

**IN THE HIGH COURT AT CALCUTTA
(CONSTITUTIONAL WRIT JURISDICTION)**

APPELLATE SIDE

Present :

The Hon'ble Justice Partha Sarathi Chatterjee

WPA 223 of 2021

Sri Rabi Bouri @ Bauri

Vs.

Eastern Coalfields Limited & Ors.

For the petitioner	: Mr. Partha Ghosh, Mr. Amal Kr. Datta, Mr. Debashis Das, Bratin Suin.
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For the respondents	: Mr. Manik Das.
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Heard on	: 03.09.2025
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Judgment on	: 12.09.2025
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Partha Sarathi Chatterjee, J.:-

Preface:

1. In this fourth round of litigation, an employee of Eastern Coalfields Limited, serving as a UG Loader (Gr. V-A Trainee P.S.), who had been dismissed from service on the ground of unauthorized absence, instituted the present writ petition challenging the order dated January 13, 2020, passed by the General Manager in compliance with the order dated November 7, 2019, in W.P. 22056(W) of 2009, whereby his dismissal was affirmed. The petitioner further

assailed the charge-sheet dated July 15, 1994, and the dismissal order dated October 7, 1994, seeking reinstatement in service with back wages. During the pendency of the writ petition, the petitioner expired, and, on the basis of an application filed by his legal heirs, they were substituted in place of the writ petitioner, since deceased and are prosecuting the proceedings.

Petitioners' case:

2. Before addressing the core controversy in this writ petition, it is appropriate to first set out the essential facts, as stated in the writ petition, which are reproduced hereinbelow:

- i) On March 27, 1989, the petitioner was appointed as loader vide no. U. Man No. 10358.C.M.P.F. on compassionate ground in place of his father who had died in harness. The petitioner's appointment was duly approved on and from April, 1992.
- ii) In September 1992, the petitioner was diagnosed with Epilepsy and was initially treated at Satgram Area Hospital under the supervision of the respondent authorities from September 18, 1992 to January 6, 1993. Thereafter, he was discharged from the hospital and declared fit to resume duties. However, soon thereafter, epileptic episodes recurred and/or relapsed. The petitioner, belonging to the weaker section of society, was constrained to undergo unconventional treatment under the supervision of local *ojhas*, and during this period, he was unable to attend his duties owing to his ailment.

iii) A charge-sheet dated July 15, 1994 was issued by the Agent/Manager, North Searsole Colliery, alleging unauthorized absence in violation of Section 17(i)(n) of the Industrial Employment (Standing Orders) Central Rules, 1946. The petitioner participated in the enquiry and was afforded an opportunity to cross-examine the witnesses produced by the management, which he declined. The Enquiry Officer returned a finding that the charge against the petitioner stood proved, primarily on the ground that the delinquent employee had failed to produce any medical documents to substantiate his illness, and accordingly, his absence was held to be unauthorized. By an order dated October 7, 1994, the General Manager, Kunustoria Area, dismissed the petitioner from service with immediate effect and directed him to collect his dues upon completion of the requisite formalities.

iv) Challenging the legality and propriety of the dismissal order, the petitioner filed W.P. No. 16428 (W) of 1995, which was disposed of by a Coordinate Bench of this Court by an order dated September 18, 1995. By the said order, liberty was granted to the petitioner to submit a representation before the competent authority within the time stipulated therein, and in the event such representation was filed, the respondent authority was directed to consider the same. Taking note of the petitioner's illness and his confinement in hospital at the relevant time, the authority was directed to dispose of the representation after affording an opportunity of hearing to

the parties, permitting the petitioner to produce relevant documents, and by passing a reasoned and speaking order.

- v) Pursuant to the liberty granted, the petitioner submitted a representation, whereupon a hearing was conducted. However, by an order dated October 12/24, 1996, the General Manager, Kunustoria Area, rejected the representation and upheld the order of dismissal.
- vi) Challenging the order dated October 12/24, 1996, the petitioner filed another writ petition, being W.P. No. 8236 (W) of 1998, which was disposed of by a Coordinate Bench of this Court by an order dated January 29, 2009. By the said order dated 29.01.2009, the General Manager was directed to reconsider the petitioner's claim within the time stipulated therein. It was further clarified that if, upon due appreciation of the petitioner's plight, the General Manager was of the view that a lesser punishment could be imposed and the petitioner could be reinstated in service, it would be open to the General Manager to first subject the petitioner to a medical examination by a duly constituted Medical Board, and if found physically fit and mentally alert, the petitioner might be reinstated on such terms and conditions as the General Manager deemed fit and proper in the circumstances.
- vii) In compliance with the order dated January 29, 2009, the petitioner's claim was reconsidered; however, by an order dated

