

HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR

S.B. Civil Writ Petition No. 12444/2020

Tina Negi D/o Lt. Shri Jaswant Singh Negi, Aged About 35 Years,
R/o Gali No. 6, Punam Colony, Gujrati Mohalla, Kota.

-----Petitioner

Versus

1. Director General, Ministry of Railways, Railway Protection Force, RPF Control Room, Railway Board, New Delhi 110001
2. Senior Divisional Security Commissioner, Ministry of Railways, Railway Protection Force, West Central Railway, Kota-324001 (Rajasthan)

-----Respondents

For Petitioner(s)	:	Mr. Ajat Shatru Mina, Adv.
For Respondent(s)	:	Ms. Manjeet Kaur, Adv. Mr. Alam Sahani, Adv. Ms. Garvita Sharma, Adv.

HON'BLE MR. JUSTICE MUNNURI LAXMAN

Judgment

DATE OF CONCLUSION OF ARGUMENTS : 21/04/2026

DATE ON WHICH ORDER IS RESERVED : 21/04/2026

FULL ORDER OR OPERATIVE PART : FULL ORDER

DATE OF PRONOUNCEMENT : 30/04/2026

1) The present writ petition challenges the enquiry report dated 12.09.2019 and the order of removal dated 26.12.2019 passed by the second respondent, Senior Divisional Security Commissioner, as well as the appellate order dated 30.06.2020 passed by the Deputy Inspector General, Railway Protection Force, Jabalpur.

2) The brief facts leading to the present proceedings are that

the petitioner was working as a Female Constable at Kota and was permanently confirmed to the post on 28.07.2006. While she was serving under the Prosecution Office of the Railway Protection Force at Kota, the respondent authorities transferred her on 27.11.2018 to Sawai Madhopur on the ground of administrative exigency, and she was relieved from her existing position by proceedings dated 16.12.2018. The petitioner was on privilege leave on medical grounds, though without a sick certificate as required, until 25.11.2018, whereas the transfer order was issued on 27.11.2018. Thereafter, multiple communications were issued by the competent authority directing the petitioner to join her post at Sawai Madhopur. The petitioner, through the letter dated 10.12.2018, informed the Senior Divisional Commissioner, RPF, Kota about her medical condition and requested an extension of leave. On 12.12.2018, the petitioner's mother also submitted a communication informing the authorities about the petitioner's medical condition and her inability to attend duty. Despite this, the respondents continued to issue communications directing her to join at Sawai Madhopur.

3) The disciplinary proceedings were initiated on three counts. The first charge relates to disobedience of the transfer order dated 27.11.2018, inasmuch as the petitioner failed to join her post at Sawai Madhopur. The second charge relates to continuous absence from duty without following the prescribed procedure and to her failure to respond to the various

communications issued by the respondents. The third charge is relating to non-compliance of the procedure to avail medical leave. The charge sheet was duly served in accordance with the prescribed procedure, calling upon the petitioner to submit her explanation. As no explanation was received, an Enquiry Officer was appointed. The Enquiry Officer issued notice to the petitioner commencing the enquiry; however, the petitioner neither responded to the notice nor participated in the enquiry proceedings. Consequently, the enquiry was conducted ex parte. During the enquiry, the department examined two witnesses and relied upon various documents. On the basis of the evidence on record, the Enquiry Officer found all three charges proved. The initial Disciplinary Authority communicated the enquiry report to the petitioner and sought her response. Upon receiving her reply, the initial Disciplinary Authority found that he was not authorised to impose the penalty of removal and, therefore, he referred the matter to the second respondent, who, by the impugned order, imposed the penalty of removal from service. The petitioner unsuccessfully challenged the order of removal passed by the Disciplinary Authority, and her appeal was also dismissed, concurring with the findings of the Disciplinary Authority. Aggrieved by the same, the present writ petition has been filed.

4) Heard both the sides.

