



IN THE HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU

SWP No. 1059/2008

Reserved on: 05.03.2026

Pronounced on : 25.03.2026

Uploaded on : 25.03.2026

Whether the operative part or full
judgment is pronounced: Full

Amit Kumar

...Petitioners

Through:- Mr. Vikas Mangotra, Advocate.

V/s

Union of India and ors.

.....Respondents

Through:- Mr. Ranjeet Singh Jamwal, CGSC.

CORAM: HON'BLE MR. JUSTICE SANJAY DHAR, JUDGE
JUDGMENT

01. The petitioner through the medium of the present petition has challenged enquiry proceedings conducted by respondent No. 4 against the petitioner. Challenge has also been thrown to order dated 04.08.2006 issued by respondent No. 3 whereby the petitioner has been removed from service. Besides this, the petitioner has also challenged order dated 30.06.2011 issued by respondent No. 5 whereby his statutory appeal against order dated 04.08.2006 has been rejected.

02. As per the case of the petitioner, he was appointed as a Constable in the year 2003 in Central Reserve Police



Force and he joined his service on 24.3.2003 at Group Centre, Rampur. He was posted in 93rd Bn, which was relocated to Anantnag. In August, 2005, the petitioner is stated to have fallen ill and he was admitted in 5th Bn CRPF Hospital and the doctor recommended one week medical leave in his favour. Accordingly, the petitioner was granted medical leave w.e.f., 13.12.2005 to 17.12.2005. He proceeded to his home town.

03. After availing the leave period while the petitioner was reporting back to his duty on 17.02.2005, his condition deteriorated and he was admitted in District Hospital, Saharanpur (UP) on 17.12.2005 itself. It is case of the petitioner that he telephonically informed the Control Room of 93rd Bn about his admission in the hospital and for extension of leave. It has been averred that the petitioner contacted the Adjutant of the battalion on telephone and he was advised to get proper treatment and to produce the medical record upon joining the duty. It has been submitted that the petitioner also applied for extension of leave through post. According to the petitioner, he remained under OPD treatment w.e.f., 25.12.2005 to 18.02.2006 but the treatment did not yield any result. He again remained under treatment at CHC Baraut District Baghpat w.e.f., 18.02.2006 to 12.03.2006 but he could not recover from the disease so as to join the duty. The petitioner is stated to have undergone treatment at District Hospital, Muzaffarabad w.e.f., 13.03.2006 to 12.06.2006. The petitioner has placed on record copies of medical



certificates/records to show that he had remained under treatment upto 12.06.2006.

04. It has been submitted that the petitioner received communication dated 25.04.2006 from respondent No. 4, who had been appointed as an Enquiry Officer by respondent No. 3, whereby he was informed that charges have been framed against him in terms of chargesheet dated 04.04.2006. Vide the said communication, the petitioner was directed to remain present before the Enquiry Officer on 5.5.2006 for facing the enquiry. According to the petitioner, he responded to the said communication of respondent No. 4 and submitted that he was suffering from ailment and that he was under treatment at district Hospital, Muzaffarabad. It has been submitted that the petitioner also annexed with his application the copies of the medical record.

05. It has been submitted that vide communication dated 8.5.2006 issued by respondent No. 4, the petitioner was again directed to appear before him on 20.6.2006 and another communication dated 17.06.2006 from the Enquiry Officer was received by the petitioner whereby he was informed that evidence on behalf of the department has been recorded. He was asked to give his defence within fifteen days. To this communication, the petitioner is stated to have responded vide reply dated 26.06.2006 whereby he informed the Enquiry Officer about his ailment and the biased conduct of Deputy Commander -Sh. Tilak Raj. Thereafter the petitioner received



order dated 04.08.2006 whereby he has been removed from service.

06. Initially, the petitioner challenged the order of his removal from service and the enquiry proceedings by way of present writ petition but during the pendency of the writ petition, the petitioner filed a statutory appeal against the said order, which came to be rejected by respondent No. 5 by virtue of impugned order dated 30.06.2011. This prompted the petitioner to amend the writ petition to lay challenge to order dated 30.06.2011, as well.

