

\$~

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of Decision: 11th October, 2012

+ **W.P.(C) 2836/2000**

AMARJEET SINGH

..... Petitioner

Through: Mr. H.K. Chaturvedi & Ms. Anjali
Chaturvedi, Advs.

versus

THE MANAGEMENT OF NATIONAL

THERMAL POWER CORPORATION LTD. Respondent

Through: Mr. S.K. Taneja, Sr. Adv. with Mr.
Rajesh Gupta, Mr. Puneet Taneja &
Mr. Anand Kumar Singh, Advs.

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

CHIEF JUSTICE

1. The petitioner was an Assistant Controller (Grade-I) in the respondent National Thermal Power Corporation Ltd. (Corporation). He has questioned the order of termination dated 18.10.1999 passed by the respondent Corporation in exercise of powers under Rule 24.9 of the NTPC Service Rules applicable to the petitioner. The said Rule is as under:

“24.9. Termination on account of unauthorized absence:

An employee who remains unauthorizedly absent from duty or place of work either without sanction of any leave or after expiry of sanctioned leave, if any, and does not report for duty for any reason whatsoever within 90 (ninety) consecutive days from the

date of his/her unauthorized absence, shall automatically lose lien on his/her post and he/she shall be deemed to have voluntarily abandoned and left the service of the Corporation, without notice.

Provided, however, if the employee subsequently substantiates and accounts for his/her unauthorized absence from duty within 90(ninety) consecutive days from the date of the termination order to the entire satisfaction of the Management, the Management may regularize his/her period of unauthorized absence on such terms and conditions as it may deem fit and proper.”

Unauthorized absence is defined in Rule 2(s) as under -

“2 (s) “Unauthorized Absence” means absence by an employee from his/her duty or place of work without authority either without sanction of any leave or after expiry of sanctioned leave, if any.”

2. The petitioner has challenged the order of termination on two grounds. Firstly, it is contended that the Rule aforesaid is violative of Article 14 of the Constitution of India inasmuch as it empowers the respondent Corporation to terminate the service of an employee without giving any chargesheet or any opportunity of being heard and without holding any inquiry resulting in violation of principles of natural justice and secondly on the merits of the order of termination

3. Insofar as challenge to Rule 24.9 of the NTPC Service Rules is concerned, we need not to trouble ourselves for the simple reason that the validity of the said Rule came up for consideration before a Division Bench of this Court in W.P.(C) No.762/2011 titled ***Surendra Kumar Tiwari Vs.***

National Thermal Power Corporation Ltd. and after referring to various judgments of this Court as well as the Apex Court, the validity of said Rule was upheld in the judgment dated 1st June, 2012. In view of the said law, the issue of challenge to the said Rule is *res integra*. Accordingly, the challenge must be negatived.

4. As far as the merits of the order of the termination are concerned, it is not controverted that a show cause notice dated 11th /15th September, 1997 was issued by the respondent to the petitioner asking the petitioner to show cause for his habitual absence as under:

“Month	Total Number of Days	Period of Absence
September, 1996	30	13
October, 1996	31	16
November, 1996	30	10
December, 1996	31	19
January, 1997	31	20
February, 1997	28	15
March, 1997	31	22
April, 1997	30	15
May, 1997	31	22
June, 1997	30	18
July, 1997	31	24
August, 1997	31	25
Total	365	219”

Significantly the petitioner in his reply dated 26th September, 1997 did not dispute his absence as detailed in the show cause notice but merely pleaded that he had been taking leave explaining his domestic problems and the said

leave was approved as leave without pay and ought not to be treated as unauthorized absence.

5. It is also not controverted that another notice dated 26th /27th April, 1999 was issued by the respondent to the petitioner to show cause as to why he should not be deemed to have voluntarily absented himself from work since the month of October, 1997, when his leave had never been approved as claimed by him in his earlier reply. The details of unauthorized absence since 1992 set out in the said show cause notice were as under:

“Year	No. of Unauthorized Days	No. of closed Days	Total absence
1992	124	66	190
1993	246	66	312
1994	188	66	254
1995	178	66	244
1996	181	66	247
1997	256	66	322
1998	299	66	365
1999	83	17	100
(upto10.4.99)			
Total	1555	462	2017”

6. The petitioner submitted a reply dated 13th May, 1999 to the said show cause notice, stating, that leave were taken verbally; that he had applied for regularization of his absence in terms of Circulars dated 7th October, 1997 and 7th /15th April, 1998 of the respondent; that he was not allowed to sign the attendance register for the last 20 months and denying that he had been absent from 1st October, 1997.

7. The respondent however, vide order dated 18th October, 1999 (supra) held the petitioner to have voluntarily left the service within the meaning of Rule 24.9 (supra). In the said order it was also observed that the occasion for the petitioner being not permitted to sign the attendance register did not arise as the same was always kept in the Section with everyone free to mark the attendance till 9.00 a.m. in the morning; thereafter the register was kept in the room of the Senior Manager so that he could supervise the late comers and the petitioner had never reported for signing the register.

8. The counsel for the petitioner has at the outset relied on the Circulars dated 7th October, 1997 and 7th /15th April, 1998 issued by the respondent giving opportunity to employees to get their unauthorized absence regularized. We however do not deem the necessity to go into the said plea inasmuch as the regularization vide the said Circulars was at best till the issuance thereof. Even if it were to be held that the unauthorized absence of the petitioner till the end of April, 1998 stood regularized, the second show cause notice was issued only on 26th /27th April, 1999 i.e. after one year and claiming the appellant to have remained unauthorizedly absent during the said time. The appellant has been unable to show any application for leave or sanction thereof for the said one year. Though he claimed that he was not being permitted to mark his attendance but it is inconceivable that an employee who though working, is not being permitted to mark his attendance for one year, would not take up the matter. We have during the hearing inquired from the counsel for the petitioner that if the petitioner, though was not being permitted to mark his attendance, was during the said time attending office, there would certainly be proof of his having worked during the said time. Neither any plea has been raised in this regard nor does

the counsel has any knowledge. The petitioner is stated to be not present in the Court today also. On the contrary the counsel for the respondents has stated that the petitioner has not collected his pay also from the month of October, 1997 onwards and no demand therefor was made. On the comments of the petitioner being solicited to the said argument, the counsel for the petitioner again expresses ignorance in this regard. Rather the counsel for the respondent has stated that the inquiries have revealed that the petitioner has a lucrative business and is thus not interested in the employment.

9. We are satisfied that there is no perversity in the application of Rule 24.9 (supra) qua the petitioner and in deeming the petitioner to have abandoned his employment by remaining unauthorizedly absent from duty for more than consecutive 90 days and no case for judicial review is made out.

10. There is thus no merit in the petition and the same is dismissed. We refrain from imposing any costs on the petitioner.

CHIEF JUSTICE

RAJIV SAHAI ENDLAW, J

OCTOBER 11, 2012
M'..