

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.8579 of 2020

=====

Pankaj Kumar Singh, Son of Ram Briksh Singh Pahepuri, Resident of Village- Pahepur, P.S.-Mufassil (Samastipur), District-Samastipur, presently residing at Nishant Residency, Flat No.C/101, Frazer Road, P.S.-Gandhi Maidan, District-Patna-800001

... .. Petitioner

Versus

1. The State Bank of India through the Chief General Manager, Local Head Office, 8th Floor, West Gandhi Maidan, Patna-800001.
2. The Chief General Manager, State Bank of India, Local Head Office, 8th Floor, West Gandhi Maidan, Patna-800001.
3. The General Manager (NW-III) State Bank of India, Local Head Office, 8th Floor, West Gandhi Maidan, Patna-800001.
4. The Deputy General Manager, Region-5, Zonal Office, Muzaffarpur, State Bank of India, Poddar Complex, Near Zubba Sahni Park, Muzaffarpur.
5. The Regional Manager, State Bank of India, Regional Business Office, Region-5, Bettiah, Ujjain Tola, Bettiah-845438.

... .. Respondents

=====

Appearance :

For the Petitioner/s	:	Mr. P.K. Shahi, Sr. Advocate Mr. Raju Patel, Advocate Mr. Mukesh Kumar Thakur, Advocate
For the S.B.I.	:	Mr. Rajendra Narain, Sr. Advocate Mr. Binod Bihari Sinha, Advocate Mr. Amarjeet Choudhary, Advocate Mr. Ajay Dutt Mishra, Advocate

=====

CORAM: HONOURABLE MR. JUSTICE HARISH KUMAR
ORAL JUDGMENT

Date : 03-09-2026

Heard Mr. P.K. Shahi, learned Senior Advocate, duly assisted by Mr. Raju Patel, learned Advocate for the petitioner, and Mr. Rajendra Narain, learned Senior Advocate, assisted by Mr. Binod Bihari Sinha, learned Advocate for the State Bank of India (hereinafter referred to as “the SBI”).



2. The challenge in the present writ petition is made to the 1st Notice bearing No. REF: RM/RBO/BTH/HR/G/210 dated 06.11.2019, issued under the signature of the Regional Manager, Regional Business Office (hereinafter referred to as “RBO”), Bettiah, in exercise of the power conferred under Rule 40(3) of the State Bank of India Officers’ Service Rules, 1992 (hereinafter referred to as “the Rules, 1992”). By the said notice, the petitioner was directed to report for duty and furnish a satisfactory explanation for his absence within thirty days from the date of receipt of the notice, failing which it was to be deemed that the petitioner had voluntarily vacated his office, amounting to voluntary resignation from service without the requisite notice.

3. The petitioner has also assailed the 2nd Notice bearing No. REF No.HR/IR/2792 dated 13.12.2019, issued under the signature of the Appointing Authority-cum-General Manager, (NW-III), SBI, whereby it was declared that the petitioner had voluntarily vacated the service of the Bank, amounting to voluntary resignation from service with effect from 07.12.2019. By the same notice, the petitioner was further directed to pay an amount equivalent to three months’ emoluments within fifteen days from the date of receipt thereof, failing which the Bank would be at liberty to adjust the said



amount against the petitioner's terminal dues, without prejudice to its right to recover the whole or any part thereof by instituting appropriate proceedings.

4. Aggrieved by the aforesaid notices, the petitioner preferred an appeal before the Appellate Authority-cum-Chief General Manager, SBI. The said appeal, however, came to be rejected vide order bearing No. HR/A&R/451 dated 24.06.2020, which order has also been assailed in the present writ petition.

5. Certain facts, which are necessary for adjudication of the controversy, may briefly be noticed hereunder:

(i). The petitioner joined the SBI on 30.11.1989 upon being appointed as a Clerk-cum-Cashier at its Main Branch at Gandhi Maidan. In due course, having been found eligible, he was promoted to Junior Management Grade Scale-I as Assistant Manager in the year 2006 and thereafter to Middle Management Grade Scale-II as Deputy Manager in the year 2011.

(ii). The dispute which ultimately led to the issuance of the impugned notices and the consequential order arose out of the petitioner's transfer while he was posted at the Digha Branch of the SBI, Patna. The petitioner had applied for an inter-zone transfer from Patna Zone to Muzaffarpur Zone on 11.03.2019 in terms of the prevailing transfer policy of the Bank.