5) The principal contention of the learned counsel for the petitioner is that the petitioner was on leave till 25.11.2018,

which was in the nature of privilege leave. However, the leave was availed on medical grounds without a sick certificate as required. She went to Delhi on 26.11.2018 to undergo further treatment at Virmani Hospital, New Delhi, where she was advised to take rest. Meanwhile, she also suffered an accidental fall, resulting in further deterioration of her medical condition. Her medical condition was duly informed to the competent authority, and she sought an extension of leave. In the meantime, she was transferred, and she could not join at the transferred place on account of her continuing medical condition, which ultimately resulted in the order of removal.

6) The learned counsel further submits that there were justifiable grounds for the petitioner's absence. The petitioner was suffering from stress-related ailments such as migraine and depression, which compelled her to seek treatment in Delhi and Mumbai. Such treatment was taken from private doctors, and the treatment records were forwarded to the competent authority for extension of leave. According to the petitioner, where medical treatment is obtained from a non-Railway doctor, the competent authority is required to refer the medical record to a Railway doctor to verify the genuineness of the treatment, and only upon an adverse report from the Medical Officer, the application for extension of leave can be rejected. It is contended that, without following such procedure, the competent authority could not have rejected the request for grant of leave.

7) The learned counsel for the petitioner also submits that

the alleged disobedience of the transfer order and non-response to the communications issued by the respondents, directing the petitioner to join duty, were on account of her medical condition. Though the petitioner may have remained absent without permission, such unauthorised absence cannot be equated with willful absence. It is contended that every absence does not amount to willful absence, and there must be evidence and a clear finding that such unauthorised absence was the result of willful conduct on the part of the petitioner. In the present case, there is no such finding recorded either by the Enquiry Officer or by the Disciplinary Authority. Therefore, the finding on the first charge is unsustainable.

8) The learned counsel for the petitioner further contended that upon submission of the treatment records from a private doctor the competent authority ought to have referred the petitioner to a Railway medical officer for verification. Without adopting such a procedure, the authority could not have rejected the request for extension of leave. It is submitted that such rejection is in violation of the rules and regulations governing the grant of medical leave. Finally, it is contended that, even assuming that Charge No. 3 relates to a procedural lapse in the submission of the application for medical leave is proved, it does not constitute such grave misconduct so as to impose the penalty of removal from service. According to the learned counsel, the punishment is disproportionate to the alleged misconduct, particularly in view of the petitioner's 16 years of

service prior to her removal.

9) In support of his contentions, the learned counsel for the petitioner has relied upon the judgments of Hon'ble Supreme Court rendered in the cases of (i) **Krushnakant B. Parmar Vs. Union of India & Anr.**, reported in 2012(3) SCC 178, (ii) **Shri Bhagwan Lal Arya Vs. Commissioner of Police Delhi & Ors**, reported in (2004) 4 SCC 560, (iii) **A.L. Kalra Vs. Project & Equipment Corporation of India Ltd.**, reported in (1984) 3 SCC 316, (iv) **Glaxo Laboratories (I) Ltd. Vs. Presiding Officer, Labour Court, Meerut & Ors**, reported in (1984) 1 SCC 1, (v) **Inspector Prem Chand Vs. Govt. of NCT of Delhi & Ors.**, reported in (2007) 4 SCC 566, (vi) **Charanjit Lamba Vs. Commanding Officer, Army Southern Command & Ors.**, reported in (2010) 11 SCC 314 and (vii) **Coimbatore District Central Cooperative Bank Vs. Coimbatore District Central Cooperative Bank Employees Assn. & Anr.**, report in (2007) 4 SCC 669.

