#### IN THE HIGH COURT OF DELHI AT NEW DELHI \*

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#### **Pronounced on:**

23<sup>rd</sup> December, 2022

W.P.(C) 6613/2010 +

SANJAY GUPTA

..... Petitioner

Through: Mr. Sudeep Singh, Mr. Akul Mehandru and Mr. Amit Malik. Advocates

versus

**UNION OF INDIA & ORS** ..... Respondents

Through:

Mr. Ruchin Mishra, Mr. Mukesh Tiwari and Ms. Mansi Verma, Advocates for UOI Mr. D. K. Garg, Advocate for R-2

### **CORAM:** HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

# JUDGMENT

# CHANDRA DHARI SINGH, J.

#### FACTUAL MATRIX

1. The instant writ petition under Article 226 & 227 of the Constitution of India has been filed on behalf of the petitioner seeking the following reliefs:-

to set aside and quash the impugned order dt. ''(i)5.11.2009, chargesheet dt. 17.6.08 & findings dt. 12.6.2009. to direct the respondent to accept the VRS of the (ii) petitioner w.e.f. 6.01.2007 in terms of the Voluntary Retirement Scheme of the respondents.

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(iii) to direct the respondent to pay the VRS benefits accrued in favour of the petitioner alongwith interest 12% per annum in order to meet the end of justice alongwith costs in favour of the petitioner.."

2. The Petitioner joined Respondent No.3 (hereinafter referred to as "Kendriya Bhandar") as Accounts Officer w.e.f. 28<sup>th</sup> June, 1996. He was appointed as Chief Accounts Officer on ad-hoc basis w.e.f. 01<sup>st</sup> February, 1999 followed by his regularization as Chief Accounts Officer (CAO) w.e.f. 12<sup>th</sup> January, 2001. The Kendriya Bhandar introduced a Voluntary Retirement Scheme (hereinafter referred to as "VRS") vide circular dated 7<sup>th</sup> August, 2006 inviting applications for voluntary retirement from the employees upto 6<sup>th</sup> November, 2006. As per terms and conditions of the VRS, the management of Kendriya Bhandar will have the right to grant or refuse the voluntary retirement to an employee subject to, reasons being recorded in writing. The Petitioner has also applied for VRS on 6<sup>th</sup> November, 2006 seeking voluntary retirement from 6<sup>th</sup> January, 2007.

3. Since, the Appointing Authority of CAO is Board of Directors, the matter of the Petitioner with respect to VRS was placed before the Board for their consideration in its meeting held on 13<sup>th</sup> January, 2007. While considering his application for VRS, the Board decided that the request of the existing CAO may be considered by the Board after the appointment of DGM (F&A) and till then he may be compensated by way of fixed special allowance to the extent of 10% of the total monthly emoluments. Accordingly, he was granted Rs. 1956/- per month and continued to draw the special allowance as approved by the Board till December, 2007.

4. In the meantime, a disciplinary proceeding was contemplated against the petitioner. A memorandum dated 26<sup>th</sup> June, 2007 requesting the petitioner to explain the allegation that he failed to safeguard the financial interest of the organization and to recover the amount of Rs 86,098/-. A disciplinary proceeding for a minor penalty vide memorandum dated 10<sup>th</sup> October, 2007 was instituted against him on the recommendation of the CBI and CVC. On conclusion of the said proceedings, a penalty of 'Censure' was imposed on petitioner vide order dated 15<sup>th</sup> April, 2008.

5. Thereafter, he suddenly absented himself from duty w.e.f. 3<sup>rd</sup> January, 2008 without information or without getting his leave sanctioned. A Memo dated 18<sup>th</sup> January, 2008 was issued to him directing him to join duties immediately and to explain why the disciplinary action should not be taken against him for unauthorized absence. The Petitioner vide his letter dated 18<sup>th</sup> January, 2008, received on 22<sup>nd</sup> January, 2008 informed that he was ill and stated that the period of absence from duty may be treated as Medical Leave though he had already joined some other organization w.e.f. 3<sup>rd</sup> January, 2008. He also requested to treat this application for VRS along with the earlier application which is pending with the management.