(iii). The petitioner's request for transfer was duly considered by the Bank and, pursuant thereto, he was relieved from the SBI, Digha Branch, Patna, on 24.06.2019, with a direction to report to the Muzaffarpur Zone for his eventual posting. In compliance thereof, the petitioner reported at the Muzaffarpur Zone on 25.06.2019 and continued to discharge his duties till 28.06.2019.

(iv). Thereafter, the petitioner was served with a letter bearing No. HR/MK 544 dated 28.06.2019, issued by the Chief Manager (HR) Muzaffarpur, who, at the relevant point of time, was posted at the disposal of RBO, Bettiah.

(v) It is the case of the petitioner that, during the aforesaid period, he was diagnosed with acute jaundice upon consultation with Dr. N.K. Ojha, M.D., Patna, who advised him complete rest for a period of at least forty-five days. Consequently, the petitioner applied for leave and subsequently sought extension thereof for the period from 01.07.2019 to 31.07.2019. The said leave was duly sanctioned by the Bank through its HRMS portal.

(vi) While the petitioner was on bed rest in terms of the medical advice, he developed another ailment in the form of severe pain in his legs. Consequently, he was admitted on 17.10.2019 to the private clinic of a renowned Orthopedic



Surgeon, namely, Dr. Bijay Narain Singh, Patna. He remained under his treatment for a considerable period and was further advised to take complete rest at least till the middle of December, 2019.

(vii) Accordingly, the petitioner remained on medical rest from 17.10.2019 to 13.12.2019. On 14.12.2019, upon being found medically fit, he was advised to resume his duties. It is the case of the petitioner that, pursuant to the letter of posting dated 28.06.2019, he submitted his joining at the Regional Business Office, Bettiah, on 16.12.2019.

(viii) Upon reporting for duty at the Regional Business Office, Bettiah, the petitioner was served with three communications, namely, the letter dated 22.10.2019, the notice dated 06.11.2019 and the second/final notice dated 13.12.2019.

(ix) By the letter dated 22.10.2019, the leave which had earlier been granted by the competent authority was declined. It was stated therein that, since the petitioner had not reported at R.B.O., Bettiah, his absence with effect from 29.06.2019 had been treated as unauthorized absence and no leave had been sanctioned by the respondent-authority. The said communication further stated that the competent authority was not satisfied with the documentary evidence furnished by the petitioner in support of his leave application and, consequently,



his request for leave was declined and the period of his absence was treated as unauthorized.

(x) By the subsequent notice dated 06.11.2019, the petitioner was directed to report for duty and furnish a satisfactory explanation for his absence within thirty days from the date of receipt of the notice. It was further stipulated that, in the event of his failure to do so, it would be deemed that the petitioner had voluntarily vacated his office, amounting to voluntary resignation from the service of the Bank.

(xi) Thereafter, by the communication dated 13.12.2019, the petitioner was informed that he had voluntarily vacated the service of the Bank, which was treated as voluntary resignation from service with effect from 07.12.2019.

(xii) Having received the aforesaid communications, the petitioner preferred an appeal before the Appellate Authority on 21.01.2020 against the impugned communication bearing No. HR/IR/2792 dated 13.12.2019. The petitioner thereafter awaited the disposal of his appeal and any communication from the Appellate Authority in that regard. However, no order was communicated to him.

(xiii) In the circumstances, the petitioner, on 12.08.2020, submitted a representation to the Appellate Authority through registered post as well as by email, stating,



inter alia, that a period of more than six months had elapsed since the filing of the appeal and, in the meantime, he had been deprived of his service-related entitlements. Thereafter, the petitioner received an email on 14.08.2020 informing him that his appeal had already been rejected by a speaking order dated 24.06.2020.

6. Mr. P.K. Shahi, learned Senior Advocate, referring to the facts of the case, primarily submitted that, prior to the dispute in question, the petitioner had completed more than thirty years of unblemished service in the Bank. During his long tenure, he had served in various capacities and at different branches and offices of the Bank, where he discharged his duties to the entire satisfaction of the organisation, and there had never been any complaint whatsoever against his conduct or performance.

