthorized absence, but it does not always mean willful and did not consider the fact that prior to his absence he always applied for the leave, which is leave without pay. The penalty of removal can be imposed only in cases if grave misconduct and continued misconduct indicate incorrigibility and complete unfitness for| service. The respondent here in this case was not willful absentee but unauthorized absentee. The punishment of dismissal from service becomes a bar for further employment, which is too harsh to an employee. If, the absence is the result of compelling circumstances under which it was not possible to report or perform duty, such absence cannot be held to be willful. Absence from duty without any application or prior permission may amount to unauthorized absence, but it does not always mean willful and recorded the findings that punishment of removal from service

imposed on the applicant is not only highly excessive but also disproportionate and setting aside the punishment order and send the matter back to the disciplinary authority for passing the order afresh in accordance with the leave rules with direction that the said exercise be done within a period of 90 days from the date of receipt of a certified copy of the order.

09. The petition is preferred on the ground that the Central Administrative Tribunal (CAT) did not consider the fact that the respondent has approached the Central Administrative Tribunal after the lapse of six years of passing the order dated 12.06.2012, and the original application filed by respondent is barred by limitation. The Central Administrative Tribunal did not consider that permission of study leave had not been granted to respondent and in spite of no written acceptance of study leaves, the respondent has remained absent for a period of two years and has wrongly considered that absence from duty was not willful although it is settled provision that every absence shall be considered and presumed as willful in which the person has knowledge of absence of permission of leaves and respondent was well aware that no prior permission was given to him and that must be considered as unauthorized absence. The Central Administrative Tribunal did not consider the

declaration along with application for leaves filed by the respondent, in which it is specifically mentioned that he himself agreed as per the clause 4 of the declaration that study permission is liable to be withdrawn at any time, if it to do so in the interest of service and applicant has also declared in declaration signed by him that in no way study permission will interfere with my official duties and submitting declaration, applicant himself has agreed that respondent may withdraw permission if it is not in interest of service and in no way study permission will interfere with applicants official duties.

10. It is further submitted that the Tribunal did not consider, CCS Leave Rules- Rule 50 in which it is mentioned that Study leave is granted to a government servant (whether gazetted or non-gazetted) who has satisfactorily completed period of probation and has rendered not less than five years regular continuous service including period of probation under the government, to enable him to undergo in or out of India, a special course of study consisting of higher studies or specialized training in a professional or technical subject having a direct close connection with sphere of his duties. It was also not considered by the Tribunal that the respondent remained absent from his duties from 31-7-2007 to 30-6-2009, without prior permission of the department and therefore respondent is

liable for major penalties and respondent vide request letter dated 19-5 2006 has requested for six months period leave for further studies but remained absent for long period of two years and after absence of continuous two years from his official duties, respondent/applicant has presented the letter to SDE, NIB, Bhadra Telephone Exchange, AHD for resumption of his duties on 01.07.2009. Vide letter dated 08.01.2008, the respondent mentioned the fact that he has joined MS course of networking at International Institute of Information Technology, Pune in July 2007 and also submitted his ID card and informed that he will join his duties in the month of December, 2008 and he has got sanctioned from department, although, no sanction was granted to him and he bluffed the petitioner, and remained absent from duties knowingly. The intention of the respondent from first instance was just to bluff the institution, therefore, the respondent has got admission letter from the Institute of Information Technology, Pune on 09.02.2007 and he has got time of four and half months to take approval but respondent/applicant has applied with the petitioners on 27.06.2007 and respondent/applicant has also remained absent from hearings also, as respondent/applicant has appeared in three hearings out of eight hearings and he remained absent from enquiries and did not co-operate with the petitioners.

11. Learned counsel for the respondent has supported the order of CAT referring to the various judgments i.e. *Smita Shrivastava vs. State of Madhya Pradesh and Others;* ***2024 SCC OnLine SC 764****, Shri Bhagwan Lal Arya vs. Commissioner of Police, Delhi and Others;* ***(2004) 4 SCC 560****, Raghubir Singh vs. General Manager, Haryana Roadways, Hissar;* ***(2014) 10 SCC 301****, Krushnakant B. Paramar vs. Union of India and Another;* ***(2012) 3 SCC 178****.*

Heard the learned counsel for the parties & perused the record.

