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CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD.

T.A. No. 670 Of 1986

Khem Raj	Plaintiff
	Versus	
Union of India	Defendant

Hon. S. Zaheer Hasan-VC
Hon. Ajay Johri - AM

(Delivered by Hon. S.Zaheer Hasan- VC)

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Regular Suit no. 213 of 1985 has been transferred to this Tribunal under Section-29 of the Administrative Tribunal Act, 1985. The plaintiff Khemraj was working as Assistant Points-Man at Agra Cantt. A charge sheet dated 13.12.83 was issued against him in connection with his unauthorised absence on several dates in the year 1983. In departmental proceedings, order of removal from service was passed on 24.5.84. This appeal was rejected. By filing this suit, he has challenged his removal from service. In his appeal, the plaintiff admitted that in 1983, he was quite irregular due to his illness and that he did not take the treatment of Railway doctor and wrongly consulted ~~the~~ private doctors. He further admitted that he did not follow the medical rules and his absence was due to sickness beyond his control. The findings of Enquiry Officer that charge was proved, has not been challenged before us. No illegality worth taking notice was pointed out at the time of arguments. So the charge

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levelled against the plaintiff has been established. The petition was not argued on merits and the case of the plaintiff was thrown ~~on~~ ^u our mercy with the contention that for unauthorised absence due to illness, the punishment of removal was clearly excessive. The plaintiff was present in person and he stated that some suitable punishment like stopping of annual increments may be passed and he will not claim any salary etc. from the date of removal till the date of his re-instatement. In the case of Husaini reported in one Supreme Court cases page-120, it was held that the punishment should be commensurate with gravity of misconduct. In famous case of Satya Vir 1986 A.T.R. page 78, it was observed that " if the punishment is grossly disproportionate to the charge proved, the court itself can reduce the punishment and substitute a penalty which would be just and proper in the circumstances of the case". There is no doubt that unauthorised absence was due to illness. The plaintiff is illiterate person and he came clean and admitted that he violated the rules and did not consult the Railway doctor and did not submit report according to rules. In the circumstances of the case, punishment of removal from service is clearly disproportionate to the charge proved. So the punishment of removal from service is set aside and instead, the plaintiff will not get the

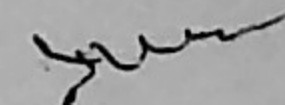
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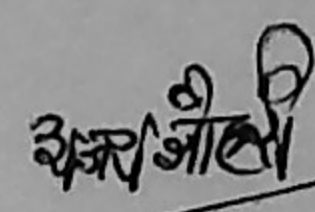
and in the event

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annual increment for two successive years after the date of his re-instatement. He will further be not paid any salary etc. from the date of removal till the date of re-instatement. ^{but this period will count for pensionary benefits} The parties will bear their own costs. Suit no.213 of 1985 is disposed of accordingly.


V.C.


A.M.

Dt/- 31.6.87
Shahid.