6. In response to his letter dated 18<sup>th</sup> January, 2008, the Petitioner was informed vide Memorandum dated 23<sup>rd</sup> January, 2008 to furnish a Medical certificate in support of his illness or report on duty immediately. He was also informed that the Board has already sanctioned him a fixed special allowance to the extent of 10% of the emoluments till the new DGM (F&A) joins Kendriya Bhandar and his application for VRS would

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be considered by the Board thereafter. He was also informed that recruitment to the post of DGM (F&A) was under process.

7. Subsequently, a complaint was received in Kendriya Bhandar against him that he is working in Okhla Industrial Area without resigning in Kendriya Bhandar or without acceptance of his request for VRS. On the said complaint, Memo dated 6<sup>th</sup> February, 2008 was issued to him in order to explain, why disciplinary action should not be taken against him for misconduct as he committed an act subversive of discipline. The Kendriya Bhandar deputed the Vigilance Officer of the Respondent to verify the fact of his working in M/s Cogent EMR Solutions at Okhla Industrial Area Phase-II. The Vigilance Officer submitted his report dated 13<sup>th</sup> February, 2008 stating that he had visited the abovementioned organization and had met the Petitioner who revealed that he had joined that firm in January, 2008 and holding the key position in the Finance and Accounts Department of the said organization.

8. The Petitioner was informed vide Memo dated 22<sup>nd</sup> February, 2008 that merely submission of an application for VRS did not bestow upon him any right that he can leave the organization without acceptance of the VRS or without him being relieved by the Competent Authority and was therefore, directed to show cause as to why disciplinary action should not be initiated against him.

9. Vide letter dated 20<sup>th</sup> March, 2008, the Petitioner requested that his application for VRS may be decided at the earliest. It was further contended that he was being harassed while initiating the departmental inquiry. The said letter of the Petitioner was placed before the Board in its meeting held on 27<sup>th</sup> March, 2008. The Board in the said meeting

approved the proposal for issue of charge-sheet for major penalty against the Petitioner for unauthorized absence and violation of the service conditions. Accordingly, a charge-sheet for major penalty was issued to petitioner vide memorandum dated 17<sup>th</sup> June, 2008 forwarding a statement of imputations of misconduct in support of articles of charge and also the list of witness.

10. Consequently, the Petitioner filed an OA bearing No. 1079/2008 before the Central Administrative Tribunal. The Tribunal dismissed his applications as withdrawn with the liberty to approach the appropriate forum. Thereafter, the Petitioner filed a Writ Petition bearing No. 4713/2008 in this Court. The same was also dismissed as withdrawn.

11. The Petitioner again approached this Court for purported settlement of his dues which was heard on 8<sup>th</sup> August, 2008. The counsel for the Petitioner prayed that he may be permitted to withdraw the present petition with the liberty to a make a representation to the Respondent No.2 for treating him having resigned from the service w.e.f. the date he absented himself. The said writ petition was dismissed as withdrawn with liberty as prayed.

12. In pursuance of the order dated 8<sup>th</sup> August, 2008 passed by this Court, the Petitioner made a representation dated 29<sup>th</sup> August, 2008 before the Competent Authority. The inquiry was concluded ex-parte as he has not participated in the said inquiry despite giving several opportunities, as per the procedure prescribed by Central Vigilance Commission for cases for major penalty. The Inquiry Officer held the charge is fully proved. The Inquiry report was placed before the Board of Directors as the Disciplinary Authority. The Board accepted the report in

totality vide OM dated 12<sup>th</sup> June, 2009. A copy of the Inquiry Report was also forwarded to petitioner for making any representation on the findings of the Inquiry Officer. The Petitioner did not make any representation on the finding of the Inquiry Officer.

13. The case was again placed before the Board in its meeting held on  $3^{rd}$  September, 2009. The Board, after considering the facts and circumstances of the case, accepted the findings of the Inquiry Officer and decided that the ends of justice would be met if major penalty of dismissal from the services of the Kendriya Bhandar is imposed on the Petitioner. Accordingly, the order of dismissal from the services of Kendriya Bhandar was issued to the Petitioner vide order dated  $5^{th}$  November, 2009. Hence, the instant writ petition has been filed on behalf of the Petitioner.

#### **SUBMISSIONS**

#### (on behalf of the Petitioner)

14. Learned counsel appearing on behalf of Petitioner submitted that the notice of VRS was given on  $6^{th}$  November, 2006, but the Authority concerned did not grant permission for retirement before expiry of notice period i.e.  $6^{th}$  January, 2007, and as such the retirement become effective on  $6^{th}$  January, 2007. It is submitted that the issuance of memorandum for' minor penalty after deemed retirement is null and void as the necessary papers for recovery under reference were never received by the Petitioner nor any receipt of the papers by the Respondent was provided by the Department.