12. Reference may be had to the judgment of the Supreme Court in ***Krushna Kant B Parmar*** (supra). The Supreme Court has held as under:

> *"16. In the case of the appellant referring to unauthorised absence the disciplinary authority alleged that he failed to maintain devotion to duty and his behaviour was unbecoming of a government servant. The question whether "unauthorised absence from duty" amounts to failure of devotion to duty or behaviour unbecoming of a government servant cannot be decided without deciding the question whether absence is wilful or because of compelling circumstances.*
>
> *17. If the absence is the result of compelling circumstances under which it was not possible to report or perform duty, such absence cannot be held to be wilful. Absence from duty without any application or prior permission may amount to unauthorised absence, but it does not always mean wilful. There may be different eventualities due to which an employee may abstain from duty, including compelling circumstances beyond his control like illness, accident, hospitalisation, etc., but in such case the employee cannot be*

> *held guilty of failure of devotion to duty or behaviour unbecoming of a government servant.*
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> *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 the absence of such finding, the absence will not amount to misconduct."*

13. In ***Krushna Kant B Parmar*** (supra), the Supreme Court has held that 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. If the absence is the result of compelling circumstances under which it was not possible to report or perform duty, such absence cannot be held to be wilful. Absence from duty without any application or prior permission may amount to unauthorised absence, but it does not always mean wilful. There may be compelling circumstances beyond his control like illness, accident, hospitalisation, etc., and in such case the employee cannot be held guilty of failure of devotion to duty or behaviour unbecoming of a government servant. If allegation of unauthorised absence from duty is made, the disciplinary authority is required to prove that the absence is wilful, in the absence of such finding, the absence will not amount to misconduct.

14. Reference may further be had to the Judgment of the Supreme Court of India in ***Chennai Metropolitan Water Supply & Sewerage Board v. T.T. Murali Babu, (2014) 4 SCC 108***, wherein the Supreme Court has explained ***Krushna Kant B Parmar*** (supra) and has held as under:

> *"23. We have quoted in extenso as we are disposed to think that the Court in Krushnakant B. Parmar case has, while dealing with the charge of failure of devotion to duty or behaviour unbecoming of a government servant, expressed the afore stated view and further the learned Judges have also opined that there may be compelling circumstances which are beyond the control of an employee. That apart, the facts in the said case were different as the appellant on certain occasions was prevented to sign the attendance register and the absence was intermittent. Quite apart from that, it has been stated therein that it is obligatory on the part of the disciplinary authority to come to a conclusion that the absence is wilful. On an apposite understanding of the judgment Krushnakant B. Parmar case we are of the opinion that the view expressed in the said case has to be restricted to the facts of the said case regard being had to the rule position, the nature of the charge levelled against the employee and the material that had come on record during the enquiry. It cannot be stated as an absolute proposition in law that whenever there is a long unauthorised absence, it is obligatory on the part of the disciplinary authority to record a finding that the said absence is wilful even if the employee fails to show the compelling circumstances to remain absent.*
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> *24. In this context, it is seemly to refer to certain other authorities relating to unauthorised absence and the view expressed by this Court. In State of Punjab v. P.L. Singla , (2008) 8 SCC 469 the Court, dealing with unauthorised absence, has stated thus :*

> *11. Unauthorised absence (or overstaying leave), is an act of indiscipline. Whenever there is an unauthorised absence by an employee, two courses are open to the employer. The first is to condone the unauthorised absence by accepting the explanation and sanctioning leave for the period of the unauthorised absence in which event the misconduct stood condoned. The second is to treat the unauthorised absence as a misconduct, hold an enquiry and impose a punishment for the misconduct.*