10) Per contra, the learned counsel appearing for the respondents submitted that the petitioner created medical records to justify her conduct and to avoid compliance with the transfer orders. It is submitted that the petitioner was granted Privilege Leave on 25.11.2018, although she claimed to be suffering from a minor medical condition. However, such a grant cannot be equated with grant of medical leave, which mandatorily requires a sick certificate from the Railway Medical Officer. The petitioner claims to have shifted to Delhi on

26.11.2018 from the headquarters. This indicates that she was available within the jurisdiction of the Railway Medical Officer at the headquarters and could have reported to obtain a sick certificate before shifting to Delhi. It is further submitted that the medical certificate produced by the petitioner, issued at Delhi, reflects only a minor medical condition, which could not have prevented her from applying for sick leave through the prescribed procedure. The entire claim of the petitioner on medical grounds appears to be motivated by her transfer to Sawai Madhopur. As per the applicable rules, the petitioner was required to submit a sick certificate from the competent Railway Medical Officer or, if she was outside the territorial jurisdiction of her headquarters, from the concerned Railway Medical Officer at that place, or, if railway doctor is unavailable, from a treating medical practitioner within 48 hours. This requirement has not been complied with. Even when she was within the jurisdiction of the Railway headquarters, she failed to obtain and submit the necessary certificate. Similarly, after reaching New Delhi, she did not obtain a sick certificate from the local Railway Medical Officer.

11) It is also the contention of learned counsel for the respondents that the petitioner filed a writ petition before this Court challenging the transfer order, and that the affidavit was sworn by the petitioner before the Oath Commissioner at Jaipur during the period in which she claimed to be undergoing treatment in New Delhi. It is submitted that if the petitioner was

medically fit to travel, she could have approached the Railway Medical Practitioner or the Railway Doctor near her place of temporary stay; however, she failed to do so. The aforesaid conduct of the petitioner clearly demonstrates disobedience of the transfer order, and her absence from duty was the result of willful conduct. The Enquiry Officer and the Disciplinary Authority have duly examined the evidence and rightly concluded that the petitioner was willfully absent from duty without authorization, even though such specific terminology may not have been expressly used in the enquiry report or the disciplinary proceedings.

12) The learned counsel appearing for the respondents further contended that the petitioner violated the procedure relating to the availment of sick leave as prescribed under the Indian Railway Medical Manual, particularly Rules 538 and 539. It is submitted that when the petitioner claims to be on medical leave and requires continuous treatment, she is required to report periodically to the Medical Officer if she is fit to travel, or otherwise communicate her condition if she is bedridden. In the absence of compliance with such procedure, the petitioner is liable to be delisted from sick leave on account of non-attendance. It is further submitted that the petitioner's name would be entered on the sick-list and would be liable to be unlisted if she fails to obtain a sick memo issued by the controlling officer while reporting before the Medical Officer. The controlling officer is required to endorse the employee's status,

including any special circumstances such as duty under a transfer order or pending disciplinary proceedings. Such compliance is required within 48 hours. It is also submitted that even assuming that the petitioner was not present at the headquarters, she could have obtained a sick certificate or continuation thereof from the Railway Medical Officer at the place where she was temporarily residing. It is not her case that no Railway Medical Officer was available near the hospital where she was undergoing treatment. Therefore, the entire claim of the petitioner is an indicative of willful/neglect conduct to avoid transfer by remaining continuously absent from duty.

13) The learned counsel for the respondents also contended that the scope of judicial review under Article 226 in departmental proceedings is very limited, and this Court may refuse to interfere where the findings are based on evidence that reasonably establishes the charges. It is further submitted that once this Court arrives at the conclusion that the findings on the charges do not warrant interference, it cannot interfere with the quantum of punishment unless the punishment is shockingly disproportionate, such that no reasonable person, in similar circumstances, would have imposed a penalty of removal for the proved misconduct. It is also contended that the conduct of the petitioner, as reflected from the three charges that have been proved, clearly demonstrates grave misconduct on her part. The punishment of removal is proportionate and does not suffer from any disproportionality so as to warrant interference by this

Court.