07. The petitioner has challenged the impugned orders issued by the respondents on the grounds that he has not been provided an opportunity of hearing either by the Enquiry Officer or by the Disciplinary Authority. It has been contended that the enquiry has been conducted in ex-parte contrary to the rules and guidelines holding the field. It has been contended that no Presenting Officer has been appointed by the disciplinary authority and the Enquiry Officer has himself acted as a Presenting Officer, therefore, the enquiry proceedings are vitiated. It has also been contended that without declaring the petitioner as deserter, no enquiry proceedings could have been initiated against him. It has also been contended that ex-parte enquiry proceedings are not permissible under rules. It has further been contended that the reply submitted by the petitioner, informing the Enquiry Officer and the respondents that he was not in proper health



to face the enquiry, has not been dealt with by the respondents.

08. The respondents have contested the writ petition by filing reply thereto. In their reply, it has been submitted that after availing medical rest upto 17.12.2005, the petitioner was obliged to report back on duty on 17.12.2005 afternoon but he did not report and overstayed the leave w.e.f., 18.12.2005 without permission of the competent authority. It has been contended that the petitioner despite having been asked to report for duty through registered communications, did not report on duty. It has been submitted that warrant of arrest was issued to Superintendent of Police, Muzaffar Nagar (UP) on the basis of complaint lodged by OC-G/93 Bn but the petitioner did not report either to his headquarter or before the civil police authority. It has been submitted that court of enquiry was ordered and on the basis of the report of the court of enquiry, the petitioner was declared as deserter from the Force whereafter the departmental proceedings were initiated against him vide memorandum dated 04.04.2006.

09. It has been submitted that the petitioner did not respond to the memorandum of charges as a result whereof Sh. Shailender Kumar, Deputy Commander of 93rd Battalion was appointed as an Enquiry Officer vide order dated 21.04.2006. It has been submitted that the Enquiry Officer, vide his communication dated 25.04.2006, directed the petitioner to appear before him but the petitioner did not do so



and continued to overstay the leave period. It has been submitted that the Enquiry Officer directed the petitioner to participate in the enquiry vide various communications but the petitioner did not respond to these communications as a result whereof the Enquiry Officer was left with no option but to conduct the enquiry ex parte.

10. It has been submitted that on 17.06.2006, the petitioner was asked to report before the Enquiry Officer and he was directed to produce defence witnesses but he failed to report before the Enquiry Officer nor did he file any documents in his defence. Accordingly, the Enquiry Officer submitted his report, a copy whereof was sent to the petitioner through registered post and he was asked to submit his defence within fifteen days, which he failed to do. It is only after undertaking these proceedings that the impugned order dated 04.08.2006 came to be issued whereby the petitioner was removed from service.

11. I have heard learned counsel for the parties and perused record of the case.

12. Although the petitioner has raised many issues as regards the manner in which the enquiry has been proceeded with by the respondents against the petitioner, yet he has laid much emphasis on the contention that despite the petitioner having submitted the medical record with the Enquiry Officer and other authorities, the same has not been considered. It has been contended that the respondents have without



considering the medical record produced by the petitioner, proceeded to pass the impugned order of removal from service against him.

13. If we have a look at the pleadings of the parties, it comes to the fore that there is no dispute about the fact that the petitioner had proceeded on duly sanctioned leave on medical grounds from 11.12.2005 to 17.12.2005. He was expected to rejoin his duty on 18.12.2005 but he did not report on the said date and even thereafter. This aspect of the matter is also not in dispute. The justification offered by the petitioner for not reporting back on duty and for not appearing before the Enquiry Officer is that he was seriously ill, as such, unable to attend either the duty or the proceedings before the Enquiry Officer. The respondents have taken a stand that the petitioner did not produce any medical record to support his assertion that he was seriously ill and he did not respond to the notices issued to him by the Enquiry Officer.