25. Again, while dealing with the concept of punishment the Court ruled as follows :

> *14. Where the employee who is unauthorisedly absent does not report back to duty and offer any satisfactory explanation, or where the explanation offered by the employee is not satisfactory, the employer will take recourse to disciplinary action in regard to the unauthorised absence. Such disciplinary proceedings may lead to imposition of punishment ranging from a major penalty like dismissal or removal from service to a minor penalty like withholding of increments without cumulative effect. The extent of penalty will depend upon the nature of service, the position held by the employee, the period of absence and the cause/explanation for the absence.*

26. In Tushar D. Bhatt v. State of Gujarat (2009) 11 SCC 678, the appellant therein had remained unauthorisedly absent for a period of six months and further had also written threatening letters and conducted some other acts of misconduct. Eventually, the employee was visited with order of dismissal and the High Court had given the stamp of approval to the same. Commenting on the conduct of the appellant the Court stated that he was not justified in remaining unauthorisedly absent from official duty for more than six months because in the interest of discipline of any institution or organisation such an

approach and attitude of the employee cannot be countenanced.

27. Thus, the unauthorised absence by an employee, as a misconduct, cannot be put into a straitjacket formula for imposition of punishment. It will depend upon many a factor as has been laid down in P.L. Singla."

15. The Supreme Court in Chennai Metropolitan Water Supply & Sewerage Board (supra) after examining Krushna Kant B Parmar (supra) has held that the view expressed in Krushna Kant B Parmar (supra), that there may be compelling circumstances which are beyond the control of an employee and that it is obligatory on the part of the disciplinary authority to come to a conclusion that the absence is wilful, has to be restricted to the facts of the said case regard being had to the rule position, the nature of the charge levelled against the employee and the material that had come on record during the enquiry. It cannot be stated as an absolute proposition in law that whenever there is a long unauthorised absence, it is obligatory on the part of the disciplinary authority to record a finding that the said absence is wilful even if the employee fails to show the compelling circumstances to remain absent.

16. The Supreme Court thereafter referred to the Judgment in P.L. Singla (supra) wherein it is held that Unauthorised absence (or overstaying leave), is an act of indiscipline and whenever there is an unauthorised

absence by an employee, two courses are open to the employer. First is to condone the unauthorised absence by accepting the explanation and sanctioning leave for the period of the unauthorised absence in which event the misconduct stood condoned and the second is to treat the unauthorised absence as a misconduct, hold an enquiry and impose a punishment for the misconduct. Where the explanation offered by the employee is not satisfactory, the employer would take recourse to disciplinary action in regard to the unauthorised absence. Such disciplinary proceedings may lead to imposition of punishment ranging from a major penalty like dismissal or removal from service to a minor penalty like withholding of increments without cumulative effect. The extent of penalty would depend upon the nature of service, the position held by the employee, the period of absence and the cause/explanation for the absence.

17. The Supreme Court held that unauthorised absence by an employee, as a misconduct, cannot be put into a straitjacket formula for imposition of punishment. It will depend upon many a factor as has been laid down in P.L. Singla (supra).

18. Supreme Court has laid down the scope, extent and parameters of judicial review in disciplinary action. Supreme Court in Railways v. Rajendra Kumar Dubey, (2021) 14 SCC 735 has held as under:

"21.1. We will first discuss the scope of interference by the High Court in exercise of its writ jurisdiction with respect to disciplinary proceedings. It is well settled that the High Court must not act as an appellate authority, and reappreciate the evidence led before the enquiry officer. We will advert to some of the decisions of this Court with respect to interference by the High Courts with findings in a departmental enquiry against a public servant.