14) In support of her contentions, the learned counsel for the respondents has relied upon the judgments rendered by Hon'ble Supreme Court in the cases of (i) **State of U.P. Vs. Ashok Kumar Singh**, reported in 1995 Supreme (SC) 1172, (ii) **Union of India & Ors. Vs. Datta Linga Toshawad**, reported in 2005 Supreme (SC) 147, (iii) **Union of India & Ors. Vs. Gulam Moho. Bhat**, reported in 2005 Supreme (SC) 1371, (iv) **Union of India & Ors. Vs. Ex. No.6492086A SEP/ASH Kulbeer Singh**, reported in 2019 (13) SCC 20, (v) **Union of India & Ors. Vs. P. Gunasekaran**, reported in 2014 Supreme (SC) 813, (vi) **Union of India & Ors. Vs. Managobinda Samantaray**, reported in 2022 Supreme (SC) 793 and (vii) **The State of Bihar & Ors. Vs. Phulpari Kumari**, reported in 2019 Supreme (SC) 1334.

15) I have considered the submissions advanced by both the parties and carefully perused the material available on record.

16) This Court is conscious of the limited scope of interference in disciplinary matters while exercising its power of judicial review. This Court normally interferes only in cases where the findings are perverse, where irrelevant facts have formed the foundation of the decision, or where relevant facts or evidence have been ignored, thereby affecting the decision-making process, or where the order suffers from arbitrariness or a complete violation of procedure.

17) Dealing with the first two charges, there is no doubt that there is evidence to the effect that the petitioner availed Privilege Leave on 25.11.2018. This leave was not supported by any sick certificate. The reasons assigned in the application for grant of Privilege Leave, however, indicate that the petitioner was suffering from a minor medical condition, namely headache and migraine, but the same was not accompanied by any medical certificate. This implies that the leave granted cannot be treated as medical leave in the strict sense as required under the applicable procedure. The petitioner was present at the headquarters on 26.11.2018 and was fit enough to travel, as she claims to have travelled from Kota to Delhi. At the time of leaving the headquarters, she had the opportunity to present herself before the Railway Medical Officer, which she failed to do. She subsequently produced a medical certificate from a doctor at New Delhi, which also does not relate to any serious medical condition. As per the certificate, the petitioner was suffering from severe migraine and had allegedly sustained an accidental fall resulting in spondylosis. According to the petitioner, she was advised rest by a private doctor for the said medical conditions. The transfer order was issued on 27.11.2018, i.e., one day after the date on which the petitioner claims to have traveled to New Delhi. However, the petitioner has not produced any travel documents for 26.11.2018, although the medical certificate indicates that she received treatment in Delhi.

18) The petitioner first submitted a communication dated

10.12.2018 to the competent authority, explaining her medical condition and seeking extension of leave on the basis of a medical certificate issued by Virmani Hospital, New Delhi. Her mother also submitted a letter dated 12.12.2018 explaining the petitioner's medical condition. It is also the petitioner's case that upon deterioration of her condition, she went to Mumbai for specialized treatment, where doctors diagnosed her with depression allegedly arising from stress and migraine. On this basis, the learned counsel for the petitioner contends that although her absence was unauthorized, it cannot be termed as willful. It is further contended that she could not comply the transfer order and join at the transferred place due to her medical condition.

19) The legal position with regard to unauthorized absence, as laid down by the Apex Court in the judgments relied upon by the petitioner's counsel, is clear that every unauthorized absence cannot be treated as willful absence. There must be specific evidence to establish that such absence was willful, though it may still be categorized as unauthorized absence. This Court, upon perusal of the findings of the Enquiry Officer as well as the Disciplinary Authority, finds that there is no specific finding to the effect that the petitioner's absence or disobedience of duty was the result of willful conduct. However, upon examining the medical records and the conduct of the petitioner, it appears that her medical condition was not so serious so as to prevent her from presenting herself before the Railway Medical Officer for a

proper assessment of whether her absence from duty was genuinely on medical grounds. This procedure was not followed.