15. Learned counsel appearing on behalf of Petitioner submitted that

since the Respondents had failed to take the decision of VRS before due date. It is further submitted that since the Petitioner has applied for VRS and no decision has been taken by the Department within the notice period, therefore, the Department cannot treat the Petitioner as its employee. Any disciplinary proceeding against the Petitioner, treating him as an employee of the Department is null and void.

16. Learned counsel appearing on behalf of Petitioner submitted that the impugned order passed by the Authority concerned, rejecting the representation, is contrary to the order dated 4<sup>th</sup> July, 2008 passed by the Coordinate Bench of this Court in W.P. (C) 4713/2008. It is submitted that since the relationship of an employer and an employee is not in existence, therefore, the question of participating in the alleged inquiry does not arise in the case of the Petitioner. The Petitioner has already availed the benefit under VRS and thereafter left the Department and joined other organization. Therefore, the question of unauthorized absence from the service does not arise in the instant case. It is also submitted that due to the *malafide* intention of the Respondents, they conducted the inquiry proceedings for the purpose of ceasing all retirement benefits of the Petitioner. It is further submitted in terms of the DoPT circular, after two months from the date of the submission of the VRS application, the employee stands relieved, if on the contrary is not intimated to the employee. Hence, in view of the facts and circumstances, the impugned order passed by the Authority concerned is bad in law and contrary to the provisions of law settled by the Hon'ble Supreme Court as well as by this Court, and, is liable to be set aside.

#### (on behalf of the Respondents)

17. *Per contra*, learned counsel appearing on behalf of Respondents submitted that the instant petition is devoid of any merit and there is no illegality in the impugned order dated 5<sup>th</sup> November, 2009 passed by the Authority concerned. The said order was passed after considering entire facts and circumstances of the case as well as law laid down by this Court and by Hon'ble Supreme Court. It is further submitted that the Petitioner has not participated in the disciplinary inquiry initiated by the Department, despite giving several opportunities. Therefore, the departmental proceedings proceeded ex-parte. The Inquiry Officer, after completion of inquiry, found the charge levelled against the Petitioner is proved. The disciplinary Authority i.e. the Board of the Kendriya Bhandar has accepted the report of the Inquiry Officer and imposed the major penalty on the Petitioner while dismissing him from service.

18. Learned counsel appearing on behalf of Respondents submitted that the Petitioner has applied for VRS on  $6^{th}$  November, 2006. The said application of the Petitioner was placed before the meeting of the Board and it was decided that the said application may be kept pending till the appointment of the DGM (F&A). Furthermore, the Board has taken a decision that till then, he may be compensated by way of fixed special allowance to the extent of 10% of the total monthly emoluments. It is an admitted fact that the VRS application of the Petitioner had not been accepted by the competent authority and was still pending with the Department. The departmental proceedings has been initiated against the Petitioner and the Petitioner was asked to submit the reply vide Memorandum dated  $26^{th}$  June, 2007 to explain the allegation that he

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failed to safeguard the financial interests of the organization. After the conclusion of the said inquiry, the allegations against the Petitioner were proved. A minor penalty of Censure was imposed on the Petitioner vide order dated 15<sup>th</sup> April, 2008.

19. Learned counsel appearing on behalf of Respondents submitted that the Petitioner has also been found absent from the service w.e.f. 13<sup>th</sup> January, 2008 without information or without getting his leave sanctioned. A memo was also issued to him on 18th January, 2008 for explanation of unauthorized absence from the service. He has replied to the said memo and stated therein that he was not medically fit, therefore, he could not join the service. It was further requested that the medical leave may be sanctioned in view of the illness of the Petitioner during the period of his absence from the service. The Department has asked for his medical report/certificate for sanctioning the medical leave. However, the Petitioner has failed to furnish the same in favour of his application. It is submitted that the Department cannot grant medical leave to any employee without furnishing the medical report/certificate. Since the Petitioner has failed to furnish the same, therefore, the Department has not been granted the medical leave and the Petitioner has been treated as unauthorized absentee from the service.

