GAHC010040442018

2025:GAU-AS:8786

THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/1749/2018

THE UNION OF INDIA AND 2 ORS.
REPRESENTED BY GENERAL MANAGER, NORTH EAST FRONTIER RAILWAY, MALIGAON, GUWAHATI-781011

2: THE CHIEF WORK SHOP MANAGER
DIBRUGARH WORK SHOP
DIBRUGARH NORTH EAST FRONTIER RAILWAY
ASSAM
PIN-783001

3: THE WORKS MANAGER
DIBRUGARH WORK SHOP
NORTH EAST FRONTIER RAILWAY
ASSAM
PIN-78300

VERSUS

PRADIP KUMAR NANDY
EX-TECHNICIAN GRADE III, T/1718 WORKING UNDER SSE/CRS/DBWS, PRESENTLY RESIDING AT SANKAR DEV RAILWAY COLONY, DIBRUGARH, ASSAM.

Advocate for the Petitioner : MR. G GOSWAMI, MS B DEVI

Advocate for the Respondent : MR. S N TAMULI (FOR CAVEATOR),

:::BEFORE:::

HON'BLE MR. JUSTICE MANASH RANJAN PATHAK

HON'BLE MRS. JUSTICE MITALI THAKURIA

Date of hearing : **16.05.2024**

Date of Judgment & Order : **27.06.2025**

JUDGMENT & ORDER (CAV)

(M. Thakuria, J)

Heard Mr. Gautam Goswami, learned Standing Counsel, Railway Department appearing for the petitioners and Mr. Santanu Nandan Tamuli, learned counsel for the sole respondent.

2. This writ petition under Article 226/227 of the Constitution of India has been filed challenging the legality and validity of the impugned Judgment and Order dated 30.11.2017, passed by the learned Central Administrative Tribunal, Guwahati Bench, Guwahati, in Original Application No. 040/00410/2015 (Shri Pradip Kumar Nandy Vs. Union of India & Ors.), allowing the Original Application filed by the applicant/respondent against the petitioners/Railways.

3. It is to be noted here that the learned Central Administrative Tribunal (in short, 'CAT'), Guwahati Bench, Guwahati, while passing the judgment and order dated 30.11.2017, had set aside the Order of Disciplinary Authority, bearing No. E/74/DAR/5/P, dated 12.12.2008, pursuant to a Disciplinary Proceeding initiated by it against the respondent for major penalty under Rule 9 of Railway Servant (Discipline & Appeal) Rules, 1968 (hereinafter referred to as 'Rules of 1968') of removal from service of the respondent for unauthorized absence from duty.

4. In brief, the case of the petitioners is that the respondent, herein, who was at the relevant point of time serving as Technician Grade III in the Office of the SSE/CRS/DBWS, N.F. Railway, was a very important and sensitive post under the N.F. Railway, was found very irregular in his duty for a long period of time. He was in the habit of remaining unauthorized absent from duty very frequently. However, a lenient view was taken by the DAR to offer him scope for improvement, but he never improved. Rather, he was repeating the same offence of remaining unauthorized absence from his duty without any justifiable ground. Situated thus, the Respondent Authority was left with no other option and compelled to take disciplinary action against the respondent for his repeated unauthorized absence from duty. Accordingly, the Departmental Authority on 04.04.2008 had served the Memorandum of Charges upon the respondent for major penalty under the Rules of 1968 through standard Form No. 5 vide No. E/74/DAR/5/P, dated 04.04.2008 along with the necessary documents annexed to it which includes a copy of letter, bearing No. CRS/1-Leave, dated 21.03.2008, issued by the SSE/CRS/ DBWS. However, even after receipt of the said Memorandum of Charges for major penalty under Rule 9 of the said the Rules of 1968, the respondent did not submit his written statement of defence to the Disciplinary Authority.