20) The petitioner was present at the headquarters on 26.11.2018 and was capable of travel. This indicates that she could have visited the Railway Medical Officer, which she did not do. Moreover, in the writ petition filed by her, which forms part of the record, she did not initially raise the medical condition as a ground to resist the transfer though it was later relied upon during the disciplinary proceedings. The transfer order was issued on 27.11.2018, and the petitioner did not join at Sawai Madhopur thereafter. Her own case indicates that after treatment in New Delhi, she proceeded to Mumbai for further treatment. These facts clearly suggest that the petitioner was in a condition fit for travel and that her medical condition was not so severe as to prevent her from joining at the transferred place and thereafter seeking medical examination for continuation of treatment. The petitioner made her request for extension of leave only on 10.12.2018.

21) It appears that her absence may have been influenced by the pendency of her writ petition challenging the transfer order, in which she was unsuccessful in obtaining any interim relief. The said writ petition was later withdrawn. It further appears that, in expectation of favourable interference by this Court, she abstained from joining in compliance with the transfer order and subsequently sought to justify her absence on medical grounds supported by a private medical certificate from New Delhi.

Considering the nature of the petitioner's medical condition, her ability to travel, and her failure to present herself before the Railway Medical Officer, particularly in the context of her transfer, these factors cumulatively indicate willful conduct. However, the charges were framed on the premise of disobedience of the transfer order and unauthorized absence from duty. There is no clear finding recorded with regard to willful absence. In view of the nature of the charges, there was no occasion for the authorities to examine the conduct of the petitioner specifically from the standpoint of willfulness. Nevertheless, the evidence on record indicates that the conduct may be construed as willful. The charge of absence requires clear evidence and a specific finding regarding willfulness by the quasi-judicial authority, i.e., the Enquiry Officer. Although there is evidence on record, no such finding has been rendered either by the Enquiry Officer or by the Disciplinary Authority. If these were the only charges, this Court would have exercised its power to remand the matter for fresh consideration by the Enquiry Officer and the Disciplinary Authority on the basis of the evidence already on record. However, in the present case, such a course is not considered appropriate.

22) The third charge relates to violation of conduct rules in availing sick leave. The relevant Rules are 538 and 539 of the Indian Railway Medical Manual, they are hereunder:-

"538. Sick certificate:-(1) When a railway employee, who is residing within the jurisdiction of a Railway doctor, is unable to attend duty by reason

of sickness, he must produce, within 48 hours, a sick certificate from the competent Railway doctor in the prescribed form as given in annexure XI to this chapter.

(2) Should a Railway employee, residing within the jurisdiction of the Railway doctor, desire to be attended by a non-Railway doctor of his own choice, it is not incumbent on him to place himself under the treatment of the Railway doctor. It is however essential that if leave of absence is required on medical certificate, a request for such leave should be supported by a sick certificate from the Railway doctor.

(3) Sick certificate may be issued by the Railway doctor of the section in which the Railway employee resides for the time being.

(4) When a Railway employee residing outside the jurisdiction of a Railway doctor requires leave on medical certificate, he should submit, within 48 hours, a sick certificate from a registered medical practitioner. Such certificate should be, as nearly as possible, in the prescribed form as given in the annexure XI and should state the nature of the illness and the period for which the Railway employee is likely to be unable to perform his duties. The competent authority may, at its discretion accept the certificate or, in cases where it has reasons to doubt the bonafides, refer the case to the Authorised Medical Officer for advice or investigation. The medical certificates from the Registered private practitioners produced by the employee in support of their applications for leave may be rejected by the competent authority only after a Railway medical officer has conducted the necessary verifications and on the basis of the advice tendered by him after such verifications. However, where the Railway medical officer could not be deputed for such verifications, the certificate from the registered private medical practitioner may be accepted straightaway.

