

**IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH.**

L.P.A. No.1283 of 2016 (O&M)  
DATE OF DECISION : 21.9.2016

National Fertilizers Limited

APPELLANT

VERSUS

Rajesh Kumar Gupta & sons

RESPONDENT

CORAM : HON'BLE MR.JUSTICE MAHESH GROVER  
HON'BLE MR.JUSTICE SHEKHER DHAWAN

Present:- Shri Kanwaljit Singh, Senior Advocate with Shri Vipin Mahajan,  
Advocate for the appellant.

**MAHESH GROVER, J.**

This appeal is directed against the judgment of the learned Single Judge dated 29.4.2016.

The respondent/workman was served with a charge-sheet dated 25/26-11-1998 with a charge that he had absented himself from duty unauthorisedly from 9.11.1998 which was more than the prescribed period i.e. 8 days in the Certified Standing Orders applicable to the industry. The relevant portion of the charge-sheet as also the Certified Standing Orders may be extracted here below :-

“It has been reported that Shri R.K.Gupta, Supervisor,E.Code

No.77/5523 has been absenting himself from duty since 9.11.1998 without prior permission of the competent authority. It has also been reported that he is in habit of absenting himself from duty without any prior approval/sanction of leave. The act of commission/omission on his part constitutes gross and serious misconduct.

... ....

Para 15.11 of the Certified Standing Orders applicable to him stipulates that :-

If a workman remains absent without leave, for more than 8 days or for more than 8 days beyond the period of leave originally granted or subsequently extended, he should be deemed to have been voluntarily abandoned his employment and his services shall be treated as having been terminated automatically and his name shall be struck off from the services of the Company without any reference to him unless he gives explanation to the satisfaction of the Management of his unauthorized absence.”

The respondent/workman had pleaded before the authorities that his absence was due to compelling reasons of his mother's ailment who had to be admitted to a hospital in Delhi. Thus, he tried to explain the delay which was not accepted by the Enquiry Officer who while determining the conduct of the workman, also took into consideration some other periods of leave which according to the Management, were also equally unexplained.

The ostensible reason for doing so was the mention of the workman's habitual absence from duty without any prior approval/sanction of leave. No

particulars of any other absence from duty without approval or sanction were, however, disclosed to the workman.

The Tribunal dismissed the reference leading to the filing of a writ petition where the findings of the Tribunal were reversed by the learned Single Judge by holding that the Enquiry Officer could not have taken note of any other material with which the workman was not confronted with. The fact of his being habitually absent from duty formed a part of the consideration of the Enquiry Officer who returned a finding against him which eventually led to inflictment of a punishment of dismissal upon the workman on charges which were too vague. He also held that copy of the enquiry report was not supplied to the workman and thus there was gross violation of the principles of natural justice.

The Writ Court then went on to direct reinstatement of the workman, if he had not attained the age of superannuation. He was also held entitled to consequential monetary benefits including the terminal benefits to be released within 4 months along with 50% back wages from the date of dismissal.

The facts are not disputed by the learned counsel for the appellant as he is unable to show that the workman was ever confronted with any other material regarding his willful absence from duty on prior occasions. Even if it is assumed that the workman had absented himself without prior sanction of leave, then also, his continuation on the assignment would indicate that his misconduct stood condoned. The workman was thus, required to answer only the charge of remaining absent from 9.11.1998 to 25.11.1998 which he explained away to an ailment of his mother and in any eventuality, the period of 15 days is not extraordinarily long to visit the consequences of termination of an employee unless of course, it was aggravated by other misconduct. The charge sheet does not disclose any other misconduct on the part of the workman. Therefore, the learned Single Judge was right in holding that the charge qua “habitual absenteeism” was

too vague.

We are thus, of the opinion that no error of jurisdiction and no illegality has been committed by the learned Single Judge in returning the finding.

Since no other point has been urged, we decline to interfere.

The appeal is therefore, dismissed.

( MAHESH GROVER )  
JUDGE

( SHEKHER DHAWAN )  
JUDGE

September 21, 2016  
GD

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|---------------------------|--------|
| Whether speaking/reasoned | Yes    |
| Whether reportable        | Yes/No |