5. Thereafter, the Inquiry Officer (I.O.) was nominated and the enquiry was held where the respondent accepted the charges framed against him. After enquiry, the report was submitted by the I.O., dated 27.10.2008, wherein it was held that the charge was established and the report was accordingly communicated and acknowledged by the respondent. But the respondent did not submit his statement of defence against the enquiry report, though he was asked to file it. Thereafter, the Notice Imposing Penalty (in short 'NIP') was also

issued to him imposing penalty of removal from service against the respondent by the competent authority on 12.12.2008, which was also acknowledged by the respondent. He was also asked to prefer an appeal against the order dated 12.12.2008 within 45 days, if so desires. Accordingly, the respondent prefer an appeal before the Appellate Authority on 23.01.2009 and after going through the record, the Appellate Authority had upheld the punishment vide its order dated 24.12.2009. Thereafter, as per special provision, the respondent prefered a petition before the General Manager, N.F. Railway for revision of the order of his punishment dated 12.12.2008. However, the Revisional Authority, vide order dated 24.03.2010, also upheld the penalty imposed on the respondent, as upheld by the Appellate Authority. Thereafter, the respondent, almost after 5 years, had approached the learned CAT, Guwahati Branch, Guwahati for setting aside the order of Disciplinary Authority dated 12.12.2008. Accordingly, the learned CAT, Guwahati Branch, Guwahati vide its Judgment and Order dated 30.11.2017 directed the Railways/petitioners to reinstate the respondent to his service from the date of his removal, i.e. 12.12.2008, with 50% back wages holding it to be disproportionate with liberty to pass such penalty proportionate to the misconduct.

6. The present petitioners/Railways in O.A. have filed their written statement contesting the claim of the applicant, respondent herein, on the ground that the contention advanced by the applicant was false and fabricated and it is also stated that the applicant was given every opportunity to defend himself and after following principles of natural justice, the removal order was passed and the same was duly intimated to him. The applicant/present respondent, also filed his rejoinder wherein he also admitted that earlier in one occasion he was served with Memorandum of Charges wherein it was alleged that he was

unauthorizedly absent from his duty.

7. It is further stated that previously also, 3 (three) Disciplinary Proceedings were initiated against the present respondent for non-carrying out instructions of his superiors and willfully delay on line duty to New Bongaigaon and Guwahati. Consequently, NIP for stoppage of increment of the respondent for 2 (two) years and 11 (eleven) months was also issued vide order dated 21.05.2007. Second Disciplinary Proceeding was initiated on 05.12.2006 for unauthorized absence from his duty and in that case also, the stoppage of increment was passed for 30 months vide order dated 21.05.2007. Thirdly, the Show Cause Notice for break in service was issued to the present respondent on 16.05.2008 for habitual unauthorized absence from duty. Consequently, NIP for break in service from 17.01.2004 was issued vide order dated 01.06.2007.

8. It is further stated that the respondent accepted the charges and in response to other questions, he raised the issue that he had to remain absent frequently from his duty for the illness of his mother, who was a Psychiatric Patient, which means and include that the respondent shall not be able to attend his duty regularly until and unless his mother become fully cured. However, it is contended that the same cannot be the legitimate ground from absence of his duty. A responsible employee is supposed to follow the Leave Rules while not attending their duties. But, in the present case, the respondent never bothered to follow any such rule and instead he preferred to remain absent from his duty on the pretext of his mother's illness. The respondent was in habit of remaining unauthorized absence from his duty and he never improved himself even after several scope was given from the Department, rather he remained absent from his duty without any justifiable grounds. Hence,

the action on the part of the petitioners is absolutely legitimate and therefore, it is contended that the impugned order dated 30.11.2017, passed by the learned Central Administrative Tribunal, Guwahati Bench, Guwahati, is not sustainable in the eye of law and the same is liable to be set aside and quashed.

9. It is further stated that while remaining absent from his duty, the respondent never produced any medical document except photocopies of certain medical documents. More so, the certificate which was produced before the learned CAT, Guwahati also pertains to a period after punishment so imposed on the respondent. Hence, those documents also cannot be taken into consideration which was produced before the learned CAT, Guwahati.