Note :-(i) Ordinarily, the jurisdiction of a Railway doctor will be taken to cover Railway employees residing within a radius of 2.5 K.M of railway hospital or health unit to which the doctor is attached, and within a radius of one kilometer of a Railway station of the doctor's line jurisdiction.

(ii) To prevent misuse of private medical certificates, the Divisional Railway Managers may withdraw the privilege as given in the concluding portion of the above sub-

paragraph by special notification to the staff for special periods. In respect of workshop employees, the power to withdraw the privilege of acceptance of certificates from registered private practitioners shall be exercised by the administrative officers in J.A.G and S.A Grades.

(5) When issuing the certificates, Railway doctors will exercise care and judgement in recommending the period of absence for which the Railway employee is unable to attend duty which should be commensurate with the nature and severity of illness.

(6) The submission of sick certificate as prescribed in sub-para(1) to (5) above shall be tantamount to only an application for leave on medical certificate, and shall not be held to carry with it permission to quit the station, unless such permission is expressly given by the competent Railway doctor.

Note:- (1)A Railway employee who is placed on sick list by a Railway doctor should continue to report to him when fit to travel, or send intimation about his condition if he is bed-ridden, at such intervals as directed by the Railway doctor. If a Railway employee fails to do so, he is liable to be discharged from sick list for non-attendance.

(2) Special provisions for members of Railway Protection Force reporting Sick: No member of the Force shall be taken on sick list by any Railway Medical Officer unless such member comes with written reference known as 'Sick Memo' from his controlling officer and also gives declaration in triplicate as per the proforma given at the end of this para.

The Controlling Officer shall issue 'Sick Memo' to the member of the Force on demand, whether such member is on duty or on leave at the Headquarters. While issuing such a memo, the controlling officer shall mention on it whether the member is required/detailed for special duty, under transfer order, facing DAR action and avoiding to attend departmental enquiry or is habitual of reporting sick, etc. In case such a member is taken on sick list by a Railway Medical Officer, the member shall intimate within 48 hours his controlling officer about being taken on

sick list and submit the Railway Medical Certificate to the controlling officer.

The Railway Medical Officer taking the staff on sick list shall send one copy of the declaration as indicated in this rule to the controlling officer of the member, the second copy of the declaration will be kept by him for his record and the third copy will be handed over to the member of the Force along with Railway Medical Certificate and the member of the Force will submit the same to his controlling officer along with Railway Medical Certificate.

Provided that the member who, due to emergency, is not able to take 'Sick Memo' from his controlling officer, may directly report to Railway Medical Officer for treatment. The member will have to inform the Railway Medical Officer immediately, if he wants to report sick and give the declaration as given at the end of this paragraph in triplicate. In case the member is taken on sick list as outdoor patient, it shall be obligatory for the member to get a 'Sick Memo' from his controlling officer and submit the same to the Railway Medical Officer. If the member is taken on sick list as indoor patient, the Railway Medical Officer shall intimate the controlling officer by sending him a copy of the declaration and the controlling officer will issue 'Sick Memo' on receipt of the declaration from the Railway Medical Officer. The sick certificate, in any case, will be issued on receipt of sick memo from the controlling officer or any other equivalent or higher official.

Provided further that if a member is on leave or on duty away from his Headquarters, he may take 'Sick Memo' from the in-charge of the nearest Railway Protection Force post/out post or from Station Master/Assistant Station Master, if no Railway Protection Force post/out-post is located nearby. The incharge of Railway Protection Force post/out-post or Station Master/Assistant Station Master issuing a 'Sick Memo' as mentioned above shall intimate the controlling officer of the member immediately. In case the member is taken on sick list as outdoor patient, he will immediately intimate his controlling officer about this fact. The attending Railway Medical Officer shall examine the member with a view to find out if the member is fit to travel up to his Headquarters, if so, he will issue fit to travel certificate.