March 20, 2009, the General Manager rejected the representation and affirmed the order of dismissal.

viii) The petitioner thereafter filed another writ petition, being W.P. No. 22056 (W) of 2019, challenging the order dated March 20, 2009. The said writ petition was disposed of by a Coordinate Bench of this Court by an order dated November 7, 2019, whereby the order dated March 20, 2009 was set aside and the Chief General Manager was directed to reconsider the matter in terms of the order dated January 29, 2009 passed in W.P. No. 8236 (W) of 1998, and to pass a reasoned order. The petitioner was also granted liberty to raise the issue of back wages and reinstatement before the competent authority.

ix) Record reveals that by an order dated 13th January, 2020, the authority rejected the petitioner's claim for reinstatement and back wages upon setting aside the order of dismissal issued against him. Challenging the order dated 13th January, 2020, the present writ petition has been preferred.

3. From the records, it appears that upon arriving at the conclusion that the writ petition should be disposed of on the basis of affidavits, a Coordinate Bench of this Court directed the parties to exchange affidavits. Pursuant thereto, the parties filed their respective affidavits in connection with the writ petition.

Respondents' case:

4. In the affidavit-in-opposition, the respondents categorically contended that the scope of the present writ petition cannot extend beyond the order dated January 29, 2009 passed in W.P. No. 8236 (W) of 1998. According to them, the petitioner is entitled only to question the proportionality of the punishment. By an order dated November 7, 2019 passed in W.P. No. 22056 (W) of 2009, the matter was remanded to the authority solely for consideration of the quantum of punishment. The authority duly reconsidered the matter; however, having found that the punishment was commensurate with the gravity of the misconduct, it upheld the same.
5. It was further averred that a charge-sheet had been issued to the petitioner for his unauthorized absence from September 18, 1992 until July 15, 1994, the date of its issuance. The petitioner neither filed any reply to the charge-sheet nor offered any justification for his prolonged absence of nearly 23 months. Upon consideration of all relevant aspects, the authority accordingly imposed the punishment of dismissal.

Contents of Affidavit-in-reply:

6. In the affidavit-in-reply, the writ petitioner, inter alia, contended that there was no justification for imposing a major penalty, and that the respondents ought to have reconsidered his claim in the spirit of the orders dated January 29, 2009 and November 7, 2019.

Submissions:

7. Mr. Ghosh, learned Advocate appearing for the petitioners, argued that in the present case, charge-sheet was issued by the Agent/Manager, North Searsole Colliery who is due to the official hierarchy only empowered to issue charge sheet against the subordinate employee (s) for the misconduct which may entail 'minor penalty'. Therefore, according to Mr. Ghosh, for this reason alone, the charge sheet cannot be allowed to stand.
8. Referring to the order dated 29.01.2009 passed in W.P.8236 (W) of 1998, he argued that the Bench was satisfied that the punishment is disproportionate to the gravity of the offence committed by the petitioner. He contended that the Bench observed that the employee being a member of the weaker section of the society, had to fight for his survival and in a case of this nature, the attitude of the disciplinary authority should not have been that of a hard task master. The Bench observed that some amount of leniency could have been shown.
9. Mr. Ghosh argued that the Bench directed the General Manager to reconsider the petitioner's claim with the sympathy it deserved but in accordance with law. However, he alleged, the respondent authority did not reconsider the employee's claim in the light of observations made in that order dated 29.01.2009. He further argued that Chief General Manager also was directed to reconsider the employee's claim in terms of the order dated 29.01.2009; however, in total disregard of those orders, the respondent authority remained steadfast to its decision.

10. Mr. Ghosh claimed that the respondent authority did not consider the employee, who was a member of weaker section and who was almost illiterate, could not attend his place of work for certain period and for commission of a misconduct of like nature, punishment of dismissal from service was not commensurate. He prayed for a directive to the respondents to treat the employee re-instated from the date of issuance of the order of dismissal from service, to grant consequential benefits including retirement benefits to the present petitioners being the legal heirs of the employee.
11. To bolster his submission, he cites the decisions, reported (2012) 3 SCC 178 (*Krushnakant B. Parmar vs. Union of India & Anr.*) & (2013) 10 SCC 324 (*Deepali Gundu Surwase vs. Kranti Junior Adhyapak Mahavidyalaya (D.ED.) & Ors.*).
12. In rebuttal, Mr. Das, learned Advocate appearing for the respondents, argued that in the order dated 29.01.2009, it was held that there was no illegality in the charge sheet and in the decision-making process including the enquiry proceeding. Therefore, according to Mr. Das, following the principles of res judicata, such issues cannot be addressed and even, the petitioners are estopped from raising any other issue except the issue of proportionality of the punishment.
13. Mr. Das argued that the claim of the employee was considered in terms of the orders dated 29.01.2009 and 7.11.2019. However, in the both the orders, issue of deciding the quantum of punishment was left at the discretion of the respondent authority. He asserted that the respondent authority upon considering all relevant aspects, found that the employee, who remained absent from more than