7. Learned Senior Advocate further submitted that, pursuant to his transfer on 24.06.2019 from the SBI, Digha Branch, Patna, to the Muzaffarpur Zone, the petitioner immediately reported at the Muzaffarpur Zone on 25.06.2019 and continued to discharge his duties till 28.06.2019. On 28.06.2019, when the services of the petitioner were placed at the disposal of the RBO, Bettiah, he was suffering from extreme physical weakness and had been diagnosed with jaundice. In



such circumstances, the petitioner submitted his application for medical leave through the HRMS portal, which was duly sanctioned for the period from 01.07.2019 to 31.07.2019. It is further contended that, consequent upon sanction of the aforesaid leave, the petitioner was paid his full salary for the said period, as would also be evident from Annexure-10 to the writ petition. Moreover, the leave statement of the petitioner would demonstrate that he had substantial sick leave standing to his credit. Considering his serious medical condition arising out of jaundice and the ligament-related ailment resulting from an earlier accident, the petitioner was advised complete bed rest.

8. Learned Senior Advocate further argued that the petitioner thereafter submitted an application before the competent authority seeking extension of his medical leave and, from time to time, furnished the medical prescriptions and other relevant documents in support of his claim for medical leave. Upon completion of the prescribed treatment and having been declared medically fit, the petitioner immediately submitted his joining on 16.12.2019. It is contended that the action of the respondent-authorities in subsequently treating the leave already sanctioned in favour of the petitioner for the period from 01.07.2019 to 31.07.2019 as unauthorized absence, on the ground that the same had not been approved by the competent



authority, is wholly arbitrary, *mala fide* and unsustainable. This is particularly so when the petitioner had admittedly been paid his salary for the said period. The observation contained in the letter dated 22.10.2019 that the competent authority was not satisfied with the documentary evidence produced by the petitioner in support of his leave application is unsupported by any cogent or valid reason and amounts to nothing more than a mere *ipse dixit*. In the absence of any material or adverse finding casting doubt upon the genuineness or *bona fides* of the medical certificates and prescriptions produced by the petitioner, the same could not have been rejected outrightly.

9. Mr. Shahi, further submitted that the *mala fide* intention, pre-determined approach and ulterior motive of the respondent-authorities are also apparent from the sequence of events. The 1st Notice dated 06.11.2019, bearing No. HR/G/210, required the petitioner to report for duty and furnish a satisfactory explanation for his absence. However, prior thereto, by communication dated 22.10.2019, the competent authority had already purported to decline the leave granted to the petitioner for the period from 01.07.2019 to 31.07.2019, notwithstanding the fact that the said leave had already been sanctioned through the HRMS portal. It is next contended that so far as the exercise of power under Rule 40(3) of the Rules,



1992 is concerned, the same has been invoked against the petitioner on an erroneous assumption that he had remained absent from duty with effect from 28.06.2019. According to learned Senior Advocate, the petitioner had sufficient sick leave as well as privilege leave standing to his credit and, therefore, the period during which he was incapacitated on account of illness ought to have been adjusted against the accumulated leave available to him, rather than being treated as unauthorized absence leading to the drastic consequence of treating him as having voluntarily vacated his office.

10. It is further contended that the notice dated 06.11.2019 was never served upon the petitioner at his last known address, which was duly available in the records of the Bank. The petitioner's recorded address was Nishant Residency, Flat No.C/101, Fraser Road, Patna-800001, which had not only been furnished to the Bank but had also been duly renewed from time to time by the competent authority, lastly up to 31.10.2020. It is submitted that even the letter dated 22.10.2019, whereby the petitioner's leave was purportedly declined, was never served upon him at his last known address.

11. So far as the 2nd Notice dated 13.12.2019 is concerned, there is no dispute that the said notice was served upon the petitioner at the RBO, Bettiah, on 16.12.2019, when he



reported there to resume his duties after having been declared medically fit by the attending doctor. The contention of the respondent-authorities that the aforesaid communications were also sent to the petitioner through email, according to learned Senior Advocate, does not inspire confidence and cannot constitute valid service. It is submitted that the petitioner's official email account, through which the respondent-Bank claims to have communicated the relevant notices and orders, had already been blocked by the Bank unilaterally, for reasons best known to the Bank itself. Consequently, the respondent-authorities could not have relied upon such mode of communication while simultaneously failing to serve the petitioner at his recorded and last known postal address.

12. Referring to Rule 40(3) of the Rules, 1992, Mr. Shahi, learned Senior Advocate, further submitted that the respondent-Bank was admittedly aware of the petitioner's last known address and, therefore, in terms of the mandate contained in the said Rule, the requisite communication was required to be made through post at such address. According to him, the prescribed procedure was not followed in the present case and, consequently, the subsequent action taken against the petitioner on the basis of such alleged service is rendered unsustainable.

