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RESERVED

Central Administrative Tribunal,  
Allahabad.

Registration T.A.No. 723 of 1986 (Original suit no. 571 of 1983)

Bharat .... Plaintiff.

Vs.

Union of India and another .... Defendants.

Hon.D.S.Misra,AM  
Hon.G.S.Sharma,JM

(By Hon.G.S.Sharma,JM)

This original suit has been received by transfer from the Court of II Additional Munsif Jhansi, under Section 29 of the Administrative Tribunals Act XIII of 1985.

2. The case of the plaintiff is that he was appointed as a Khalasi in the Central Railway Jhansi on 1.7.1955 by the then D.V.S now called as the Divisional Railway Manager. The plaintiff while posted at the railway station Khairar, suddenly fell ill and was under the treatment of a private registered medical practitioner from 4.2.1981 to 30.10.1981 as he was not having the proper medical facilities of the railway administration at that station. The plaintiff was duly informing his authorities about his illness at regular intervals as required under the rules. On recovering from his illness, the plaintiff was examined in the railway hospital Jhansi as required under the rules and on being declared fit, was issued the fitness certificate M-15-B, which was produced by him before his immediate superior-Chief Signal Inspector Orai. On his efforts, the plaintiff was transferred to Mathura Junction under mutual transfer and from Mathura Junction, he was transferred to Ballabgarh. On 26.11.1981, the plaintiff was called by Chief Signal Inspector Mathura Junction and informed that his earlier transfer has been cancelled by the C.S.I Mathura Junction and he was asked to go back and report to C.S.I Orai. The plaintiff approached the

Sr.Divisional Signal Telecommunication Engineer (for short Sr.DSTE) Jhansi in connectioin with this change and he was assured by him his posting at the Mathura Junction after settling the issue early. Despite his several efforts, the plaintiff was not sent back to Mathura and on 5.1.1982, the Sr.DSTE Jhansi had made a note in the file about his seeking interview for transfer. The plaintiff also approached the Labour Enforcement Officer (Central) Jhansi in Feb.1982 which displeased the local authorities,more particularly, the ASTE. The plaintiff was, thereafter, served with a charge sheet for major penalty for his alleged unauthorised absence from duty w.e.f. 4.2.1981 to 30.10.1981 and 8.11.1981 to the date of the charge sheet. In his reply dated 12.7.1982 to the charge sheet, the plaintiff had made it clear that he was sick and under treatment of a doctor and on being declared fit for duty, he had resumed his duties w.e.f. 8.11.1981 and actually worked upto 26.11.1981 till he was called by the CSI Mathura Jn. and directed to the Sr.DSTE Jhansi and since then, he was awaiting ~~for~~ the posting orders and there was no question of his unauthorised absence. The CSI Jhansi was appointed inquiry officer and despite his representations to settle the question of assigning duty to him for which he was waiting for the last 10 months, the inquiry officer acted arbitrarily and concluded the inquiry ex-parte. He had recorded the statement of the witnesses in respect of extraneous and foreign matters and was unmindful of plaintiff's remaining idle for want of orders and he wrongly held the charge of unauthorised absence from duty ~~as~~ established. The Sr.DSTE removed the plaintiff from duty by way of punishment in clear violation of the principles of natural justice and Art.311 of the Constitution. After serving the defendants with a statutory

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notice the plaintiff accordingly filed this suit for declaration that the order dated 16.10.1982 of his removal from service is illegal and inoperative and he is entitled to continue in service with all benefits.

3. The suit has been contested on behalf of the defendants and in the written statement filed on their behalf it has been stated that the plaintiff was appointed as Khalasi on 1.7.1955 by DSTE Jhansi and not by the D.V.S. He was granted casual leave for 2.2.1981 and 3.2.1981 and thereafter he remained absent from duty in an unauthorised manner from 4.2.1981 to 30.10.1981. There are two medical units- one at Mahoba, at a distance of 43 km., and the other at Banda, at a distance of 10.5 km.,- from Khairar and it is wrong to say that the plaintiff had no medical facilities at Khairar. The plaintiff did not follow the medical rules of getting private treatment. There is no record to show that the plaintiff had ever informed the railway administration about his sickness and his getting treatment from any private practitioner. On the basis of M-15 dated 30.10.1981 he was taken back on duty but he failed to produce the proper medical certificates about his alleged illness before that date and as such, he was treated absent unauthorisedly w.e.f. 4.2.1981 to 30.10.1981 and was charge sheeted accordingly. The plaintiff was transferred on mutual exchange to Mathura Junction by ASTE Jhansi but the same was cancelled by the Sr.DSTE in the interest of administration. The plaintiff was never assured of his posting at Mathura Junction nor any remark was made on the file on 5.1.1982 by the Sr.DSTE as wrongly alleged by the plaintiff, The plaintiff was again absent from duty w.e.f. 28.11.1981 and it is on account of