10. It is also stated that the respondent never demanded for any relevant documents during the Departmental Proceeding, though he took the plea of non-supplying of the relevant documents and hence, the findings of the learned CAT, Guwahati amounts to error of law and therefore is liable to be set aside and quashed. More so, the respondent approached the learned Tribunal after lapse of 5 years, but without going into these issues, the Order was passed by the learned Tribunal on 30.11.2017, which is not sustainable and liable to be dismissed. Further, the order of reinstatement of the respondent from the date of removal with 50% back wages is in contradiction to well settled principle of "no work no pay" which is now the law of the land as held by the Hon'ble Supreme Court and various High Courts. As such, if the impugned Judgment and Order passed by the learned CAT, Guwahati if not set aside, in that event the petitioners would suffer irreparable loss and injury and would have a cascading effect on the fiscal prudence of the country and for this reason also, the Judgment passed by the learned Tribunal is liable to be set aside and

quashed. It is stated that the learned Tribunal failed to consider the fact that previously on several occasion, the respondent was warned by DAR for his unauthorized absence from duty, but he was in the habit of remaining unauthorized absence and did not improve himself even after the lenient view taken by the DAR. The Disciplinary Authority found that the respondent failed to rectify himself in spite of ample opportunity from the department and therefore had to initiate the Departmental Proceeding against the present respondent.

11. The order of punishment by way of removal from service of the respondent was imposed by the petitioners as per the law and the respondent was given every opportunity to defend himself and after following the principles of natural justice, the Order of removal was passed which was also duly intimated to him. No illegality has been committed in the Order passed in the Departmental Proceeding and hence, reinstatement of the present respondent with 50% back wages cannot be entertained and is not sustainable under the eye of law. The petitioner submitted that the punishment from removal of service was proportionate in comparison with the offence committed by the respondent.

12. The petitioners further stated that the Railway Department has a strong *prima facie* case and balance of convenience also lies in favour of the petitioners. If the impugned order is allowed to be sustained, the Railway Administration would be seriously prejudiced and same shall cause irreparable loss and injury to the department and as such, the impugned order is liable to be set aside and quashed in the interest of justice. Accordingly, it is prayed by the petitioners that the order passed by the learned CAT, Guwahati, dated 13.11.2017, is liable to be interfered with by this Court.

13. Mr. Goswami, learned Standing Counsel, Railway Department, appearing for the petitioners, submitted that during the Departmental Proceeding, the Register was called for and on verification, it was found that in some days, the respondent attended the first half and in some days, he attended the second half of the office and on the other days, he was absent for the full day without any leave application which can be considered as unauthorized leave and thus, it was the opinion of the Inquiry Officer that the respondent had accepted the charges framed against him and it was observed that from the attendance sheet submitted by the office that he was irregular and remained absent. Further, from the report received from the OS/P/Bill, it also reveals during enquiry that he had not submitted any leave application for his unauthorized absence except the commuted leave from 12.03.2008 to 17.03.2008.

14. It is further submitted by Mr. Goswami that all the charges framed against the respondent was duly served/intimated to him and he also accepted the charges brought against him before the Inquiry Officer. He preferred the appeal before the learned Tribunal after 5 years and till that period, he was sitting ideally and hence, he cannot claim for his back wages for the period wherein he was sitting ideal without even preferring any appeal for revision. However, he was reinstated in service on 04.04.2018 and since then, he was getting his regular salary till his superannuation on 31.03.2020. Mr. Goswami further submitted that considering the offence committed by the respondent, the penalty imposed on him is proportionate and hence, the view of the learned Tribunal is not sustainable under the eye of law wherein it has been held that the penalty was highly disproportionate in comparison to the offence committed by the employee/respondent.

15. Mr. Goswami further relied on the decision of Hon'ble Apex Court reported in **(2014) 4 SCC 108 (Chennai metropolitan Water Supply and Sewerage Board and Others Vs. T. T. Murali Babu)**. Relying on the said decision, it is submitted that the unauthorized absence of an employee is considered to be misconduct and cannot be put in straitjacket formula for imposition of punishment and it depends on the various factors. It is the duty of the employee to perform his duty with sincerity and honesty for service of the institution and unauthorized absence from the duty itself is considered to be misconduct and thus, the punishment provided to the present respondent cannot be considered as disproportionate as held by the learned Tribunal. He basically emphasized on paragraph Nos. 4, 5, 8, 12, 15 & 16 of the said judgment and paragraph Nos. 12 & 16 reads as under:

> "*12. It is not in dispute that the Inquiry Officer found that both the charges had been proved. The disciplinary authority had ascribed reasons and passed an order of dismissal from service. On a perusal of the order of dismissal it is vivid that the medical certificate was belatedly submitted and he had remained unauthorisedly absent from 28.08.1995. The question that arises is when the charges of unauthorized absence for a long period had been proven, was it justified on the part of the High Court to take resort to the doctrine of proportionality and direct reinstatement in service. That apart, one aspect which has not at all been addressed to by the High Court is that the respondent invoked the extraordinary jurisdiction of the High Court after four years.*
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> *16. Thus, the doctrine of delay and laches should not be lightly brushed aside. A writ court is required to weigh the explanation offered and the acceptability of the same. The court should bear in mind that it is exercising an extraordinary and equitable jurisdiction. As a constitutional court it has a duty to protect the rights of the citizens but simultaneously it is to keep itself alive to the primary principle that when an aggrieved person, without adequate reason, approaches the court at his own leisure or pleasure, the Court would be under legal obligation to scrutinize whether the lis at a belated stage should be entertained or not. Be it noted, delay comes in the way of equity. In certain circumstances delay and laches may not be fatal but in most circumstances inordinate delay would only invite disaster for the litigant who knocks at the doors of the Court. Delay reflects inactivity and inaction on the part of a litigant – a litigant who has forgotten the basic norms, namely, "procrastination is the greatest thief of time" and second, law does not permit one to sleep and rise like a phoenix.*

Delay does bring in hazard and causes injury to the lis."

16. Mr. Goswami further cited another decision of Hon'ble Apex Court passed in **Civil Appeal Nos. 7939-7940 of 2022 (Union of India & Ors. Vs. Subrata Nath).** Relying on the said judgment, Mr. Goswami submitted that it is not the duty of the appellate forum or the learned Tribunal to re-appreciate the evidence or the statement recorded by the enquiry officer and the High Court also while exercising the power under Article 226 of the Constitution of India is not supposed to re-appreciate the evidence which were recorded by the Inquiry Officer during the departmental proceeding. He accordingly emphasized on paragraph Nos. 27 & 28 of the judgment which reads as under:

> "*27. The Division Bench went a step further and proceeded to reappreciate the evidence and observed that it was not persuaded to conclude that such a major theft of 800 kgs comprising of 42 bundles of copper wires could have happened 'in the blink of an eyelid' despite holding that the view of the learned Single Judge regarding non-production of the original Beat Book was unsustainable. The Court held that the allegation of connivance in the theft levelled against the respondent was presumptive and there wasn't enough evidence to conclude that theft of such a magnitude could have happened during the duty period of the respondent alone, yet charge-I pertaining to negligence and dereliction of duty on the part of the respondent was sustained. At the same time, the order passed by the learned Single Judge directing substitution of the punishment of dismissal with that of compulsory retirement was set aside and the respondent was directed to be reinstated in service with full back wages, while giving liberty to the Disciplinary Authority to issue a fresh order of punishment commensurate to the negligence and dereliction of duties on his part, except for punishment of dismissal or removal from service or compulsory retirement.*
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> *28. We are unable to commend the approach of the learned Single Judge and the Division Bench. There was no good reason for the High Court to have entered the domain of the factual aspects relating to the evidence recorded before the Inquiry Officer. This was clearly an attempt to reappreciate the evidence which is impermissible in exercise of powers of judicial review vested in the High Court under Article 226 of the Constitution of India. We are of the opinion that both, the learned Single Judge as well as the Division Bench, fell into an error by setting aside the order of dismissal from service imposed on the respondent by the Disciplinary Authority and upheld by the Appellate Authority."*

17. On the other hand, Mr. Tamuli, learned counsel appearing on behalf of the

sole respondent, submitted verbally as well as by filing his written argument that basically the allegation against the present respondent is that he was most irregular in his duty and was in habit of remaining absent from his duty very frequently which is considered to be a serious misconduct as the same was in violation of Rule 3.1(ii) & (iii) of Railway Services (Conduct) Rules, 1966 and for such misconduct or unauthorized absence of the respondent, the Departmental Proceeding was initiated against him on several occasion. But in every occasion the lenient view was taken for the respondent and he was also provided a scope of improvement in the earlier proceedings. However, as there was no improvement in his conduct and he used to repeat the same act, the Departmental Proceeding was accordingly initiated and finally it is held by the Inquiry Officer that the charges against the respondent is established and thereafter the disciplinary authority vide order dated 12.12.2008 has imposed penalty of removal from his service with immediate effect.