23 months without giving any intimation, cannot have claim any lenient approach. He contended that the employee used to reside in a place near to his place of work; however, he never thought it necessary to give an intimation that he had fallen ill once again.

14. Mr. Das contended that respondents are to run an establishment with many employees and if such leniency is shown to an employee, then it would adversely affect the discipline of the concern which is not expected at all.

15. He argued that scope of judicial review of the order of punishment is very limited and it is not open to the Court to go into the proportionality so long as the punishment does not shock the conscience of the Court and unless it is totally irrational or wholly outrageous in defiance of logic.

16. To invigorate his submission, he referred to the decisions, reported at *(2015) 2 SCC 610 (Union of India & Ors. vs. P. Gunasekaran)*, *2006 (1) Supreme 37 (State of Rajasthan & Anr. vs. Mohammed Ayub Naz)*, *(2010) 5 SCC 775 (Administrator, Union Territory of Dadra and Nagar Haveli vs. Gulabhia M. Lad)* & *(2014) 4 WBLR (SC) 635 (Deputy Commissioner, KVS vs. J. Hussain)*.

Analysis and Conclusion:

17. As noted earlier, the petitioner was appointed on 27.03.1989 and remained admitted in the hospital from 18.09.1992 to 06.01.1993. Thus, he had rendered service in the establishment of the respondents from 27.03.1989 till 18.09.1992, i.e., for a period of about 3 years and 6 months. The petitioner was discharged from the hospital on 06.01.1993 and was declared fit to resume duties. However, according to the petitioner, episodes of epilepsy recurred and/or relapsed, and

being a member of the weaker section of society, he had to undergo unconventional treatment under local *Ojhas*.

18. Conversely, the respondents contended that the petitioner's place of work was in close proximity to his residence, and therefore, he could have intimated the authorities about his subsequent illness and recurrence of the earlier ailment. However, the petitioner failed to do so and also could not produce any material to substantiate his claim of having undergone treatment under local *Ojhas*. Accordingly, his absence from duty was treated as unauthorised, which led to the initiation of disciplinary proceedings that ultimately culminated in his dismissal from service.

19. In the present case, both parties have placed strong reliance on the order dated 29.01.2009 passed by a Co-ordinate Bench in W.P. 8236 (W) of 1998. The said order shows that the Hon'ble Bench took note of the contentions raised by the writ petitioner, which were as follows:

- “i) The charge sheet disclosed closed mind of the disciplinary authority;
- ii) The petitioner was given 48 hours to reply to the charge sheet which was inadequate;
- iii) The fact that the petitioner was admitted in the hospital from 18.9.1992 to 6.1.1993 was within the knowledge of the respondent and therefore, the charge sheet alleging that the petitioner had remained absence without authorization from 18.9. 1992 till the date of its issue is defective;
- iv) That the petitioner was not given opportunity to engage a co-worker to assist him during enquiry; and

v) The punishment imposed is thoroughly disproportionate and there has been no proper consideration of his representation.”

20. However, upon considering the submissions of the parties and the facts and circumstances of the case, the Hon’ble Bench held as follows:

- i) that there was no illegality in the language of the charge-sheet;
- ii) that, on an overall assessment of the enquiry proceedings, it did not appear that the employee had been denied a reasonable opportunity to contest the charges, and therefore, the enquiry could not be said to have been vitiated;
- iii) that the mere inclusion of the period from 18.09.1992 to 06.01.1993 in the charge-sheet, by itself, would not invalidate the order of penalty passed pursuant to the enquiry; and
- iv) that although there existed a provision enabling a delinquent employee to avail himself of the assistance of a co-worker in defending the charge, the petitioner had not exercised that option, and even if he had, such assistance would not have established his innocence, since it was an admitted position that he had failed to send any intimation to the colliery authority during the period of his absence. The charge stood established owing to the non-production of relevant material documents, the onus of which rested upon the petitioner.

Accordingly, the Hon’ble Bench found no merit in such contention of the employee.

