

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.8698 of 2019

Sanjay Kumar Son of Sri Hari Nandan Sharma Resident of Aropur, P.O.-
Amarpura, P.S.- Naubatpur, District- Patna, Pin Code- 80117 (Bihar), Ex-
Emergency Peon, Under Chief Claims Officer, N.F. Railway, Maligaon, Pin
Code- 781011 (Guahati).

... .. Petitioner/s

Versus

1. The Union of India through the General Manager, North Frontier Railway, Maligaon, Pin Code- 781011 (Guahati).
2. The General Manager (Personnel), North Frontier Railway, Maligaon, Pin Code- 781011 (Guahati).
3. The Chief Claim Officer, North Frontier Railway, Maligaon, Pin Code- 781011 (Guahati).
4. The Senior Commercial Manager (Claims), North Frontier Railway, Maligaon, Pin Code- 781011 (Guahati).
5. The Senior Personnel Officer (T), North Frontier Railway, Maligaon, Pin Code- 781011 (Guahati).
6. The Assistant Commercial Manager (Court), North Frontier Railway, Maligaon, Pin Code- 781011 (Guahati).
7. Sri A.K. Prasad, Chief Claim Officer through the General Manager, North Frontier Railway, Maligaon, Pin Code- 781011 (Guahati)
8. Sri Sanjay Kumar Bhuiyan, Personnel Assistant to the Sri A.K. Prasad, Chief Claim Officer through the General Manager, North Frontier Railway, Maligaon, Pin Code- 781011 (Guahati).

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr.M. P. Dixit, Advocate Mr. S.K. Dixit, Advocate Mr. Sanjay Kumar Choubey, Advocate Mrs. Swastika, Advocate Mr. Shailendra Kumar, Advocate
For the Respondent/s	:	Mr. Ramadhar Shekhar, Advocate

CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE JUSTICE SMT. ANJANA MISHRA
ORAL ORDER

(Per: HONOURABLE THE CHIEF JUSTICE)

2 22-04-2019 Heard Shri M.P. Dixit, learned counsel for the

petitioner.



2. The unauthorized absence of the petitioner is the gravamen of the charge for which he has been dismissed from service. We are not delineating on the entire facts which have already been set out in detail in the impugned order of the Tribunal, but the crucial facts for determination relate to voluntary absentism and the charge relating thereto having been established. The charge sheet spells out that the petitioner was unauthorizedly absent on 2nd April, 2005, 3rd April, 2005, 21st of June, 2005, 22nd of June 2005 and from 11th August, 2005 till the date of the issuance of the charge sheet which is 26.10.2005.

3. Shri Dixit submits that the Disciplinary Authority has proceeded even beyond the period of the charge for which unauthorized absence was alleged, inasmuch as, it has been assumed that the petitioner was absent till 23rd of June 2006. He, therefore, submits that the charge being specified till the date of the issuance of the charge sheet, the Disciplinary Authority could not have found the petitioner to be guilty even beyond the said period.

4. He further submits that the petitioner had given an explanation and tendered an application for joining of the duties and had also furnished information as per the advice tendered to



him by the official concerned, yet no notice was taken in respect thereof and not only this the salary of the petitioner was also deducted for the said four days which have been referred to in the charge sheet. In such circumstance, not only there is a violation of procedure causing prejudice to the petitioner, but also the punishment of dismissal is disproportionate to the guilt found.

5. We have examined the entire pleadings as placed before us and we find that when the petitioner made a request for joining duty on 6th/ 7th September 2005, he categorically stated that he had to remain away from duty from 11.08.2005 when he reported back on 31st August, 2005 for reasons beyond his control. We repeatedly asked Mr. Dixit as to what were those reasons which were beyond the control of the petitioner for which Shri Dixit submits that he had no explanation except the document which has been filed as Annexure-A/2 at Page 75 of the paper book. The findings recorded in the orders passed by the authorities are categorical to the effect that the defence submitted by the petitioner nowhere disclosed any supportive document giving any plausible explanation with regard to his unauthorized absence after 11th August, 2005. We entirely agree with the aforesaid finding, inasmuch as, there is nothing on



record which may be construed as any cogent explanation for the unauthorized absence of the petitioner.

6. Apart from this, we find that the petitioner was appointed as an Emergency Peon attached to the office of a responsible official. The argument of the learned counsel for the petitioner that the charge sheet was only with regard to absence upto the date of issuance of charge-sheet misses the point that since the charge sheet was being served on a particular day and the petitioner was unauthorizedly absent even till then, therefore, the words “till date” had been used in the charge sheet. It does not exonerate the petitioner on any future aspects as well.

7. In view of the aforesaid facts where the petitioner could not come up with any valid explanation for his extension from duty between 11.08.2005 till 30.08.2005 which he explains to be reasons beyond his control, we in addition thereto further find that there is no explanation whatsoever of his absence even thereafter. In the circumstances, the irresponsible conduct of the petitioner was rightly dealt while passing the order of dismissal with which we do not find any cause for interference on the facts of the present case. The conclusion drawn by the Tribunal is, therefore correct. The writ petition lacks merit and is,



accordingly, rejected.

(Amreshwar Pratap Sahi, CJ)

(Anjana Mishra, J)

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