

Registration T.A.No.219 of 1987 (Original suit No.113/85)

Vs.

Hon. Ajay Johri, AM
Hon. G.S.Sharma, JM

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

2. The applicant Nanney (hereinafter referred to as the plaintiff) was posted as a permanent Gangman under the Asstt. Executive Engineer (for short AEN) Central Railway at Mathura Junction and is stated to have put in about 20 years service and he was working under the supervision and subordination of Permanent Way Inspector (for short PWI) II Mathura Jn. On 17.4.1980 when the then PWI II Mathura Jn. R.C.Garg went to the place where the unit no.1 of the Gangmen was working in his section near the Railway Station Bad, the plaintiff was found on duty and he presented an application for leave to the PWI. The PWI refused to entertain the leave application on the ^{ground} ~~pretence~~ that already 4 persons of the unit were sick and one or two others were also on leave and it was not possible to grant him leave. This infuriated the plaintiff and it is alleged that in a fit of anger he misbehaved with the PWI, hurled abuses on him and also used undignified language for him. On the report of the PWI, the plaintiff was served with a charge sheet dated 7.6.1980 for major punishment by the AEN Mathura for this miscon-

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duct. The plaintiff denied the charge levelled against him and in the disciplinary inquiry conducted against him by the PWI Kosi Kalan, the plaintiff was found guilty of the charge. He was accordingly awarded the punishment of removal from service on 27.2.1984 by the AEN. The appeal preferred by the plaintiff was dismissed on 8.5.1984 by the Sr.DEN (N) Jhansi.

3. Aggrieved by the punishment awarded to him, the plaintiff had filed this suit on 13.3.1984 for a declaration that the order of his removal passed by the DEN Central Railway Jhansi on 27.2.1984 is wrong, illegal and unconstitutional and is inoperative and the plaintiff is entitled to get himself reinstated with all consequential benefits with the allegations that there was no evidence on record to prove the prosecution story and the inquiry officer on account of his closeness to the complainant PWI R.C.Garg had taken a partial view and the inquiry was, in fact, a farce and against the principles of natural justice. It was also alleged that the order of punishment is unconstitutional being in violation of Art.311(2) of the Constitution.

4. The suit has been contested on behalf of the defendants and in the written statement filed on their behalf after a long time before this Tribunal by the Addl. DRM Jhansi, it was stated that on 17.4.1980 when the PWI R.C.Garg showed his inability to grant the leave applied for by the plaintiff, the plaintiff got infuriated and without any rhyme ^{and} reason, badly abused the PWI and used unparliamentary language and insulted him. On his report, the plaintiff was accordingly charge sheeted under the Railway Servants (Discipline and Appeal Rules and the charge levelled against the plaintiff

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regarding the aforesaid misconduct was fully established by a number of witnesses and the plaintiff was given adequate opportunity to defend himself. After considering the entire material the inquiry officer found the plaintiff guilty of the misconduct aforesaid and the disciplinary authority accepting his report awarded the punishment of removal considering the gravity of the misconduct and the punishment so awarded was confirmed by the appellate authority on 8.5.1984. The plaintiff avoided to accept the copy of the appellate order and on his refusal it was pasted on his door in the presence of witnesses. His past conduct is also bad and he is a person of ill temperament and for the misconduct committed by him, he was rightly removed from service and there was no illegality or irregularity in conducting the disciplinary inquiry against him and his suit deserves to be dismissed.

5. The parties did not produce any documents in this case and the arguments of the parties were heard merely on the basis of their pleadings. On the direction of the Tribunal the learned counsel for the defendants afterwards produced the record of the inquiry against the plaintiff for our perusal.

6. We have carefully examined the proceedings of the disciplinary inquiry in the light of the pleadings of the parties and find that in his statement before the inquiry officer the plaintiff had admitted that he and the PWI R.C.Garg both had lost temper when he was not granted leave by the PWI. The PWI himself appeared as a witness before the inquiry officer and had stated that the plaintiff had used abuses and

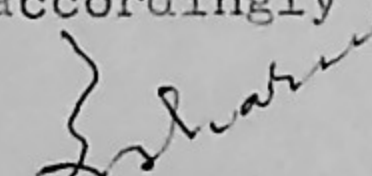
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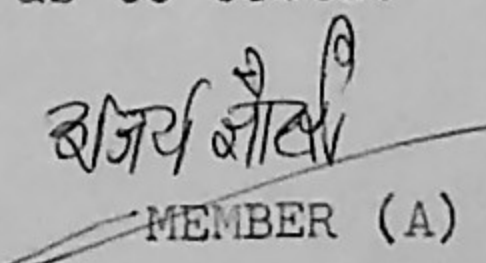
undignified language at that time. His statement was supported by other witnesses. The plaintiff had admitted at the time of inquiry that a number of persons of the unit were present at the time of this incident. After a careful consideration of the evidence produced by the prosecution and the plaintiff before him, the inquiry officer found the plaintiff guilty of using abusive language and for abusing PWI. The plaintiff was given adequate opportunity to make his defence and we see no irregularity of any kind in the inquiry proceedings conducted against the plaintiff. The plaintiff was found guilty of the charge on the basis of the evidence and the allegation of the plaintiff to the contrary that he was found guilty without any evidence is not correct. In the memo of appeal submitted by the plaintiff against the impugned order of removal from service, the plaintiff did not point out a single fact to show that the inquiry against him was not held in accordance with law or he was in any way otherwise prejudiced by the action of the inquiry officer or he had not acted as impartial person in conducting the inquiry. We, therefore, find no force in any of the allegations made by the plaintiff in his plaint and are of the view that he was rightly found guilty of the misconduct committed by him.

7. Regarding the punishment, we, however, feel that the penalty of removal for a misconduct of this type appears to be little unproportionate and harsh. The plaintiff is alleged to have put in about 20 years service and he is now unfit to get any employment under the Government on account of his advanced age. The

record of inquiry shows that though the plaintiff is alleged to be a man of short temperament ^{but} he had not misbehaved like this in ^{the} past with his PWI or any other superior officer. We, therefore, cannot maintain the penalty of removal and will like to give an opportunity to the plaintiff to mend himself.

8. Upholding the guilt of the plaintiff we set aside the order of his removal from service and impose the penalty of reduction in ^{at the lowest stage} ~~his~~ pay scale. On his reinstatement, the plaintiff will get the minimum pay of his grade and shall not be entitled to any pay or allowances for the period he remained out of service on account of the impugned order of punishment and the period of his absence shall not be counted for any purpose except for pensionary benefits in future. The respondents will be free to consider the posting of the plaintiff in any other section where he may be expected to work as a disciplined and faithful worker. The transferred application is disposed of accordingly without any order as to costs.


MEMBER (J)


MEMBER (A)

Dated: 15th Nov. 1988
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