21. With regard to the last contention of the employee, namely, that the punishment imposed was disproportionate to the gravity of the offence, the Hon'ble Bench observed that during the three years of his service, there had been no allegation of unauthorized absence, and the cause of action had arisen only due to his ill health. The Bench further noted that the employee, being a member of the weaker section of society, was compelled to struggle for survival, and in such circumstances, the disciplinary authority ought not to have adopted the approach of a hard taskmaster. A degree of leniency, it was observed, could well have been shown. The Bench also held that it was unreasonable to expect production of medical papers and documents from a person who had undergone treatment under local *Ojhas*, and it was incumbent upon the General Manager to consider the claim for reinstatement of the employee by revoking the penalty, keeping in view these mitigating factors.
22. Ultimately, the order of the General Manager was set aside, and he was directed to reconsider the petitioner's claim with the sympathy it deserved, but in accordance with law, within the time stipulated therein. It was further clarified that, upon such de novo consideration, if the petitioner's claim was not found acceptable, a reasoned order would be passed and duly communicated to him. It was also observed that, in the event the General Manager considered imposition of a lesser punishment but reinstatement in service was not feasible, it would be open to subject the petitioner to a prior medical examination.
23. The employee did not challenge the order dated 29.01.2009. Therefore, at this stage, applying the principles of res judicata and constructive res judicata, the inevitable conclusion that can be drawn is that the petitioners, claiming their

rights through the said employee, cannot call into question the charge-sheet, the enquiry proceedings, or even the order of dismissal, except to the limited extent of questioning the quantum of punishment.

24. A bare perusal of the order dated 29.01.2009 indicates that, although the Hon'ble Bench observed that the General Manager ought not to have insisted upon the employee producing medical documents and could have adopted a lenient approach in imposing the penalty, the matter was ultimately relegated to the respondent authority to examine the proportionality of the punishment and to pass a reasoned order.
25. In compliance with the order dated 29.01.2009, the General Manager in his order noted that the Ex-Workman was holding the post of cableman directly linked with production. The workman was literate and had failed to intimate the local Management about his alleged sickness in time bound manner. The Ex-Workman had been staying at Satgram Village nearing to his place of work i.e. North Searsole Colliery. There were two parameters of reinstatement as agreed upon in the Bipartite meeting held on 11.05.2007 viz. i) Dismissed person should be less than 45 years; ii) period of absence should not exceed 9 (nine) months. Therefore, the General Manager did not find substance in the claim of the employee for reinstatement.
26. Assailing that order, another writ petition, W.P. 22056(W) of 2009 was filed by the employee, which was disposed of by a Co-ordinate Bench by an order dated 7.11.2009 remanding the matter back to the respondent authority with a direction to reconsider the matter in terms of the order dated 29.01.2009.

27. However, upon reconsideration of the prayer of the employee for lesser punishment and re-instatement was rejected by passing an order dated 13.01.2020. The operative part of that order is as follows:

“5. On perusal of the order dated 29.01.2009, it is observed that the Hon’ble Court nowhere questioned on the enquiry proceeding rather it has questioned on the quantum of punishment awarded to the petitioner. The Hon’ble Court in its order dated 07.11.2019 also questioned on the quantum of punishment awarded to the petitioner.

6. While reconsidering the decision on the quantum of punishment, it is observed that the period of absence is more than one year and ten months which is not condonable for any reason. During the said period of absence, the petitioner did not even inform the colliery management about his sickness whereas his native village where he was residing was nearest to his place of working. Had the management been informed about the sickness of the petitioner, he would have been treated better in company’s hospital. But he was sitting idle in his home and due to his lackadaisical approach the management was compelled to terminate his service.

7. The Hon’ble Court has pointed out that the petitioner hails from a weaker section of the society. The undersigned do hold the same opinion but the enquiry in unauthorized absenteeism cases is based on the documentary evidences rather on the statement of evidences.

8. Hon’ble Calcutta High Court vide order dated 20.04.2016 in Some Majhi Vs. CIL & Ors. has interalia observed that employee must take his duties seriously, perform his functions with honesty & sincerety, and must

conduct himself in disciplined manner. An employee/workman who did not think it necessary to send even one intimation to the employee during the period of absence, deserves no sympathy. Further, the Hon'ble Calcutta High Court in Dayanand Paswan Vs CIL & Ors vide order dated 19.05.2016, upheld the dismissal of workman where workman absented without intimation.

9. In view of the above, it is evident that the period of absence is more than one year and ten months. Also, the petitioner did not think it necessary to send even one intimation to the unit management. Thus reconsidering the decision on the quantum of punishment, the undersigned is handicapped to review the punishment in absence of any specific ground, be it for sickness or other. Hence, taking all factors together & analyzing instant matter in proper perspective the undersigned is constrained to reaffirm the order of dismissal after reconsidering the facts, circumstances & in order to maintain discipline in the company.”

