

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW BOMBAY BENCH, NEW BOMBAY

Tr. Application No. 135/86

Shri Nagindas Jagjivandas,
Room No.32, 2nd Floor, Safiuddin Bldg.,
Poibawadi, Parel,
Bombay-400 012

.. :: .. :: **Applicant**
(Original Plaintiff)

V/s

The Union of India,
Owing and representing and Operating
the Western Railway, through the
General Manager, Western Railway,
Churchgate, Bombay-400 001

.. :: .. :: **Respondent**
(Original Defendant)

Coram: Hon'ble Member S.P.Mukerji

Hon'ble Member (J) M.B.Mujumdar

Judgment (Per Member S.P.Mukerji)

Date: 23-9-1986.

This is a suit transferred to the Tribunal under Section 29 of the Administrative Tribunals Act from the City Civil Court. The brief material facts of the case be summarised as follows. The Plaintiff who was working as a Carpenter in the Western Railway since 1948 was probed against in a departmental enquiry on the charge of unauthorised absence from duty between 25-10-76 ^{and} to 11-1-1977 and removed from service in accordance with the impugned order dated 15-9-77. The article of charge against him read as follows: "That the said Shri Nagindas Jagjivandas while functioning as Carpenter during the period did not observe the instructions contained in the office circular No.E-638/4/CW dt.30-6-76 during his absence from 25-10-76 to 11-1-77". The gravamen of the charge in the brief was that he had produced a private doctor's certificate not authenticated by a Railway Doctor as a result of which the certificate was not acceptable for granting him the leave on medical grounds during the period of absence in question. In accordance with the Central Civil Services (Classification, Control and Appeal) Rules (hereinafter referred to as Rules) the charge sheet was framed and inquiry was held and the disciplinary authority on the basis of the findings of the inquiry officer and the inquiry report issued a show cause notice to the petitioner on 1st July, 1977 to show cause why the penalty of removal from service should not be imposed on him.

After receiving the reply, the impugned order removing the Plaintiff from the Railway service was passed. According to the Plaintiff, he was unable to attend duty as he was suffering from Typhoid and he was treated by the family Doctor and having no grown up male member in the family, it was not possible for him to inform the Railway Medical Officer and other authorities about his illness. He has also pleaded ignorance of the contents of the office circular disallowing a certificate from the Private Doctor. The Plaintiff appealed against the impugned order but the appeal was rejected. The review petition also ended in a fiasco. He has alleged that apart from the fact that the punishment is disproportionate to the charge, the rules of natural justice were not observed during the inquiry and he was not given adequate opportunity to defend himself. The assistance of a co-employee was refused and that the proceedings were not recorded correctly and faithfully. In accordance with the Written Statement filed by the Defendants originally, all the averments about the alleged lapses during the inquiry proceedings have been denied. They have categorically stated that the Plaintiff pleaded guilty of the charges when questioned at the beginning of the proceedings. They have also stated that no rule of natural justice have been violated and all the statutory provisions of the relevant rules have been adhered to. The Defendants then filed a supplementary written statements indicating that during the scrutiny of the concerned records, certain important facts about the Plaintiff's habitually remaining absent from duty without informing the Railway administration and without prior sanction of the Railway administration had come to light and had gone out of sight inadvertently when the first written statement was prepared. A new para (9-A) to the original writ statement was added to indicate that inspite of previous warning the Plaintiff remained absent unauthorisedly.

We have heard the arguments of the learned Counsel for both the parties and gone through the documents and pleadings very carefully. In so far as the charge of unauthorised absence from duty between 25-10-76 and 11-1-77 is concerned, having gone through the original documents of the inquiry proceedings, we are satisfied that the Plaintiff had pleaded guilty to the charge before the inquiry officer. In this context, and having regard to the fact that the inquiry officer did not go beyond what would have naturally followed from the admission of the Plaintiff, we see no useful purpose in going into the

various allegations about the conduct of the inquiry proceedings. The only point which worries us is the quantum of punishment. The learned Counsel for the Defendants has argued that the quantum of punishment has to be adjudged by the fact that apart from the unauthorised absence between the 25-10-76 to 11-1-77, the petitioner has been absenting ^{hunself} from duty habitually in the past also and was awarded a number of punishments previously which had been mentioned in one of the enclosures to the article of charge as quoted above. However, we find that the fact of habitual absentism for which the petitioner seems to have been subjected to drastic punishment has not found a place either in the article of charge or in the show cause notice dt.1.7.1977 about the quantum of punishment referred to above. There are other mitigating circumstances also namely that the Plaintiff is a Class IV artisan not conversant with the details of the circulars which prescribes the manner in which leave on medical grounds has to be obtained. We, however, cannot overlook the factum of the Plaintiff's admission of the main charge for which the disciplinary proceedings were initiated and culminated in his removal. In the facts and circumstances indicated above while we uphold the establishment of the charge of unauthorised absence from duty between 25-10-76 ~~and~~ ^{to} 11-1-77 we feel that the punishment of removal from service is disproportionate to the gravity of the charge. We feel that ends of justice on one hand and requirement of administrative and organisational discipline would both be served if the penalty of removal from service is modified to commensurate with the charge read in the context of the circumstances of the case. Considering that the plaintiff is a Class-IV Govt. servant and a re-examination of the case by competent authority in the Railways may take considerable time, we, in the interest of speedy justice, direct that the quantum of punishment^s should be reduced to that of reduction of his pay by three stages lower in the time scale of pay which he was enjoying on the date of his removal from service for a period of five years and that the reduction will not have the effect of postponement of his future increment of pay on the expiry of this period of 5 years. The Plaintiff should accordingly be reinstated as Carpenter w.e.f.15-9-77 (the date of his removal) and his pay should be fixed on the basis of this order w.e.f. that date. The period of absence from 15-9-77 till today should be covered by such leave on full, half pay and without pay as would be admissible to him on the date of his removal. For the remaining

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period of absence, he should be given half of the pay to which he would have been entitled if he had been in service as paid in accordance with this order. He should be paid arrears of pay and leave salary accordingly within a period of three months. It is clarified that the period of absence should not be treated as break in service and should qualify for pension. There will be no orders as to cost.

S.P.M.
(S.P.MUKERJI)
Member

M.B.M.
(M.B.MUJUMDAR)
Member (J)