his unauthorised absence that the charge sheet was issued to him and the allegation of personal prejudice made by the plaintiff is not correct. The plaintiff was repeatedly asked to attend the inquiry but he deliberately failed to appear before the inquiry officer and as such, the inquiry officer had concluded the inquiry after recording the statements of Time Keepers Orai and Mathura and no extraneous evidence was recorded by the inquiry officer. On verification, the plaintiff was found absent from 28.11.1981 to 3.7.1982 instead of 8.11.1981 to 3.7.1982. The mistake was due to a clerical error and slip. The inquiry against the plaintiff was concluded in accordance with law and the relevant rules and there has been no violation of the principles of natural justice or any rules. It was also alleged that the suit is barred by Section 80 of the Civil Procedure Code and Section 34 of the Special Relief Act and it was beyond the jurisdiction of the Court.

4. We have heard the arguments advanced on behalf of the parties and have also carefully perused the record. The plaintiff has filed only a copy of the notice under Section 80 CPC and the registration receipt. The defendants produced 24 documents besides the original service book and personal file of the plaintiff. The copy of the charge sheet served on the plaintiff shows that the charge against him was in respect of his unauthorised absence from duty w.e.f. 4.2.1981 to 30.10.1981 and 8.11.81 to the date of the charge sheet. The plaintiff has admitted the service of this charge sheet on him and according to him he had submitted his statement of defence on 12.7.1982. His defence, however, is that from 4.2.1981 to 30.10.1981 he was sick and under the treatment of a private medical practitioner while he had actually worked

from 8.11.1981 to 26.11.1981 and thereafter, on account of his being called at Jhansi and not assigning any other duty, he remained without work despite his willingness to do his job. Naturally, the burden to prove his illness as well as the fact that he was either on duty or he was under attendance and available for duty was on him. Undisputedly, he did not appear before the inquiry officer and did not produce any evidence despite being asked by the inquiry officer to do so repeatedly.

5. The plaintiff has not disputed the fact that he was served with the necessary notices by the inquiry officer for attending the inquiry. The stand taken by the plaintiff may be appreciated by his letter dated 17.9.1982 sent by registered post to the inquiry officer in which it was stated by him that he was not in service from 4.2.1982 and it is more than 1½ years that no action to take him back on duty has been initiated while he was out of service and it will not be in order to force him to attend the inquiry as the railway administration desires to cover this ~~as~~ refusal to duty. In the first place he be put back to duty and then order to appear in the inquiry. He further made it clear that the inquiry held without giving the posting shall not be binding and he shall not be responsible for the consequences. The insistence of the plaintiff, therefore, was that for his absence from duty in 1982, no action was taken for more than 1½ years and regarding his subsequent absence, he was not at fault and despite his efforts, no duty was assigned to him and as such, he should not be forced to appear before the inquiry officer. In any case, it was the duty of the plaintiff to establish that he was really ill in 1982 and he was available for duty during the period of subsequent absence but no work was ~~being~~ taken from him. He, however, did not produce any evidence to establish these }

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facts. The evidence produced before the inquiry officer established that the plaintiff was absent from duty from 4.2.1981 to 30.10.1981 and again from 28.11.1981 to 3.7.1982 as appears from the report dated 25.9.1982 of the inquiry officer. This report was accepted by the Sr.DSTE on 16.10.1982 and by way of punishment, ~~that~~ the plaintiff was removed from service on its basis.

6. We have carefully examined the material on record but could find nothing in support of the plaintiff's contention on the basis of which, the disciplinary inquiry held against him may be held to be irregular or contrary to the rules. The minor mistake regarding the date of absence is liable to be ignored. In any case, it does not prejudice the plaintiff as instead of an earlier date 8.11.1981, the plaintiff was found absent from a subsequent date 28.11.1981. The plaintiff did not like to challenge the impugned punishment even by preferring a departmental appeal and unfortunately, he adopted a very unwise attitude regarding the disciplinary inquiry initiated against him. He has failed to establish that the disciplinary inquiry held against him was not valid or the officer by whom he was punished was not competent to pass the impugned order. There is, therefore, no merit in his case.

7. The suit is accordingly dismissed without any order as to costs.

*Khm*  
12.10.87  
MEMBER (A)

Dated : Oct. 12, 1987  
kkb

*S. Narasimha*  
12/10/87  
MEMBER (J)