



Reportable

HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JODHPUR

D.B. Special Appeal Writ No. 1349/2011
CNR: RJHC010328302009 | URN: SAW / 3146U / 2011

Heera Mani Wife of Late Shri Kailash Chandra Sharma, resident
of Gram Post Kotkasim, District Alwar.

-----Appellant

Versus

1. The State of Rajasthan through Director General of Police,
Rajasthan, Jaipur.
2. Superintendent of Police, Barmer.

-----Respondents

For Appellant(s)	:	Mr. DS Sodha Mr. Manvendra Singh
For Respondent(s)	:	Mr. Sandeep Soni Ms. Sulochno Bishnoi for Mr. B.L. Bhati, AAG

HON'BLE THE CHIEF JUSTICE MR. SANJAY K. AGRAWAL
HON'BLE MR. JUSTICE VINIT KUMAR MATHUR

Judgment
16/09/2026

Sanjay K. Agrawal, CJ.

1. The appellant (wife of the deceased Government servant) has filed this writ appeal under Rule 134 of the Rajasthan High Court Rules, 1952 questioning the validity and correctness of judgment and order dated 11.12.2008 by which the substantive writ petition filed by her has been dismissed by the learned Single Judge on the ground of availability of alternative remedy and on ground of delay and latches.



2. The appellant's husband was initially appointed on the post of Constable in the year 1979 in the respondent Department. Unfortunately, he was suffering from Tuberculosis and owing to his prolonged illness and deteriorating health condition, he was not in a position to discharge his duties regularly during the particular period and leading to institution of the departmental enquiry. A charge-sheet under Rules 16 of the CCA Rules, 1958 was issued against him, wherein following as many as six charges were levelled against him, which read as under:-

“Charge – 1 कि आप बेहोदे कानि 133 पु0 ला0 बाड़मेर के पदस्थापन्न थे। दिनांक 17.07.1994 पी एम से रात्रि कस्बा गस्त गैर हाजिर हुए दिनांक 17.07.1994 को आमद का आदेश लेकर जरिये रपट सं0 1099 के हाजर ड्युटी हुए।

Charge – 2 दोषी कर्मचारी पर लगाया गया आरोप इस प्रकार है कि दिनांक 02.08.1994 को अपनी ड्युटी कस्बा मोबाईल में उम्मेद सिंह सउनि के साथ लगी हुई थी आप ड्युटी पर नहीं गये, जिस पर आपकी गैर हाजरी जरिये रपट सं0 107 पर दर्ज की गयी। दिनांक 13.08.1994 को आदम आदेश प्राप्त कर उपस्थित ड्युटी हुए जिस पर आमद जरिये रपट सं0 657 के की गई।

Charge – 3 दोषी कर्मचारी पर लगाया गया आरोप इस प्रकार है कि दिनांक 17.08.94 को रात्रि गस्त ड्युटी में न जाने पर आपकी गैर हाजिर जरिये रपट संख्या 864 वक्त पी एम दर्ज की गई दिनांक 20.09.1994 को आमद आदेश प्राप्त कर उपस्थित हुए आमद रपट संख्या 1028 वक्त 6 पीएम पर की गई।

Charge – 4 दोषी कर्मचारी पर लगाया गया आरोप निम्न है कि दिनांक 18.10.1994 को आपकी ड्युटी वीआईपी ड्युटी में लगी हुई थी। ड्युटी पर न जाने से जरिये रपट सं0 889 वक्त 10.30 एएम पर आपकी गैर हाजरी दर्ज की गई। दिनांक 19.10.1994 को आमद का आदेश प्राप्त कर उपस्थित ड्युटी दी हुए। आमद जरिये रपट सं0 950 वक्त 10.30 एएम पर की गई।

Charge – 5 दोषी कर्मचारी पर लगाया गया आरोप इस प्रकार है कि दिनांक 23.10.1994 को आपकी ड्युट क्वार्टर गार्ड ड्युटी थी मगर आप ड्युटी से गैर हाजिर हो गये जिस पर जरिये रपट सं0 1178 वक्त 8.35 पीएम पर गैर हाजरी दर्ज की गई। दिनांक 29.10.1994 को आमद आदेश प्राप्त कर उपस्थित ड्युटी हुए। आमद जरिये रपट सं0 1462 वक्त 12.00 एएम पर की गई।

Charge – 6 दोषी कर्मचारी पर लगाया गया आरोप इस प्रकार है कि दिनांक 30.10.1994 को पु0 ला0 बाड़मेर में हाजरी मुलाजमानो की लेने पर आप गैर हाजिर पाए थे जिस पर जरिये रपट सं0 1512 दोपहर 12 बजे पर आपकी गैर हाजरी दर्ज की गई। दिनांक 1.11.1994 को आमद आदेश प्राप्त कर उपस्थित ड्युटी हुए, जिस पर जरिये रपट सं0 13 वक्त 11 एएम पर आमद की गई।”



3. The allegation for remaining absent was 57 days on six occasions to which he filed a detailed reply refuting the charges and submitted requisite documents regarding his illness. Thereafter vide order dated 01.05.1995, the Disciplinary Authority i.e. Superintendent of Police, Barmer appointed the Additional Superintendent of Police, Barmer as an Enquiry Officer. The Enquiry Officer, after conducting the enquiry, submitted its enquiry report to the Disciplinary Authority, wherein it is mentioned that the appellant's husband could not appear personally and he nominated one Khoraj Ram as his representative and two witnesses, viz, Naval Singh, Constable 786 and Udai Raj Constable 173, were produced as defence witnesses. The said witnesses categorically deposed that the husband of the appellant was suffering from Tuberculosis and was not in a position to appear before the Enquiry Officer and there was no other member in the family to look after him and his treatment was going on.