21.2. In State of A.P. v. S. Sree Rama Rao, AIR 1963 SC 1723] , a three-Judge Bench of this Court held that the High Court under Article 226 of the Constitution is not a court of appeal over the decision of the authorities holding a departmental enquiry against a public servant. It is not the function of the High Court under its writ jurisdiction to review the evidence, and arrive at an independent finding on the evidence. The High Court may, however, interfere where the departmental authority which has held the proceedings against the delinquent officer are inconsistent with the principles of natural justice, where the findings are based on no evidence, which may reasonably support the conclusion that the delinquent officer is guilty of the charge, or in violation of the statutory rules prescribing the mode of enquiry, or the authorities were actuated by some extraneous considerations and failed to reach a fair decision, or allowed themselves to be influenced by irrelevant considerations, or where the conclusion on the very face of it is so wholly arbitrary and capricious that no reasonable person could ever have arrived at that conclusion. If, however, the enquiry is properly held, the departmental authority is the sole judge of facts, and if there is some legal evidence on which the findings can be based, the adequacy or reliability of that evidence is not a matter which can be permitted to be canvassed before the High Court in a writ petition.

21.3. These principles were further reiterated in State of A.P. v. Chitra Venkata Rao, (1975) 2 SCC 557. The jurisdiction to

issue a writ of certiorari under Article 226 is a supervisory jurisdiction. The court exercises the power not as an appellate court. The findings of fact reached by an inferior court or tribunal on the appreciation of evidence, are not re-opened or questioned in writ proceedings. An error of law which is apparent on the face of the record can be corrected by a writ court, but not an error of fact, however grave it may be. A writ can be issued if it is shown that in recording the finding of fact, the tribunal has erroneously refused to admit admissible and material evidence, or had erroneously admitted inadmissible evidence. A finding of fact recorded by the tribunal cannot be challenged on the ground that the material evidence adduced before the tribunal is insufficient or inadequate to sustain a finding. The adequacy or sufficiency of evidence led on a point, and the inference of fact to be drawn from the said finding are within the exclusive jurisdiction of the tribunal.

21.4. In subsequent decisions of this Court, including Union of India v. G. Ganayutham , (1997) 7 SCC 463, RPF v. Sai Babu , (2003) 4 SCC 331, Chennai Metropolitan Water Supply & Sewerage Board v. T.T. MuraliBabu, (2014) 4 SCC 108, Union of India v. Manab Kumar Guha , (2011) 11 SCC 535, these principles have been consistently followed.

21.5. In a recent judgment delivered by this Court in State of Rajasthan v. Heem Singh , (2021) 12 SCC 569 this Court has summed up the law in following words:

> *37. In exercising judicial review in disciplinary matters, there are two ends of the spectrum. The first embodies a rule of restraint. The second defines when interference is permissible. The rule of restraint constricts the ambit of judicial review. This is for a valid reason. The determination of whether a misconduct has been committed lies primarily within the domain of the disciplinary authority. The judge does not assume the mantle of the disciplinary authority. Nor does the judge wear the hat of an*

employer. Deference to a finding of fact by the disciplinary authority is a recognition of the idea that it is the employer who is responsible for the efficient conduct of their service. Disciplinary enquiries have to abide by the rules of natural justice. But they are not governed by strict rules of evidence which apply to judicial proceedings. The standard of proof is hence not the strict standard which governs a criminal trial, of proof beyond reasonable doubt, but a civil standard governed by a preponderance of probabilities. Within the rule of preponderance, there are varying approaches based on context and subject. The first end of the spectrum is founded on deference and autonomy — deference to the position of the disciplinary authority as a factfinding authority and autonomy of the employer in maintaining discipline and efficiency of the service. At the other end of the spectrum is the principle that the court has the jurisdiction to interfere when the findings in the enquiry are based on no evidence or when they suffer from perversity. A failure to consider vital evidence is an incident of what the law regards as a perverse determination of fact. Proportionality is an entrenched feature of our jurisprudence. Service jurisprudence has recognised it for long years in allowing for the authority of the court to interfere when the finding or the penalty are disproportionate to the weight of the evidence or misconduct. Judicial craft lies in maintaining a steady sail between the banks of these two shores which have been termed as the two ends of the spectrum. Judges do not rest with a mere recitation of the hands-off mantra when they exercise judicial review. To determine whether the finding in a disciplinary enquiry is based on some evidence an initial or threshold level of scrutiny is undertaken. That is to satisfy the conscience of the court that there is some evidence to support the charge of misconduct and to guard against perversity. But this does not allow the court to reappreciate evidentiary

findings in a disciplinary enquiry or to substitute a view which appears to the judge to be more appropriate. To do so would offend the first principle which has been outlined above. The ultimate guide is the exercise of robust common sense without which the judges' craft is in vain."

