

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH  
AT JAMMU**

**Reserved on : 27.10.2021  
Pronounced on : 17.11.2021**

SWP No.1082/2017  
IA Nos.2/2018, 1/2017,  
3/2018, 1/2018  
CM No.4001/2020

Pritam Bhattacharya

**.....Petitioner**

Through: Mrs. Surinder Kour, Sr. Advocate, with  
Ms. Manpreet Kour, Advocate

**versus**

Union of India & others

**.....Respondent(s)**

Through: Mr. L.K. Moza, CGSC

**Coram: HON'BLE MR. JUSTICE TASHI RABSTAN, JUDGE**

**JUDGMENT**

1. Through the medium of this petition, the petitioner is seeking to quash Order No.14012/31TF/P Bhattacharya/41/EIE dated 14.01.2015 issued by the Chief Engineer, Project Sampark GREF, respondent No.3 herein, whereby the petitioner came to be removed from service and the entire period of overstayed leave was treated as absent without leave and was considered as dies-non for all purposes. The petitioner is also seeking a direction to the respondents to allow him to join against the post of Junior Engineer, E&M and also to release pay and allowance with effect from August, 2011 with all consequential benefits.

**2.** The facts-in-brief as averred in the writ petition are that the petitioner came to be appointed as Charge Mechanic in Border Road Organization on 24.08.2002. Thereafter the petitioner was promoted to the post of Junior Engineer E&M and was posted at 1052 Field Workshop, C/O 56 APO Rajouri. It is averred that on 10.06.2011 the petitioner was granted 10 days leave and after the expiry of leave period he could not join the unit because of sudden heavy flood in the home district of petitioner due to heavy rain. In the meantime the relations between the petitioner and his wife became strained and on her complaint FIR No.305 dated 12.03.2012 came to be registered against the petitioner at Police Station Berhampore and the petitioner was kept in jail for number of years and came to be released from jail on 05.07.2016. It is also averred that the Staff Officer (Works) vide communication dated 25.05.2012 addressed to the Commanding Officer revealed that how the police authorities were blindly helping the wife of petitioner, though the neighbours were ready to depose against the wife of petitioner, but despite that petitioner was kept in jail under fake and false allegations leveled by his wife, and all these facts he gathered from the RTI application filed by him. It is averred in the petition that after release from jail the petitioner reported for duty at Headquarter 31 BRTF but was not allowed to join. It is averred that the petitioner also made a representation, but of no avail. Hence, the present petition.

**3.** Learned senior counsel appearing for petitioner argued that neither any show cause notice was issued nor any order was ever served upon the petitioner nor the respondents conducted any inquiry as mandated under the provisions of CCS (CCA) Rules, 1965. She further argued that though the respondents were having the knowledge that the petitioner was in jail for

number of years, yet the respondents did not allow him to join when he reported for duty.

4. Objections have been filed on behalf of respondents contending therein that the petitioner proceeded on 12 days casual leave with effect from 11.06.2011. Thereafter, he applied for extension of leave till 31.07.2011 and was to resume duties on 01.08.2011. However, he failed to report for duty on the due date, in fact he never joined his duties nor reported to any nearby office of the answering respondents. Accordingly, roll for absent without leave/desertion of GREF personnel was issued on 24.08.2011 to Superintendent of Police and Deputy Commissioner, Murshibadad, West Bengal, but he could not be traced out. Thereafter a memorandum was issued by the Commanding Officer on 07.11.2012 containing the articles of charges framed against the petitioner which was served at the given address of petitioner. Since petitioner did not respond to the articles of charges, Col. Paramjot Singh, Commanding Officer was appointed as the inquiry officer on 03.07.2013. Since again the petitioner did not present himself before the inquiry officer to defend himself, the inquiry officer conducted the inquiry proceedings in absence of petitioner and submitted the report on 28.04.2014 holding the charges framed against the petitioner as having been proved. Thereafter, again a notice was issued to the petitioner seeking his response. Since again the petitioner did not respond, the answering respondents accepted the findings of inquiry officer and vide Order No.14012/31TF/P dated 14.01.2015 removed the petitioner from service directing that the entire period of over staying of leave be treated as absent without leave and the said period be considered as dies-non for all purposes.

5. Heard learned counsel appearing for the parties, considered their rival contentions and also perused the record produced by the learned counsel for respondents.

6. A perusal of the writ petition reveals that the same does not disclose when the leave period of petitioner had to expire, when he applied for extension of leave, what was the status of petitioner for more than seven months, i.e., from 01.08.2011 when he had to join for duties to 12.03.2012 when allegedly FIR was registered against him, on which date the petitioner was lodged in jail, for how many days/years the petitioner remained in jail, when the petitioner got bail etc. Though the petition has been drafted in a totally vague, immature and casual manner without any type of clarity, yet after going through communication dated 25.05.2012 of Staff Officer (Works) addressed to the Commanding Officer one can understand that the respondents were having the knowledge that the petitioner was in jail with effect from 12.03.2012 and that the said Staff Officer (Works) through the said letter requested the Commanding Officer for extending helping hand for the petitioner's family. Therefore, the assertion of respondents that the petitioner was not being traced out nor could be apprehended despite issuance of roll for absent without leave cannot be relied upon. He was discharged from service with effect from 14.01.2015 on the ground that neither he turned up to join his duties nor he presented himself in the office for facing the inquiry despite sending several communications to him, when the fact of the matter was that the petitioner was in jail.

7. It is to be seen here that in terms of Rule 14(4) of CCS Rules, the disciplinary authority was required to deliver or cause to be delivered to the

petitioner a copy of the articles of charge, the statement of the imputations of misconduct or misbehavior and a list of documents and witnesses by which each article of charge is proposed to be sustained and shall require the petitioner to submit, within such time as may be specified, a written statement of his defence and state whether he desires to be heard in person. Although, it seems the petitioner was in jail, yet the record reveals that neither any show cause notice was caused to be served upon him nor any inquiry was conducted in terms of the Central Civil Services (Classification, Control and Appeal) Rules, 1965 (for short, CCS Rules) so as to show the cause of his absence before removing him from service. Further, the respondents have themselves admitted in the objections that the inquiry proceedings were conducted against the petitioner at his back and in his absence. Since the petitioner was in jail for so many years, then how could he be expected to participate in the inquiry proceedings or join the service nor he might be in the knowledge of all these things being going on. Thus, admittedly, the petitioner had not been afforded with an adequate opportunity of being heard. The action of respondents, therefore, is in violation of Articles 14 & 16 of the Constitution of India and also against the principles of natural justice. Further, in paragraph-2 of parawise reply to the objections, the respondents have specifically averred that during the service tenure of petitioner, nothing adverse came in the notice of respondents; meaning thereby the respondents have admitted that the petitioner had a clean service record.

**8.** Therefore, in view of what has been discussed hereinabove, the writ petition is allowed and Order No.14012/31TF/P Bhattacharya/41/EIE dated 14.01.2015 removing the petitioner from service is hereby quashed. The

respondents are, however, at liberty to conduct inquiry against the petitioner in accordance with the rules/regulations occupying the field and complete the same positively within a period of three months from the date a copy of this order/judgment is served upon them. Petitioner's retention in service or otherwise shall depend on the outcome of such inquiry. Connected miscellaneous petition(s) accordingly stands disposed of.

9. Registry to send back the record against proper receipt.

Jammu:  
17.11.2021  
(Anil Sanhotra)

**(Tashi Rabstan)**  
**Judge**

Whether the order is reportable ?  
Whether the order is speaking ?

Yes  
Yes