20. Learned counsel appearing on behalf of Respondents submitted that the Petitioner, without resigning from the Department, has joined the other organization, which has been established during the inquiry when the Inquiry Officer visited the alleged organization and found that the Petitioner was working there. The Petitioner has also admitted the said fact that he has already joined the said organizing without resigning from

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the service. It is argued here that the reasons put forth by the learned counsel for the Petitioner do not have any merit since, on the one hand, the Petitioner may be viewed as deemed retired from the service, following the expiration of the VRS notice, which means that VRS was assumed to be accepted. On the contrary, he has replied to the memo dated 18<sup>th</sup> January, 2008, issued by the Department seeking the explanation about the unauthorized absence. In reply, the Petitioner has applied for medical leave without disclosing the fact that he already has joined the other organization.

21. Learned counsel appearing on behalf of Respondents submitted that the Petitioner did not join the departmental inquiry initiated against him, despite giving several opportunities. The Inquiry Officer, after conducting the Inquiry, found that the allegations made against the Petitioner are proved and the Inquiry Report was accepted by the competent authority. Hence, the Petitioner has rightly been dismissed from the service. It is submitted that there is no illegality in the impugned order passed by the Authority concerned and therefore, the instant petition is liable to be dismissed.

# FINDINGS AND ANALYSIS

22. Heard learned counsel appearing on behalf of the parties and perused the record.

23. For proper adjudication of the instant matter, the relevant paragraphs of the impugned order dated 5<sup>th</sup> November, 2009 are reproduced herein below:-

*"4. Whereas, in the meantime, Sh. Sanjay Gupta filed CM No.10883/2008 which was heard on 8th August 2008 in* 

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Delhi High Court. Sh. D.K. Nag, counsel for Kendriva Bhandar, was also present during the hearing. The High Court dismissed the writ petition as withdrawn reserving the liberty as prayed for by the petitioner to make representation to respondent No.2 a No.2 (Kendriva Bhandar) for treating him as having resigned from the service of respondent No.2 w.e.f. the date he absented himself some time in December. 2007 to take up a job with M/s. Cogent EMR Solutions. Sh. D.K. Nag, learned counsel on behalf of the kendriya Bhandar, said on the occasion that in case any such representation was made by the petitioner, the same shall be considered appropriately. After the decision of the Court. Sh. Sanjay Gupta submitted a representation dated 29.08.2008 (received on 06.09.08) addressed to the Chairman, Kendriva Bhandar followed by a reminder dated 19.11.2008. Both the representations were examined in Kendriva Bhandar and a OM dated 01.12.2008 was issued to Sh. Sanjay Gupta with the approval of Chairperson, intimating him that the Competent Authority had already approved the issue of charge sheet to him for major penalty for unauthorized absence etc. and that action had already been initiated by the Inquiry officer appointed for the purpose. It was also informed that the judgment dated 08.08.2008 passed by the Hon'ble High Court did not contain any direction to Kendriay Bhandar and that his representation dated 29.08.2008 would be placed before the Competent Authority after conclusion of enquiry by the enquiry officer, for consideration and appropriate order.

5. Whereas, the Competent Authority in Kendriya Bhandar, i.e. Board of Directors, considered these facts alongwith the report of the Inquiry officer in its meeting held on 27<sup>th</sup> May, 2009. The Board of Directors rejected the representations unanimously as Sh. Sanjay Gupta failed to comply with directions/ decisions of the Board and absented himself from the service unauthorisedly and joined an outside employment without first resigning and being relieved from the service of Kendriaya Bhandar. The Board

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of Directors also decided to accept the report of the Inquiry Officer in toto. The decision of the competent Authority as regards the representations dated 29.08.2008 and 19.11.2008 submitted by Sh. Sanjay Gupta and a copy of the Inquiry Report were forwarded to sh. Sanjay Gupta, vide OMS dated 12.06.2009 separately. He was given 15 days' time to submit his representation, if any, against the findings of the Inquiry Officer.

6. Whereas, Sh. Sanjay Gupta, did not submit any representation against the finding of the Inquiry officer.

7. Whereas, the Competent Authority, after taking into consideration all the facts and circumstances of the case decided in their meeting held on 03.09.2009 and in exercise of powers conferred under Section 30 of the Delhi Shops and Establishment Act, 1954 that ends of justice would be met if the major penalty of "dismissal from service" of the Kendriya Bhandar is imposed on Sh. Sanjay Gupta, Chief Accounts officer, (presently unauthorisedly absent from duty) as the charges framed against him were established as grave and stand proved beyond doubt.