14. In the above context, if we have a look at the documents placed on record by the petitioner along with his writ petition, it is revealed that he had sent a communication to the Enquiry Officer (Annexure-A) informing him that he has been taken ill as a result of which he is unable to appear before him. He has further requested that as soon as he recovers, he would present himself before enquiry officer. Although the said communication is undated and the respondents have denied its receipt, yet the record of the



enquiry produced by the respondents would reveal that a copy of the said communication forms part of the record. It seems that the same has been received by the Enquiry Officer on 16.05.2006. Another communication dated 01.06.2006 addressed by the petitioner to the Enquiry Officer is also available in the enquiry record. Vide the said communication, the petitioner had informed the Enquiry Officer that he has been suffering from Typhoid and Hepatitis since long and at present he is undergoing treatment in District Hospital, Muzaffarnagar. It appears that the Enquiry Officer has made an endorsement on the said letter to the effect that the same is without any medical record.

15. The petitioner has also placed on record copies of communications (Annexures-K, M and N to the writ petition) addressed by him to the Enquiry Officer repeatedly informing him about his ailment and his inability to appear before the said officer. Along with communications, (Annexure-K) and (Annexure-M), the petitioner had also annexed the copies of the medical record.

16. Although the afore-noted communications are not available in the record of the enquiry, yet in para (4) of the impugned order dated 04.08.2006 issued by respondent No. 3, it is clearly mentioned that after the submission of enquiry report with the Disciplinary Authority on 07.07.2006, a communication was received by the enquiry officer from the petitioner, which was accompanied by the medical record.



It is also noted in the impugned order dt. 04.08.2006 that vide the said communication, the petitioner had intimated that he is suffering from Hepatitis and Typhoid and that he is undergoing treatment in district hospital, Muzaffarnagar as a result of which he is unable to present himself before the Enquiry Officer. It is further mentioned in para (4) of the impugned order that after analyzing the medical record produced by the petitioner, it appears that he is suffering from high fever and was admitted to hospital at Baraut w.e.f., 18.02.2006 to 12.03.2006 and was advised rest for this period. It is also noted that on 13.03.2006, the petitioner was declared fit but on the same day, he remained admitted in the hospital at district hospital at Muzaffarnagar because he was suffering from Typhoid.

17. After noticing the aforesaid facts, respondent No. 3 has drawn an inference that the petitioner is avoiding to attend his duty intentionally. This inference has been drawn by respondent No. 3-Disciplinary Authority on the basis that he had received an application from father of the petitioner, wherein he had mentioned that the petitioner had tried to commit suicide on two occasions and on one occasion, he had cut vein of his hand. It has been noted by the Disciplinary Authority that on account of these symptoms, the petitioner should have been subjected to treatment from a Psychiatrist but there is no such record produced in this regard. Thereafter the Disciplinary Authority has, vide the impugned



order, proceeded to accept the report of the Enquiry Officer. After noting that the petitioner did not respond to the communication dated 11.07.2006 within the stipulated time of 15 days, the Disciplinary Authority has proceeded to presume that the petitioner has nothing to say in defence. Accordingly, the impugned order, directing removal from service of the petitioner, has been issued.

18. From a bare perusal of the impugned order dated 04.08.2006 passed by the disciplinary authority particularly para (4) of the said order, it becomes amply clear that the Enquiry Officer as well as the Disciplinary Authority had received the medical record and the certificates from the petitioner along with his applications seeking deferment of enquiry proceedings so as to enable him to present himself before the Enquiry Officer.