4. The Enquiry Officer after conducting enquiry, submitted the enquiry report to the disciplinary authority, wherein he held that the husband of the appellant was guilty of the charges levelled against him.

5. It is the case of the appellant's husband that the enquiry report was not supplied by the Enquiry Officer to him as provided under Rule 16(10) of the CCA Rules. Thus, the said action of the authority concerned is in utter violation of principles of natural justice depriving the husband of the appellant an opportunity to examine the finding recorded therein and to submit a representation, if any. However, the disciplinary authority by order dated 26.10.1996 after considering the enquiry report concurred



with the findings recorded by the Enquiry Officer and consequently imposed the penalty of termination of service upon the husband of the appellant.

6. The appellant's husband passed away after a prolonged illness. However, the appellant and her family member could not file an appeal in time and even he could not file writ petition on account of being resident of remote district of Alwar. Ultimately, she decided to file a writ petition being *S.B. Civil Writ Petition No.2021/2001*. Learned Single Judge after hearing the learned counsel for the parties dismissed the said writ petition vide order dated 11.12.2008 on preliminary ground of availability of alternative remedy and delay in filing the writ petition, against which this writ appeal has been preferred.

7. Mr. D.S. Sodha, learned counsel for the appellant submits that learned Single Judge was absolutely unjustified in dismissing the writ petition on the ground of delay and laches by recording a finding that the appellant being widow was having no means to file the writ petition in time, whereas the learned Single Judge ought to have decided the writ petition on its merit. Otherwise as per the statements of two witnesses namely Naval Singh, Constable 786 and Udai Raj Constable 173, wherein they have categorically deposed before the Enquiry Officer that the husband of the appellant was suffering from Tuberculosis. It is, therefore, submitted that his absence from duty was on account of his medical condition and the same was neither deliberate nor willful. Though the charge of unauthorized absence was levelled against the deceased government servant, but the department failed to establish that such absence was willful or not. In support of his



contention, he relied upon the judgment of their Lordships of Supreme Court in case of **Krushnakant B. Parmar Vs. Union of India and Ors.**¹ He further submits that copy of the enquiry report was not served upon the appellant's husband, which was required to be supplied as per the ratio laid down judgment of their Lordships of the Supreme Court in case of **Union of India Vs. Mohd. Ramzan Khan**² & **H.P. State Electricity Board Ltd. v. Mahesh Dahiya**³. He, therefore, prays that the writ petition may kindly be allowed and the impugned order may be quashed and set aside.

8. Learned counsel for the respondents would support the impugned judgment. He submits that the husband of the appellant was asked to furnish the medical certificate in support of his illness, but the same could not be produced by him during the course of inquiry.

9. We have considered the rival submissions made by the learned counsel for the parties and perused the material available on record.

10. In the present case, this Court finds the following question to be determined :

"Whether the learned Single Judge is absolutely justified in dismissing the writ petition upholding the order of termination?"

11. The first submission that has been raised on behalf of the appellant is that the appellant's husband was suffering from

1 2012 (3) SCC 178
2 (1991) 1 SCC 588
3 (2016) 12 SCC 583



prolonged illness i.e. Tuberculosis, therefore, he remained absent, thus, the said absence was neither willful nor deliberate.

12. "Willful absence" has been considered by the Supreme Court in the matter of *Krushnakat B. Parmar v. Union of India* wherein it has been held that for sustaining allegations of failure to maintain devotion to duty due to absence and conduct unbecoming of government servant and dismissal based thereupon it must be proved that unauthorized absence was willful. If absence is due to compelling circumstances under which it is not possible to report for or perform duty, such absence cannot be held to be willful and employee guilty of misconduct. Their Lordships have further held that absence from duty without any application or prior permission may amount to unauthorized absence, but it would not be willful.

Paragraphs 15, 16, 17, 18 & 19 of the report read as under:-

"15. In the case of Appellant referring to unauthorized absence the disciplinary authority alleged that he failed to maintain devotion of duty and his behavior was unbecoming of a Government servant.

16. The question whether 'unauthorized absence from duty' amounts to failure of devotion to duty or behavior unbecoming of a Government servant cannot be decided without deciding the question whether absence is willful or because of compelling circumstances.

17. If the absence is the result of compelling circumstances under which it was not possible to report or perform duty, such absence can not be held to be willful.