13. Adverting to the order passed by the Appellate



Authority, learned Senior Advocate submitted that, despite the Appellate Authority having acknowledged that, as per the HRMS data, the petitioner had been sanctioned sick leave on full-pay basis for the period from 01.07.2019 to 31.07.2019 by the competent authority, the appeal came to be rejected without properly considering the said material fact. The Appellate Authority itself acknowledged that the letter dated 22.10.2019 had been sent to the petitioner by registered post at his recorded address, but the same had been returned undelivered. Nevertheless, while considering the subsequent notice dated 13.12.2019, whereby the petitioner was informed of the purported voluntary vacation of service, the Appellate Authority proceeded on the basis that the petitioner had acknowledged the said notice on 16.12.2019 when he visited the RBO, Bettiah. On the same occasion, the petitioner was also served with the letter dated 22.10.2019, which had earlier been returned undelivered.

14. According to learned Senior Advocate, the aforesaid sequence of events clearly demonstrates that the procedure prescribed for invoking the drastic consequence of voluntary vacation of service was not followed in its true letter and spirit. The subsequent acknowledgment of the communications by the petitioner on 16.12.2019, when he himself reported for duty, could not cure the earlier failure of the



Bank to effect service in the manner prescribed under the Rules. It is, therefore, submitted that the entire procedure adopted by the respondent-authorities was arbitrary and contrary to the statutory requirements and, consequently, warrants interference by this Court.

15. Placing reliance upon the decision of the Hon'ble Supreme Court in ***Dipak Babaria & Anr. v. State of Gujarat & Ors., [(2014) 3 SCC 502]***, learned Senior Advocate submitted that where a statute prescribes that a particular thing is to be done in a particular manner, the same must necessarily be done in that manner and in no other manner.

16. Reliance has also been placed upon the decision in ***Chhel Singh v. M.G.B. Gramin Bank Pali & Ors., [2014 (3) PLJR (SC) 451]***. It is submitted that, once it was neither the case of the respondent-Bank nor of the competent authority that the medical reports and certificates submitted by the petitioner were false, fabricated or procured for any extraneous consideration, and in the absence of any material or finding to that effect, the competent authority could not have discarded or disbelieved the medical certificates issued by the attending doctors without assigning any cogent or valid reason.

17. Reference has also been made to the decision of the Hon'ble Supreme Court in ***Krushnakant B. Parmar v.***



Union of India and Another, [(2012) 3 SCC 178]. Relying upon the said decision, it has been submitted that where absence from duty is occasioned by compelling circumstances which render it impossible for an employee to report for or perform his duties, such absence cannot, merely for want of prior permission, be treated as wilful absence. Although such absence may, in a given case, amount to unauthorized absence, unauthorized absence by itself does not necessarily imply or establish wilful absence from duty.

18. It is, therefore, submitted that, in the facts of the present case, where the petitioner's absence was admittedly on account of serious medical conditions and was supported by medical prescriptions and certificates, and where the petitioner had sufficient leave standing to his credit, the respondent-authorities acted illegally in treating the period of his medical absence as wilful absence and in invoking the provisions relating to voluntary vacation of service against him.

19. *Per contra*, Mr. Rajendra Narain, learned Senior Advocate appearing for the SBI, controverting the aforesaid submissions, has vehemently contended that the real reason for the petitioner proceeding on sick leave was his dissatisfaction with the posting allotted to him. According to learned Senior Advocate, the petitioner had sought transfer from Patna Zone to



Muzaffarpur Zone with an expectation that he would eventually be posted at a branch under the Samastipur Regional Business Office. However, his request for such choice posting was not acceded to and, instead, he was transferred to the Regional Business Office, Bettiah. It is submitted that, rather than joining at the place of his posting, the petitioner proceeded on leave, which, *prima facie*, reflected an act of indiscipline.