28. Absence from duty without intimation or prior permission may amount to unauthorized absence; however, it does not invariably connote willfulness. There may be compelling circumstances beyond the employee's control, such as illness, accident, or hospitalization. In such situations, the employee cannot be held guilty of lack of devotion to duty or conduct unbecoming of a government servant. In the present case, as already noted, the findings of the Enquiry Officer and the Disciplinary Authority, holding that the charge of unauthorized absence stood proved against the employee, were upheld by the order dated 29.01.2009. That issue, therefore, cannot be re-opened at this stage.

29. The scope of judicial review is generally confined to questions of illegality, irrationality, and procedural impropriety. In this context, reference may be made to the decision in *Om Kumar v. Union of India*, (2001) 2 SCC 386, where the Hon'ble Supreme Court elaborated the principles of primary and secondary review. The doctrine of primary review applies to statutes, statutory rules, or any order having the force of law. Secondary review, on the other hand, applies, inter alia, to cases where the executive has acted in a patently arbitrary manner. In disciplinary matters, where an administrative decision regarding punishment is challenged as arbitrary, the Court's review is confined to the Wednesbury principles. If the Court is satisfied that these principles have been violated, it ordinarily remits the matter for reconsideration and fresh decision.
30. The disciplinary authority is invested with the discretion to impose appropriate punishment keeping in view the magnitude or gravity of misconduct. In decision of *B.C. Chaturvedi vs. Union of India*, reported at (1995) 6 SCC 749, it was ruled that if the punishment shocks the conscience of the Court, it would appropriately mould the relief, either directing the disciplinary authority to reconsider the penalty or to shorten the litigation, it may itself, in exceptional and rare cases, impose appropriate punishment with cogent reasons in support thereof.
31. In *State of Punjab v. Dr. P.L. Singla*, (2008) 8 SCC 469, the Hon'ble Supreme Court observed that, in cases of unauthorized absence, two courses of action are open to the employer: one is to condone the absence by sanctioning leave for the period concerned; the other is to initiate disciplinary proceedings and impose punishment, which may range from dismissal or removal from

service to withholding of increments, etc. The extent of punishment would depend upon factors such as the nature of service, the position held by the employee, the duration of absence, and the explanation offered therefor.

32. In considering interference with the quantum of punishment, due regard must be given to the principle of proportionality between the gravity of the offence and the severity of the penalty. In the present case, the matter was remitted to the respondent authority on two occasions, with directions to reconsider the quantum of punishment, taking into account that the employee belonged to a weaker section of society and that his claim of having sought unconventional treatment from local ojhas could not be doubted. The competent authority, however, observed that the employee was literate, resided near his workplace, and could have availed himself of better medical treatment at the company's hospital. Further, he had failed to provide any intimation and remained absent from duty for a continuous period of one year and ten months.
33. Therefore, when a balance is struck between the aggravating and mitigating factors, it is evident that, on the one hand, the employee remained absent without authorization for over one year and ten months, without intimation, despite being literate, residing close to his workplace, and having access to better medical treatment at the company's hospital. On the other hand, the mitigating factor is that he belonged to a weaker section of society and had resorted to unconventional treatment from local ojhas, and, as such, was unable to produce any documentary evidence regarding his treatment.
34. As noted earlier, the employee has since expired, and hence there is no scope for his reinstatement. On two occasions, the respondent authority considered the

fact that the employee belonged to a weaker section of society, yet remained steadfast in adhering to its earlier decision. In these circumstances, the only course now open to this Court is to substitute the punishment by directing the respondent authority to treat the employee as reinstated, impose any minor penalty deemed appropriate, and thereafter compute his service-related benefits, including back wages, and release the same in favour of his legal heirs, i.e., the present petitioners.

35. In *B.C. Chaturvedi (supra)*, it was held that the Court may, in exceptional and rare cases, itself impose an appropriate punishment, provided cogent reasons are recorded in support thereof. However, upon considering all relevant aspects, I am of the considered view that the present case does not fall within the category of such exceptional or rare cases. Therefore, in the present case, it would not be appropriate to substitute the punishment or to direct the authority to treat the employee reinstated retrospectively from any particular date and to pay certain amount to the petitioners. Therefore, I do not find any justification to interfere with the order under challenge in the present writ petition.

36. Consequently, based on the discussions and reasons set out in the preceding paragraphs, the writ petition is, thus, dismissed without any order as to the costs.

(Partha Sarathi Chatterjee, J.)