19. The medical record of which disciplinary authority has taken note in para (4) of the impugned order dated 04.08.2006 has been produced by the petitioner along with the writ petition. These documents include discharge slip issued by District Hospital, Saharanpur, which shows that the petitioner has remained admitted in the said hospital w.e.f., 17.12.2005 to 18.12.2005 and medical certificate issued by Medical Officer, CHC, Shamli, Muzaffarnagar, which shows that he has remained under the treatment of said doctor from 20.12.2005 to 18.02.2006. As per this certificate, the petitioner has been advised to take complete rest during the



aforesaid period. Another document has been issued by Superintendent CHC, Baraut, Bhagpat. As per this document, the petitioner was suffering from fever and he was advised complete bed rest from 18.02.2006 to 12.03.2006. Yet another document produced on record is the one issued by Doctor R.S. Soodan of District Hospital, Muzaffarnagar, which shows that the petitioner has been under his treatment w.e.f., 13.03.2006 to 12.06.2006. It is further shown that the petitioner was suffering from Typhoid and Hepatitis. The petitioner has also placed on record copies of OPD cards dated 13.03.2006, 27.03.2006 and 29.05.2006 issued by District Hospital, Muzaffarnagar, which also show that the petitioner was suffering from Typhoid and Hepatitis. All these documents/certificates have been issued by Government Hospitals/doctors.

20. While passing the impugned order dated 04.08.2006, the Disciplinary Authority has refused to rely upon the aforesaid documents by making an observation that upon examining these documents, it appears that the petitioner is intentionally avoiding to present himself from the duty. The question that arises for determination is whether the Enquiry Officer or the Disciplinary Authority was justified in discarding the medical certificates produced by the petitioner, which were admittedly received by them, before issuing the impugned order dated 04.08.2006.



21. Before answering the aforesaid question, it has to be noted that the petitioner has admittedly remained unauthorizedly absent after overstaying the leave sanctioned in his favour upto 17.12.2005. However, merely because the petitioner has remained unauthorizedly absent from duty and overstayed the leave cannot form a ground for imposing punishment upon him unless it is shown that his unauthorized absence from duty was willful and deliberate.

22. In the present case, the petitioner has raised a defence that he was suffering from serious ailment of Typhoid and Hepatitis, which prevented him from attending his duties and from participating in the enquiry proceedings. It has come on record that applications in this regard were received by the respondents from time to time from the petitioner's end. It has also been established that medical records in support of the assertions of the petitioner were also received by the respondents before passing of the impugned order dated 04.08.2006. The respondents, without ascertaining the veracity of the medical records produced by the petitioner, have proceeded to presume that the production of medical records by the petitioner is a device to avoid attending the duties. It was not open either to the Enquiry Officer or to the Disciplinary Authority or to the Appellate Authority to discard the medical records produced by the petitioner without ascertaining the authenticity and veracity of these documents.



23. Learned counsel for the respondents has vehemently argued that these documents were fabricated and obtained by the petitioner with a view to create a defence. It has been submitted that the petitioner is stated to have undergone treatment at Baraut, which is a place far off from his home town and, as such, these documents cannot be relied upon.

24. I am afraid the aforesaid contention of the respondents cannot be accepted. Neither this Court nor the respondents can brush aside or refuse to consider the medical records produced by the petitioner without ascertaining the veracity of the said records. The Supreme Court has, in the case of **Chhel Singh Vs. MGB Gramin Bank, Pali and Ors, (2014) 13 SCC 166** while dealing with somewhat similar issue, made the following observations:

“15. From the plain reading of the charges we find that the main allegation is absence from duty from 11.12.1989 to 24.10.1990 (approximately 10½ months), for which no prior permission was obtained from the competent authority. In his reply, the appellant has taken the plea that he was seriously ill between 11.12.1989 and 24.10.1990, which was beyond his control; he never intended to contravene any of the provisions of the service regulations. He submitted the copies of medical certificates issued by Doctors in support of his claim after rejoining the post. The medical reports were submitted after about 24 days. 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 and on the ground of 24 days' delay."