20. Learned Senior Advocate for the SBI further submitted that, despite being fully aware that he had already been relieved from the Digha Branch, SBI, the petitioner deliberately submitted his application for sick leave through the HRMS portal to the Branch Manager, SBI, Digha Branch. The Branch Manager, SBI, Digha Branch, inadvertently approved the petitioner's leave while processing the leave applications of other employees. According to learned Senior Advocate, the said fact was subsequently brought to the notice of the Controlling Authority by the Branch Manager, SBI, Digha Branch, through an email dated 26.07.2019. It is contended that, since the purported sanction of sick leave had been granted by an authority which was not competent to do so, such sanction could not confer any legal entitlement upon the petitioner. As the petitioner was required to report at the RBO, Bettiah, and failed to do so, his request for sick leave was rightly declined by



the competent authority.

21. Mr. Narain, further submitted that, as the petitioner continued to remain absent from duty, a notice dated 18.09.2019 was issued to him by the competent authority at the Regional Business Office, Bettiah, at the address recorded by the petitioner himself in the HRMS portal. It is, therefore, submitted that the petitioner could not legitimately dispute the service of the said communication. It is next contended that, since the petitioner had remained unauthorizedly absent from duty with effect from 28.06.2019, the competent authority, in exercise of the power conferred under Rule 40(3) of the Rules, 1992, issued the 1st Notice dated 06.11.2019 calling upon him to report for duty. The notice specifically stipulated that, in the event the petitioner failed to report for duty and furnish a satisfactory explanation for his absence within thirty days, it would be deemed that he had voluntarily vacated his employment, amounting to voluntary resignation from service without giving the requisite notice.

22. Learned Senior Advocate further contended that, despite receipt of the aforesaid notice, the petitioner did not report for duty. Instead, he submitted a letter dated 16.10.2019 referring to the earlier communication dated 18.09.2019, wherein he asserted that his leave had been sanctioned up to



31.07.2019 and requested that his application for sick leave be considered.

23. In the aforesaid background, Mr. Rajendra Narain, learned Senior Advocate for the SBI, submitted that, on the one hand, the petitioner has acknowledged receipt of certain communications sent to the address recorded in the HRMS portal, while, on the other hand, he disputes receipt of other communications sent to the very same address. Such a plea, according to learned Senior Advocate, cannot be permitted to be taken selectively and according to the convenience of the petitioner. It is further argued that, despite his leave having been subsequently declined by the competent authority, the petitioner continued to remain absent for more than ninety consecutive days. Consequently, the Bank, in exercise of its power under Rule 40(3) of the Rules, 1992, issued the requisite notice at the petitioner's last known address available in the records of the Bank, calling upon him to report for duty within thirty days from the date of the notice.

24. Notwithstanding the aforesaid notice, the petitioner failed to report for duty within the stipulated period. Consequently, in terms of the statutory provision, he was deemed to have voluntarily vacated his employment upon expiry of the period prescribed in the notice. It is emphatically



contended that there was no violation or transgression of any procedure prescribed under the Rules, 1992, and the Bank had acted strictly in accordance with the procedure contemplated under Rule 40(3).

25. According to learned Senior Advocate, the petitioner's continued absence, despite repeated communications and opportunities afforded to him, constituted a clear case of neglect of duty and indiscipline, leaving the Bank with no option but to proceed against him under Rule 40(3) of the Rules, 1992. The appeal preferred by the petitioner was duly considered by the competent Appellate Authority. Upon consideration of the materials on record and the grounds urged by the petitioner, the appeal was found to be devoid of merit and was accordingly rejected. The Appellate Authority had considered all relevant aspects of the matter and had passed a speaking and reasoned order. In such circumstances, the petitioner had failed to demonstrate any ground warranting interference by this Court in exercise of its limited jurisdiction of judicial review.

26. While concluding his submissions, Mr. Rajendra Narain, learned Senior Advocate appearing for the SBI, placed reliance upon the decision of the Hon'ble Supreme Court in ***Bharat Petroleum Corporation Limited and Another v. N.R.***



Vairamani and Another, [(2004) 8 SCC 579]. Relying upon the said decision, learned Senior Advocate submitted that a judicial decision cannot be relied upon without examining whether the factual situation in the case in which the decision was rendered bears sufficient similarity to the facts of the case under consideration. According to him, the factual and circumstantial context of each case assumes significance, and even a single distinguishing fact may make a substantial difference between two cases. It is, therefore, submitted that cases ought not to be decided by placing blind reliance upon precedents without examining their applicability to the facts and issues arising for consideration. The decisions relied upon by learned Senior Advocate appearing for the petitioner have no application to the facts of the present case. According to him, the authorities relied upon by the petitioner primarily concern cases involving disciplinary proceedings and the question of wilful absence in that context, whereas the present case is governed specifically by Rule 40(3) of the Rules, 1992. Rule 40(3) expressly empowers the competent authority to treat an officer as having voluntarily vacated his employment where, despite service of the requisite notice, he fails to report for duty within the stipulated period. Therefore, according to learned Senior Advocate, once the petitioner failed to report for duty within the



prescribed period pursuant to the notice issued under Rule 40(3), the consequence contemplated under the said Rule automatically followed, and the impugned action of the Bank does not warrant interference by this Court in exercise of its writ jurisdiction.