18. Absence from duty without any application or prior permission may amount to unauthorized absence, but it does not always mean willful. There may be different eventualities due to which an employee may abstain from duty, including compelling circumstances beyond his control like illness, accident, hospitalization, etc., but in such case the employee cannot be held guilty of failure of devotion to duty or behavior unbecoming of a Government servant.

19. In a Departmental proceeding, if allegation of unauthorized absence from duty is made, the disciplinary authority is required to prove that the absence is willful, in absence of such finding, the absence will not amount to misconduct".



13. Similarly, in the matter of **Chhel Singh v. M.G.B. Gramin Bank, Pali and Others**⁴, the Supreme Court has held that in order to hold a person guilty for unauthorized absence from duty, the unauthorized absence from duty must be willful and deliberate. In paragraph 15 of the report, their Lordships of Supreme Court observed as under:-

"15.There was no allegation that the appellant's unauthorized absence from duty was willful and deliberate. The Inquiry Officer has also not held that appellant's absence from duty was willful and deliberate. It is neither case of the disciplinary Authority nor the Inquiry Officer that the medical reports submitted by the appellant were forged or fabricated or obtained for any consideration though he was not ill during the said period. In absence of such evidence and finding, it was not open to the Inquiry Officer or the Disciplinary Authority to disbelieve the medical certificates issued by the doctors without any valid reason on the ground of 24 days delay."

14. Coming to the facts of the present case in the light of the aforesaid principle laid down by their Lordships of Supreme Court, it is evident that although the charge of unauthorized absence was levelled against the deceased Government servant, but the department could not establish that his absence was willful. On the contrary, on behalf of the deceased Government servant, Constable No.786 Naval Singh and Constable No.173 Udai Raj were examined, who categorically deposed that during the relevant period, the husband of the appellant was unwell and was suffering from tuberculosis and, therefore, he remained absent from duties. Shri Udai Raj, Constable No.173 has also reiterated that the deceased Government servant was suffering from tuberculosis for a considerable period and that on account of such

4 2014 AIR SCW 6539



prolonged illness, he remained absent on several occasions. Thus, there was sufficient evidence available on record to establish that the absence was not willful but occasioned due to his prolonged illness.

15. Their Lordships of Supreme Court in *Krushnakant* (supra) has clearly held that if allegation of willful absence is refuted by showing compelling circumstances under which it was not possible for a government servant to report on duty or perform his duties owing to such circumstances, the absence cannot be treated as willful absence. In such circumstances, the employee's absence cannot be held to be unbecoming of a Government servant as provided under Rules.

16. In view of the aforesaid, we are unable to uphold the order of termination as the respondent Department was not able to prove that the deceased Government servant was willfully absent from his duties. Furthermore on behalf of the deceased Government servant, ample evidence has been brought on record to show that his absence was not willful but the same was on account of his prolonged illness i.e. Tuberculosis. There is one more reason for setting aside the termination order because deceased Government servant specifically stated that the copy of enquiry report was not served upon him as provided under Rules 16 (10) of the CCA Rules, 1958. Their Lordships of Supreme Court in the case of *Mohd. Ramzan Khan* (supra) has held that the delinquent employee is entitled to have a copy of the enquiry report before the disciplinary authority takes a final decision. The



relevant paragraphs of the said judgment are reproduced as under:-

"18. We make it clear that wherever there has been an Inquiry Officer and he has furnished a report to the disciplinary authority at the conclusion of the inquiry holding the delinquent guilty of all or any of the charges with proposal for any particular punishment or not, the delinquent is entitled to a copy of such report and will also be entitled to make a representation against it, if he so desires, and non-furnishing of the report would amount to violation of rules of natural justice and make the final order liable to challenge hereafter.

19. On the basis of this conclusion, the appeals are allowed and the disciplinary action in every case is set aside. There shall be no order for costs. We would clarify that this decision may not preclude the disciplinary authority from revising the proceeding and continuing with it in accordance with law from the stage of supply of the inquiry report in cases where dismissal or removal was the punishment. Appeals allowed".

16. Furthermore, Their Lordships of Supreme Court in the case of *Mahesh Dahiya* (supra) has held that when the disciplinary authority forms an opinion to punish a delinquent employee with major penalty even before forwarding copy of the enquiry report to him, the same is nothing but in clear violation of principles of natural justice.

17. In view of the discussions made here-in-above, this Court finds that the respondent-department has failed to establish that the absence of the husband of the appellant was willful. Furthermore, non-supply of the enquiry report resulted into violation of principle of natural justice.

18. Accordingly, the special appeal (writ) is allowed. The order of termination dated 26.10.1996 as well as the order of learned Single Judge dated 11.12.2008 are hereby quashed as set aside. Since the husband of the appellant (deceased Government servant) has already died, the appellant (wife) will be entitled for





all consequential service/retiral benefits within a period of 45 days
from the date of receipt of certified copy of this order.

(VINIT KUMAR MATHUR),J

(SANJAY K. AGRAWAL),CJ

22/Payal Rani/Sanjay Solanki