25. Again in the case of **Union of India & Ors Vs. I.S. Singh 1994 Supp (2) SCC 518**, the Supreme Court has held that Enquiry Officer was duty bound to pay attention to the letters of the delinquent official wherein he had stated that he was suffering from ailment. The Supreme Court further held that even if these letters were not accompanied with medical certificates, the proper course for the Enquiry Officer was to call upon the delinquent official either to produce the medical certificates or to direct him to be examined by a Medical Officer specified by him. The Supreme Court, after noticing that the enquiry report did not even refer to the request contained in the application nor did it assign reasons why he ignored the plea of the delinquent official and instead proceeded ex-parte, went on to hold that Enquiry Officer has conducted the enquiry in a manner contrary to the procedure prescribed under rules and also in violation of principles of natural justice.

26. In the present case also, even though the record of the enquiry does show that letters addressed by the petitioner to the Enquiry Officer, indicating that he was suffering from ailment, are available in record but the same have not been



dealt with by the Enquiry Officer nor has he asked the petitioner to produce the medical record. In fact, in the impugned order passed by the Disciplinary Authority on 04.08.2006, it has been admitted by the respondents that the medical records were received by the Enquiry Officer after the submission of the enquiry report but even the Disciplinary Authority has brushed aside these documents on flimsy grounds without assigning any reasons and without ascertaining the authenticity of these documents.

27. Thus, the respondents have committed a serious breach of principles of natural justice by proceeding ex-parte against the petitioner while holding enquiry against him. If the petitioner was really suffering from a serious disease like Typhoid and Hepatitis, it would not have been possible for him to present himself before the Enquiry Officer. Without ascertaining the truthfulness or otherwise of the said contention of the petitioner, the respondents ought not to have proceeded to hold the enquiry against the petitioner ex-parte and pass the impugned order of his removal from service. Not even the Appellate Authority has applied its mind to this aspect of the matter inasmuch as it has proceeded to reject the appeal of the petitioner in a cryptic manner, without assigning any reasons.

28. For what has been discussed hereinbefore, the writ petition is allowed and the impugned order of removal from service passed against the petitioner is set aside.

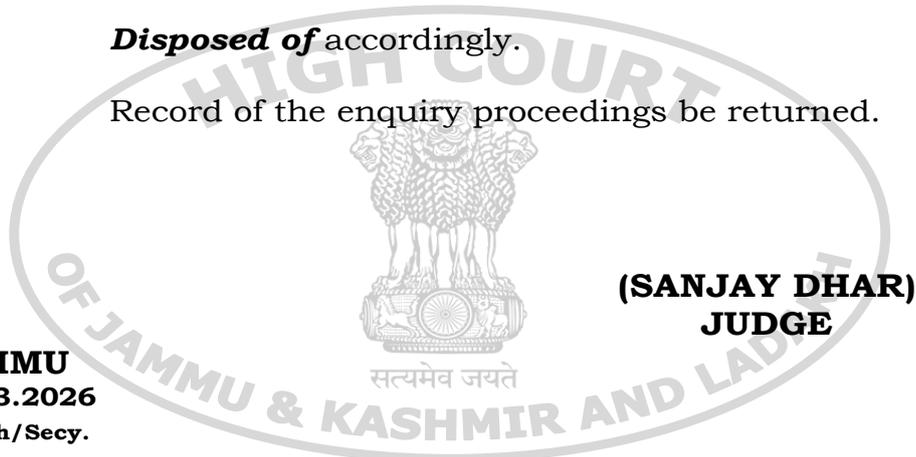


The respondents are directed to reinstate the petitioner in service. The respondents are directed to hold a fresh enquiry against the petitioner, during which the Enquiry Officer shall ascertain veracity of the medical records produced by the petitioner. On the basis of the fresh report of the Enquiry Officer, the respondents shall take further action in the matter in accordance with law. The fate of the period during which the petitioner has remained out of service shall be decided by the competent authority on the basis of the outcome of the fresh enquiry that shall be undertaken by the respondents.

29. ***Disposed of*** accordingly.

30. Record of the enquiry proceedings be returned.

JAMMU
25.03.2026
Naresh/Secy.



(SANJAY DHAR)
JUDGE

Whether the judgment is speaking: **Yes**

Whether the judgment is reportable: **Yes**