27. This Court has given its anxious consideration to the submissions advanced by learned Senior Advocates appearing for the rival parties and has also perused the materials available on record as well as the relevant provisions of the State Bank of India Officers' Service Rules, 1992.

28. Before proceeding further, it would be apposite to observe that an employee cannot be treated as a slave and, ordinarily, has the right to relinquish his employment voluntarily by tendering his resignation. Equally, however, a prolonged and unexplained absence from duty may, depending upon the applicable service rules and the surrounding circumstances, constitute abandonment of service. While absence from duty for a short duration may constitute misconduct warranting appropriate action, continued absence for an extended period may, where the governing service rules so provide, lead to the statutory consequence of treating the employee as having voluntarily abandoned or vacated his employment.

29. The Hon'ble Supreme Court, in a catena of



decisions, has recognised that where an employee remains absent beyond the prescribed period for which leave of any kind could be granted, the applicable service rules may provide for such absence resulting in the employee being treated as having resigned from service and consequently ceasing to be in employment. Where the statutory rules themselves provide for such a consequence upon fulfilment of the prescribed conditions, a regular departmental enquiry may not necessarily be required. Reference in this regard may be made to the decision of the Hon'ble Supreme Court in *Vijay S. Sathaye v. Indian Airlines Limited and Others*, [(2013) 10 SCC 253].

30. In the light of the principles enunciated in the aforesaid decisions and for dealing with cases of unauthorized absence from duty or overstaying of leave, the SBI has made specific provisions in the Rules, 1992. Rules 40(2) and 40(3), which assume significance in the present context.

31. Rule 40(2), *inter alia*, provides that an officer who overstays his leave, except in circumstances beyond his control, shall not be entitled to any salary or allowance for the period of such absence without leave and shall also be liable to any of the penalties specified in rule 67.

32. Rule 40(3) of the Rules, 1992, which is particularly relevant for the present controversy, contemplates,



inter alia, that where an officer, who has not submitted an application for leave, or where an officer having submitted his application was refused sanction of leave, absent himself for a period of 90 or more consecutive days or over stay the sanctioned leave by 90 or more consecutive days notwithstanding the provision of Sub-Rule (2), the Bank may, at any time thereafter, give a notice to the officer at his last known address available with the Bank, calling upon him to report for duty within 30 days from the date of such notice. If the Officer does not report for duty within the stipulated period, he may, by an order of the Appointing Authority, be deemed to have voluntarily vacated his employment on the expiry of the said period set out in the notice.

33. Thus, Rule 40(3) incorporates a specific mechanism for dealing with prolonged absence from duty or overstaying of sanctioned leave and, upon fulfilment of the conditions stipulated therein, empowers the Appointing Authority to treat the officer as having voluntarily vacated his employment. It is in this backdrop of the aforesaid statutory scheme that the legality and validity of the action taken against the petitioner in the present case is required to be examined.

34. Now, coming to the facts of the case, there is no dispute with regard to the factual position that, upon his transfer



to the Muzaffarpur Zone and prior to his joining at the Regional Business Office, Bettiah, the petitioner had sought sick leave for the period from 01.07.2019 to 31.07.2019. The said leave was duly approved through the HRMS portal by the Branch Manager, SBI, Digha Branch, upon consideration of the medical prescriptions and reports furnished by the petitioner in support of his request for leave and its subsequent extension.

35. Even if, for the sake of argument and for the present, the contention of the Bank is accepted that the leave was sanctioned by an authority who was not competent to grant such leave at the relevant point of time, or that the petitioner had approached such authority with a view to obtaining an undue advantage, the least that was expected of the respondent-authorities was to forward the petitioner's application to the competent authority for proper consideration of his request for sick leave.

36. In the present case, once the petitioner was informed through the HRMS portal that his sick leave had been approved, there was no reason or occasion for him to submit a fresh application for the very same period, particularly when the petitioner was paid his full salary for the said period pursuant to the approval of his leave.