19. The Supreme Court in Railways v. Rajendra Kumar Dubey (supra) after referring to various decisions has laid down principles which can be summarised as follows:

i. the jurisdiction to issue a writ of certiorari under Article 226 is a supervisory jurisdiction;

ii. the High Court under Article 226 of the Constitution is not a court of appeal over the decision of the authorities holding a departmental enquiry against a public servant;

iii. it is not the function of the High Court under its writ jurisdiction to review the evidence, and arrive at an independent finding on the evidence;

iv. High Court may interfere with the proceedings:

(a) where principles of natural justice has not been complied with,

(b) where the findings are based on no evidence, which may reasonably support the conclusion of guilt, or

(c) there is violation of the statutory rules prescribing the mode of enquiry, or (d) the authorities were actuated by some extraneous considerations and failed to reach a fair decision, or

(e) allowed themselves to be influenced by irrelevant considerations, or

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

v. if, the enquiry is properly held, the departmental authority is the sole judge of facts, and if there is some legal

evidence on which the findings can be based, the adequacy or reliability of that evidence is not a matter which can be permitted to be canvassed before the High Court in a writ petition;

vi. findings of fact reached by an inferior court or tribunal on the appreciation of evidence, are not re-opened or questioned in writ proceedings; and

vii. an error of law which is apparent on the face of the record can be corrected by a writ court, but not an error of fact, however grave it may be.

20. The Supreme Court relying upon State of Rajasthan v. Heem Singh (supra) held that in exercising judicial review in disciplinary matters, there are two ends of the spectrum. The first embodies a rule of restraint. The second defines when interference is permissible.

21. The rule of restraint constricts the ambit of judicial review for the reason that the determination of whether a misconduct has been committed lies primarily within the domain of the disciplinary authority. The judge does not assume the mantle of the disciplinary authority. Nor does the judge wear the hat of an employer. Deference to a finding of fact by the disciplinary authority is a recognition of the idea that it is the employer who is responsible for the efficient conduct of their service. Though Disciplinary Enquiries have to abide by the rules of natural justice, they are not governed by strict rules of evidence which apply to judicial proceedings. The standard of proof is not the strict standard which governs

a criminal trial, of proof beyond reasonable doubt, but a civil standard governed by a preponderance of probabilities.

22. The Supreme Court further held that at the other end of the spectrum is the principle that the court has the jurisdiction to interfere when the findings in the enquiry are based on no evidence or when they suffer from perversity. A failure to consider vital evidence is an incident of what the law regards as a perverse determination of fact. Proportionality is an entrenched feature of our jurisprudence.

Now come to the facts of this case.

23. Looking to the nature of job of the respondent & applying the above principles, the absence was not for the reasons that can be termed as the result of compelling circumstances under which it was not possible to report or perform duty and the Central Administrative Tribunal (CAT) was not within the jurisdiction to interfere in the penalty because it could not be said that it was disproportionate. Thus, petitioner succeeds and this Misc. Petition is allowed and the order dated 22.09.2023 passed in Original Application No.201/00749/2018 by the Central Administrative Tribunal, Jabalpur Bench Circuit Sittings : Indore (Annexure-P/1) is set aside and the order dated 28.03.2018 by the Appellate Authority i.e. Chief General Manager, BSNL, Gujrat Circle, Ahmedabad is restored.

24. This writ appeal is accordingly, ***allowed and disposed of.***

No order as to costs.

(VIVEK RUSIA)
J U D G E

(GAJENDRA SINGH)
J U D G E

vs