If a member is found to be habitually reporting sick usually on occasion of his deployment to special duty or on refusal of leave he may be sent for special medical examination by competent authority to ascertain as to the genuineness of the illness.

Wherever there are more than one doctor in the hospital/Health Unit/OPD (Outdoor Patient Department), the issuance of Railway Medical Certificate for the RPF shall be dealt with only by one authorised doctor to be nominated by the in-charge of the Hospital/Divisional In-charge.

Ordinarily no Railway Medical Certificate shall be issued for more than 7 days at a time unless a member is admitted in the hospital as an indoor patient. Similarly, after discharge from the hospital, a member shall not be kept on sick list for more than 14 days at a time.

Provided that in certain circumstances if the Medical Officer concerned is of the opinion that the patient will have to be kept as an OPD (Outdoor Patient Department) case for domiciliary treatment for a longer period, the same may be done but a detailed report will have to be sent about such patient to the Chief Medical Superintendent/Medical Superintendent in-charge of the division endorsing a copy of the same to the controlling officer of the patient:-

A member who has been issued Railway Medical Certificate shall be examined regularly during the period of sickness by the Railway Medical Officers.

A member of the Force on sick list shall not leave his place of treatment without the written approval of the leave sanctioning authority except for such exercise as may be prescribed and notified in the order by the Railway Medical Officer.

To matters not covered under foregoing rules, extant provisions of Railway Rule/Indian Railway Medical Manual shall apply.

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"539. Continuation sick certificate:- (1)
When a Railway doctor who has issued a sick certificate for a prescribed period in the first instance finds that the illness of the employee is

likely to result in the absence of the employee from duty beyond the period prescribed in the original sick certificate, he will issue immediately a continuation sick certificate in the prescribed form as given in the annexure XII to this chapter. The certificates should be serially numbered.

(2) When a Railway employee who is residing outside the jurisdiction of the authorised medical officer and is under the treatment of a non-Railway registered medical practitioner requires further extension of leave, he should submit a continuation certificate from the non-Railway medical practitioner to the competent authority who may at his discretion accept the certificate or refer the case to the Railway medical officer for advice or investigation and then deal with it as circumstances may require."

22.1) A glance at Rule 538 makes it clear that every railway employee is required to obtain a sick certificate from the jurisdictional Railway Doctor when he or she is unable to attend duty due to sickness, within 48 hours, along with an application. The Rule further provides that it is not compulsory for the employee to undergo treatment from the jurisdictional Railway Doctor; the employee may also take treatment from a non-railway doctor. However, the employee is still required to obtain a sick certificate from a Railway Doctor. Sub-rule (3) of Rule 538 also clarifies that temporary residence within the jurisdiction of a Railway Doctor entitles the employee to obtain a sick certificate from such a doctor. Sub-rule (4) deals with a situation where an employee is residing outside the jurisdiction of a Railway Doctor and such a doctor is not available. In such a case, the employee is required to obtain a sick certificate from a registered medical practitioner, which shall be forwarded to the competent authority along with an application for grant of leave. The competent

authority is then required to refer the same to the jurisdictional Railway Doctor for verification of the medical condition. If the doctor is satisfied, the competent authority may grant leave. In such circumstances, the competent authority has no jurisdiction to differ with the medical opinion and reject the application for extension of leave on that ground.

23) The contention advanced by the learned counsel for the petitioner is that the petitioner was outside the jurisdiction of the Railway Doctor and had submitted a medical leave application along with a sick certificate issued by a registered private practitioner. It is argued that the competent authority, without referring the matter to the Railway Doctor, rejected the request, which is in violation of sub-rule (4) of Rule 538 of the Indian Railway Medical Manual. This argument is unsustainable. When the petitioner proceeded on leave on 26.11.2018, she was at her headquarters and could have presented herself before the Railway Doctor to obtain a sick certificate. Therefore, she was not outside the jurisdiction so as to claim the benefit under sub-rule (4) of Rule 538. The Rules also permit an employee to obtain a sick certificate from a Railway Medical Officer at the place of temporary residence. It is not the case of the petitioner that no such Railway Medical Officer was available in Delhi.