37. This Court is also at a loss to understand as to how



the application for sick leave could have been rejected merely on the ground that the authority who had initially approved the leave was subsequently found to be not competent to do so. The factum of such approval could not, by itself, constitute a valid ground for completely discarding the petitioner's claim for sick leave without examining the genuineness and *bona fides* of the medical grounds on which such leave was sought.

38. The petitioner had produced medical prescriptions and reports in support of his request for leave. The genuineness of the said medical documents was never specifically disputed by the respondent-authorities, nor was any material placed on record to suggest that the same were forged, fabricated or otherwise unreliable. In the absence of any such finding or material, rejection of the petitioner's request for sick leave merely on the ground of want of competence on the part of the authority who had initially approved the leave, without examining the medical documents produced by the petitioner, in the considered opinion of this Court, does not withstand the test of fairness and reasonableness.

39. This Court is conscious of the distinction between mere absence from duty and wilful or unauthorized absence from duty. The mere fact that an officer was not physically present at his place of posting cannot, by itself, lead to the



conclusion that such absence was wilful, deliberate or without justification. Before holding an employee to be unauthorizedly absent from duty, particularly where the absence is claimed on medical grounds, the appointing or competent authority is required to consider the reasons furnished by the employee and the materials placed in support thereof.

40. There can be no quarrel with the proposition that, where an employee fails to furnish any supporting material for his absence, or where the medical prescriptions or reports relied upon by him are found to be fictitious, forged or fabricated, appropriate action may certainly be taken against him for unauthorized absence in accordance with law. However, the position would be materially different where the employee has produced medical prescriptions, medical reports and, subsequently, a fitness certificate issued by the treating doctors, and the genuineness or *bona fides* of such documents has neither been specifically disputed nor discredited by any cogent material.

41. In the present case, the petitioner had admittedly submitted his application for sick leave along with medical prescriptions and reports. The medical documents relied upon by him were never held to be forged or fabricated, nor was any enquiry undertaken to establish their falsity. The treating doctors



had prescribed medication and subsequently issued a fitness certificate. In such circumstances, the medical basis of the petitioner's absence could not have been brushed aside without assigning any cogent reason.

42. There is yet another aspect of the matter which assumes significance. A disputed question of fact arises with regard to the service of the notices and communications upon the petitioner at his last known address, as contemplated under Rule 40(3) of the Rules, 1992.

43. According to the petitioner, the HRMS portal reflected his last known address as "Nishant Residency, Flat No.C/101, Fraser Road, Patna-800001". It is stated that the said address was duly recorded and renewed by the competent authority from time to time, lastly up to 31.10.2020. However, according to the petitioner, none of the impugned notices or communications was served upon him at the said address.

44. The contention of the petitioner further assumes significance in view of his assertion that his official email account, through which the respondent-Bank claims to have communicated the relevant notices and orders, had already been blocked by the Bank unilaterally. In such circumstances, the mere fact that the petitioner responded to one of the communications and sought extension of his sick leave cannot,



by itself, establish that all the notices and communications relied upon by the Bank were duly and validly served upon the petitioner in the manner contemplated under Rule 40(3) of the Rules, 1992.

45. Before invoking the drastic consequence contemplated under Rule 40(3) of the Rules, 1992, the question of unauthorized absence or overstaying of leave must necessarily be examined in the light of the preceding statutory provision contained in Rule 40(2). Rule 40(2), *inter alia*, provides that an officer who overstays his leave shall not be entitled to any salary or allowance for the period of such absence without leave and shall also be liable to any of the penalties specified in rule 67 of the Rules, 1992.

46. The scheme of Rule 40, therefore, requires the authority to first determine whether the absence of the officer is, in fact, unauthorized or amounts to overstaying of leave within the meaning of Rule 40(2). It is only upon the requisite conditions being satisfied that the consequence contemplated under Rule 40(3) can be invoked against the concerned officer.

47. This Court further finds that none of the competent authorities has assigned any cogent or convincing reason as to why the medical reports and prescriptions furnished by the petitioner were not found satisfactory. If the respondent-



authorities entertained any doubt regarding the genuineness or correctness of the medical reports or prescriptions submitted by the petitioner, they were expected to have the same verified through an appropriate mechanism or, if necessary, to have referred the petitioner for examination by a duly constituted Medical Board. A mere recital, while declining the petitioner's sick leave, that the competent authority was "not satisfied with the documentary evidence" produced by him, without disclosing any reason for such dissatisfaction, amounts to an arbitrary exercise of power and cannot be sustained in the eyes of law.