8. And Whereas, in view of the facts and circumstances of the case as detailed in the preceding paras, Sh. Sanjay Gupta, Chief Accounts Officer, Kendriya Bhandar, is hereby dismissed from service with immediate effect.

9. Receipt of this order be acknowledged."

24. The Petitioner has applied for the VRS on 6<sup>th</sup> November, 2006. The Kendriya Bhandar introduced the VRS vide circular dated 7<sup>th</sup> August, 2006, inviting applications for voluntary retirement from the employees upto 6<sup>th</sup> November, 2006 as per terms and conditions of the VRS scheme. The circular dated 7<sup>th</sup> August, 2006 is reproduced herein below:-

#### "<u>CIRCULAR</u> VOLUNTARY RETIREMENT SCHEME

The Board of Kendriya Bhandar in their meeting held 24.06.2006 has approved the introduction of Voluntary Retirement on Scheme for the employees of Kendriya Bhandar and Voluntary Separation Scheme for the daily wagers/casual workers engaged in Kendriya Bhandar initially for a period of three months.

The eligibility, the terms & conditions and the benefits under the <u>Voluntary Retirement Scheme</u> as applicable to the employees of Kendriya Bhandar and <u>Voluntary Separation</u> <u>Scheme</u> as applicable to the daily wagers/casual labour and piece rated labour engaged in Kendriya Bhandar are enclosed in Annexure-1 & II respectively

Employees of Kendriya Bhandar as well as daily wagers/casual workers/piece rated workers who want to avail of the Voluntary Reurement Scheme and Voluntary Separation Scheme may apply in the <u>respective Application</u> <u>Form enclosed</u> in Annexure (I) & (II)

The Voluntary Retirement Scheme, Voluntary Separation Scheme is being introduced initially for <u>a period of three</u> <u>months</u> and the applications for Voluntary Retirement Scheme/Voluntary Separation Scheme will be received in Kendriya Bhandar <u>only upto 6<sup>th</sup> November, 2006.</u>

The Management of Kendriya Bhandar reserves the right to grant or refuse to grant the Voluntary Retirement Scheme and Voluntary Separation Scheme to the employees of Kendriya Bhandar and daily wagers/casual/piece rated workers respectively engaged in Kendriya Bhandar as the case may be.

This issues with the approval of the Competent Authority.

(S.P.SHARMA) Secretary

#### **VERDICTUM.IN**

#### NEUTRAL CITATION NO. 2022/DHC/005856

to

 All Sections at Head Office, R.K.Puran (E) and (W) for information of all the employees.
All RMs/DMs of Kendriya Bhandar
All Officers
OSD (Admn.)
Sr.PA to Managing Director
All Stores
Notice Board 8. Office copy
Copy for information to : Chairman, Kendriya Bhandar
Managing Director, Kendriya Bhandar

Enclosed: Annexure-I and Annexure-II"

25. The Petitioner has applied for the VRS on  $6^{th}$  November, 2006 seeking voluntary retirement through the letter addressed to the Secretary, Kendriya Bhandar, Pushpa Bhawan, New Delhi. The said letter has been placed before the Board, which is the competent authority to take a decision on the request of the voluntary retirement, for consideration in its meeting held on  $13^{th}$  January, 2007. The said request of the voluntary retirement was not accepted by the Board in its meeting and took a decision that the request of the Petitioner may be kept pending till the appointment of the DGM (F&O). It has also compensated him, by way of fixed special allowance to the extent of 10% of the total monthly emoluments till then.

26. It is an admitted fact that the application of the Petitioner seeking voluntary retirement was not accepted by the competent authority. The Petitioner was also found involved in some irregularities and after the departmental inquiry, which has been initiated against the Petitioner and

proceeded in accordance with law, found guilty and minor penalty of Censure has been imposed on him.

27. The Petitioner was also found in unauthorized absence from the service and without informing or resigning from the post, he joined the other organization. Furthermore, the departmental proceedings were initiated and the Petitioner did not participate in it, despite giving ample opportunities. Hence, the proceedings were proceeded ex-parte and the Inquiry Officer has concluded the inquiry against the Petitioner and found that the allegation leveled against the Petitioner was proved.