24) The learned counsel for the petitioner has drawn the attention of this Court to the Note under sub-rule (4) of Rule 538, which defines the radius of jurisdiction of a Railway Doctor for issuing a sick certificate. According to him, there is no

evidence to show that a Railway Doctor was available within the prescribed radius for obtaining a sick certificate. The petitioner is required to establish that she had no access to such a Railway Doctor within the prescribed radius. However, this is not the case pleaded by the petitioner. Therefore, the note cannot be used to claim that the petitioner has complied with the procedure. The evidence on record clearly demonstrates non-compliance with the procedure for obtaining a sick certificate. There is a special provision under Rule 538 applicable to the Railway Protection Force. The procedure is more stringent compared to that applicable to other railway employees. For a member of the Force to be placed on the sick list, the reference must come from the Controlling Officer. The Controlling Officer is required to make an endorsement regarding attendance in a disciplinary proceedings, or the employee under transfer, so as to assess whether the claim is genuine or intended to avoid such proceedings. This procedure has not been followed in the present case. The findings of all the authorities regarding the charges do not require any interference.

25) The authorities have proceeded to impose the punishment of removal. The entire genesis of the petitioner's absence from duty appears to be connected with the transfer order and the pendency of the writ petition. The conduct of the petitioner, when examined in light of the evidence on record, prima facie indicates willful conduct. However, there is no clear finding by the Enquiry Officer or the Disciplinary Authority that the absence

was willful so as to constitute disobedience amounting to grave misconduct. In fact, it is a case of remand on Charge Nos. 1 and 2 but the fact of the matter is that the petitioner, a Constable, had rendered 16 years of service prior to her removal. It is also well settled that in a disciplined force, maintenance of discipline is of paramount importance. The petitioner was serving in such a disciplined force, and strict compliance with the Conduct Rules is expected. At the same time, this Court is conscious that judicial review in matters of punishment is limited. Even where the Court finds that the punishment is shockingly disproportionate, and no reasonable disciplinary authority would have imposed such punishment in the given circumstances, the Court ordinarily would not substitute its own decision but would remit the matter to the Disciplinary/Appointing Authority for reconsideration. However, this rule is not absolute and admits of exceptions. In rarest of rare cases, the Court may itself assume the role of the Disciplinary Authority. In the present case, in order to avoid further delay that would be caused by remanding the matter on both the charges and the punishment, this Court considers it appropriate to exercise such power and modify the punishment. Such modification is warranted in the facts and circumstances of the case. Although Charges Nos.1 and 2 are of a serious nature and the evidence prima facie suggests willful conduct, however, there is no definitive finding to that effect. In normal circumstances, the matter would have been remanded for fresh consideration. However, to bring finality to the proceedings, this

Court adopts a lenient view and proceeds to impose a lesser punishment.

26) Considering the above facts and circumstances, this Court is of the view that the punishment of removal imposed on an employee who had rendered 16 years of service, on account of the conduct underlying the charges, is shockingly disproportionate, particularly with regard to the third charge. Since there is prima facie evidence of the petitioner's willful conduct, remanding the matter would only prolong the litigation, unnecessarily cause additional burden and mental agony to the petitioner, as well unnecessary burden on the respondents. Therefore, this Court is inclined to exercise its power treating this case as rarest of rare case to modify the punishment.

27) In the result, the writ petition is partly allowed by modifying the punishment of removal to that of compulsory retirement. The date of removal shall be treated as the date of the petitioner's compulsory retirement, and all benefits available to a retired employee as on that date shall be extended to the petitioner. Final conclusion on charges is not interfered.

28) In the circumstances, no order as to costs.

29) Pending interlocutory applications, if any, shall stand disposed of.

(MUNNURI LAXMAN),J