48. The Appellate Authority, though having taken note of the material facts on record, failed to examine the most material aspect of the matter, namely, what persuaded the competent authority to decline the petitioner's sick leave despite the fact that the leave had earlier been sanctioned through the HRMS portal and the petitioner had been paid full salary for the said period. The Appellate Authority also failed to deal with the specific contention raised by the petitioner in his memo of appeal regarding non-service of the notices and orders at his last known recorded address.

49. It is significant to note that, had the petitioner actually received the 1st Notice dated 06.11.2019, there was no apparent reason for him not to submit an explanation,



particularly when he had substantial leave standing to his credit. According to the petitioner, he had more than 270 days of earned leave to his credit and was also entitled, under the applicable service rules, to substantial sick leave. These circumstances were relevant and ought to have been duly considered before drawing the drastic consequence of treating the petitioner as having voluntarily vacated his employment.

50. It needs to be emphasised that conferment of discretion upon an authority under a statutory rule and the exercise of such discretion in accordance with the rule are two distinct aspects. It is well settled that whenever a statutory authority is vested with discretion, such discretion cannot be exercised arbitrarily, mechanically or on the basis of extraneous considerations. The discretion must be exercised objectively, fairly and upon due consideration of all relevant facts and materials available on record.

51. The Hon'ble Supreme Court, in ***Krushnakant B. Parmar*** (*supra*), particularly in paragraph 17, has observed that where absence from duty is the result of compelling circumstances which render it impossible for an employee to report for or perform his duties, such absence cannot be treated as wilful absence. Mere absence from duty without an application for leave or prior permission may constitute



unauthorized absence, but it does not invariably follow that such absence is wilful. There may be several eventualities on account of which an employee may be compelled to remain away from duty, including circumstances beyond his control such as illness, accident, hospitalization and the like. In such circumstances, an employee cannot, merely on account of such absence, be held guilty of lack of devotion to duty or conduct unbecoming of a government servant.

52. In the present case, this Court has already recorded a categorical finding that the very basis on which the petitioner's application for leave was declined, namely, that the leave had been approved by an authority who was not competent to sanction the same, cannot, in the facts and circumstances of the case, be sustained. The petitioner's medical condition and the medical documents furnished by him were not found to be false, forged or fabricated, nor was their genuineness otherwise discredited by the respondent-authorities.

53. Consequently, the foundation for treating the petitioner's absence as unauthorized absence stood materially eroded. In such circumstances, the invocation of Rule 40(3) of the Rules, 1992 against the petitioner, without first properly determining the nature and status of his leave and without considering the medical materials furnished by him in their



proper perspective, cannot be sustained.

54. On consideration of the facts and circumstances of the case and in the light of the discussions made hereinabove, this Court is of the considered opinion that the action of the respondent-Bank and its authorities does not withstand the test of fairness and reasonableness embodied in Article 14 of the Constitution of India. The petitioner's medical grounds for absence were not considered in their proper perspective, the basis for rejection of his sanctioned leave was not disclosed by the competent authority, and the petitioner was not afforded a fair and meaningful opportunity to explain his alleged unauthorized absence before the drastic consequence of voluntary vacation of service was imposed upon him.

55. The impugned action, therefore, also suffers from violation of the principles of natural justice.

56. Accordingly, the impugned notice dated 06.11.2019 and the consequential notice dated 13.12.2019, contained in Annexures-1 and 2 respectively to the writ petition, as well as the order dated 24.06.2020 passed by the Appellate Authority, contained in Annexure-3 to the writ petition, are hereby held to be unsustainable in law and are accordingly quashed and set aside.

57. Consequently, the respondent-Bank is directed to



reinstate the petitioner in service with continuity of service.

58. However, considering the facts and circumstances of the case, the petitioner shall not be entitled to salary or allowances for the period during which he did not actually discharge his duties. The said period shall, however, be counted for the purposes of continuity of service and for all other consequential service benefits, as admissible in accordance with the applicable service rules.

59. The writ petition stands allowed.

60. The parties shall bear their own cost(s).

(Harish Kumar, J)

rohit/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	05-09-2026
Transmission Date	