28. It is pertinent that a copy of the inquiry report was also sent to the Petitioner. The Petitioner was again given an opportunity to comment upon the departmental inquiry as well as the report of the Inquiry Officer. The Respondent directed the Petitioner to produce his statement in writing failing which, it would be considered that the Petitioner agreed completely with the report of the Inquiry Officer.

29. Even in response to this, the Petitioner remained silent throughout the whole exchange. The Petitioner was found to be guilty of the charges of having been absent from duty without prior permission of the Competent Authority and without information of proceeding on leave, which amounts to disobedience of order and dereliction of duty, after the careful perusal of the report of the Inquiry Officer, the disciplinary authority arrived at a conclusion that proceedings have been concluded as per the applicable rules. It is further alleged that the petitioner had joined some other organization without giving notice of resignation to the respondent organization.

30. The record and the averments of the present petition make it abundantly evident that the Petitioner has not even bothered to inform the Respondent organization regarding his absence from duty and joining other organization. The said fact is crystal clear upon perusal of the record and the averments of the present petition.

31. After evaluating every component of the case, this Court ultimately decided to pass the challenged order to the Petitioner as a means of meting out the most severe sanction possible for the said violation.

32. It has been settled by the Hon'ble Supreme Court in its judgment titled as *State of Punjab v. Dr. P.L. Singla;* (2008) 8 SCC 469, that authorized absence of an employee from his duty amounts to misconduct. The relevant paragraphs of the judgment are reproduced herein:

"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.

12. An employee who remains unauthorisedly absent for some period (or who overstays the period of leave), on reporting back to duty, may apply for condonation of the absence by offering an explanation for such unauthorised absence and seek grant of leave for that period. If the employer is satisfied that there was sufficient cause or justification for the unauthorised absence (or the overstay after expiry of leave), the employer may condone the act of indiscipline and sanction leave post facto. If leave is so sanctioned and the unauthorised absence is condoned, it will not be open to the employer to thereafter initiate disciplinary

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proceedings in regard to the said misconduct unless it had, while sanctioning leave, reserved the right to take disciplinary action in regard to the act of indiscipline. XXX

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. Where the punishment is either dismissal or removal, it may not be necessary to pass any consequential orders relating to the period of unauthorised absence (unless the rules require otherwise). Where the punishment awarded for the unauthorised absence, does not result in severance of employment and the employee continues in service, it will be necessary to pass some consequential order as to how the period of absence should be accounted for and dealt with in the service record. If the unauthorised absence remains unaccounted it will result in break in service, thereby affecting the seniority, pension, pay, etc. of the employee. Any consequential order directing how the period of absence should be accounted, is an accounting and administrative procedure, which does not affect or supersede the order imposing punishment."

33. It is well established that the introduction of the VRS by the Department, does not automatically qualify an employee to the benefits of the Scheme as a matter of right. Whether or not an employee should be permitted to retire in accordance with the Scheme in the event that the Scheme itself provides for retirement to become effective upon

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completion of the notice period. The VRS that was implemented by the Department is, in essence, an expression of the Department's aim to prune the overstaffed positions.

34. The contention made by the Petitioner that his application for voluntary retirement became effective upon the expiration of the period of notice given by him must fail because there was no such stipulation in the scheme that even without acceptance of his application, it would be deemed that the Petitioner's application for voluntary retirement had been accepted. As soon as it became clear that this would not be authorized, he was approached with the offer to join his service. In addition to this, he received compensation in the form of a set special allowance equal to 10% of the total emoluments received each month. The Petitioner was completely aware of this situation because he was requested for the medical leave when the Department had questioned about his unlawful/unauthorized absence. This meant that the Petitioner was fully aware of this stance. In addition to that, respondent requested a medical report or certificate from the Petitioner. At that point in time, he did not disclose the fact that he had already left the Department and had joined other organization without giving the formal resignation from the Department.

35. No procedural infirmity is pointed out in the conduct of the disciplinary inquiry. Learned counsel for the Petitioner has also not been able to prove violation of any statutory provisions or principles of natural justice.

### **CONCLUSION**

36. Having considered the facts and circumstances of the case, this Court does not find any illegality in the impugned order dated  $5^{th}$  November, 2009. Accordingly, the instant petition being devoid of any merit, is dismissed.

- 37. Pending applications, if any, also stand dismissed.
- 38. The judgment be uploaded on the website forthwith.

# (CHANDRA DHARI SINGH) JUDGE

**DECEMBER 23, 2022** Dy/ug