18. Against the aforesaid order of dismissal, the respondent preferred an appeal before the Appellate Authority, i.e. the Chief Workshop Engineer, N.F. Railway. But his appeal was dismissed upholding the penalty imposed by the Disciplinary Authority. Thereafter, the respondent also preferred a revision before the Revisional Authority which was also dismissed and the penalty imposed by the Disciplinary Authority was upheld and confirmed vide order dated 24.03.2010.

19. After dismissal of the revision petition, he approached the learned CAT vide O.A. No. 401/2015 where there was a delay in approaching the learned Tribunal. However, the delay was condoned by the learned Tribunal. But the present petitioner never challenged the order of condoning the delay by the

learned Tribunal and hence, they cannot take the plea of delay in filing the O.A. at this stage. He took the plea before the learned Tribunal that the Disciplinary Authority, while confirming the charges, relied upon the report dated 21.03.2008 submitted by SSE/CRS wherein the respondent was declared to be absent from his duty between 01.01.2008 to 21.03.2008 and other part of the allegation that the respondent was absent from his duty on earlier occasion was vague and there was no valid foundation for the same. He also clarified before the learned Tribunal that his absence from duty was placed earlier in one occasion due to his sickness and the said period was later on regularized on production of medical certificate from railway doctor. Further, the Disciplinary Authority did not frame any definite and distinct charge against each allegation. It is evident that the enquiry was conducted against the present respondent for the period of absence from 01.01.2008 to 21.03.2008 and the respondent had admitted only that part of charge, though it is claimed by the petitioner that he admitted his charge before the Disciplinary Authority. More so, the Disciplinary Authority had failed to consider the fact that under the compelling circumstances only, he had to remain absent from his duty and he never remain absent willfully or negligently from his duty.

20. Mr. Tamuli further raised the following issues in his written argument as well as in his oral submission:

(i) The petitioners failed to formulate distinct and definite charges against the respondent as mandated under Rule 9)6)(i) of the Railway Servants (Discipline and Appeal) Rules, 1968.

(ii) The period for which the applicant was unauthorized absent was not distinct and definite.

(iii) The past conduct of the respondent which was taken into consideration was also vague

(iv) The service particulars are produced for the first time in the writ petition. As there was no detail of the earlier misconduct, the respondent could not respond to such allegations which cause serious prejudice to the present respondent and only on this count, the memorandum of charges can be quashed.

(v) Along with the Memorandum of Charges the petitioners have provided only the report of the SSE/CRS dated 21.03.2003, wherein it was shown that the respondent remain absent from his work place only on few occasions. There was no document except a vague statement of imputation of misconduct or misbehavior.

(vi) From the order passed by the Disciplinary Authority as well as the Appellate Authority and the Revisional Authority, it is seen that they have considered the absence of the present respondent only for the period between 01.01.2008 to 21.01.2008 and not his earlier period of absence as claimed by the petitioners in their departmental proceeding.

(vii) The respondent remain absent from his duty only for few days in between 01.01.2008 to 21.03.2008 as per the report of SSE/CRS and it reveals that the respondent remain unauthorized absent from his work place for 10 days in full, for 19 days in half, i.e. either in first half or second half, and hence, such penalty of removal of service is shockingly disproportionate considering the gravity of the offence of unauthorized absence.

21. Accordingly, Mr. Tamuli, learned counsel for the respondent, submitted that the charge framed against the employee was vague and his period of absence was considered only on the basis of the report submitted by SSE/CRS from the period in between 01.01.2008 to 21.03.2008, wherein he was found to be remain absent for 10 days in full and for 19 days he remained absent either in the first half or second half. More so, if half day leave is granted by the authority that cannot be considered as unauthorized absence of duty from his service. In the departmental proceedings, it was not enquired as to whether his absence was willful or he remained absent for some compelling situation/circumstances and without going to any findings, the disciplinary authority had imposed the penalty form removal of service which is a disproportionate penalty imposed on the present respondent.

22. Mr. Tamuli further relied on the following decisions at the time of argument:

(i) **Anil Gilurkder Vs. Bilspur Raipur Kshetria Gramin Bank and Anr.**, reported in **(2011) 14 SCC 379**, wherein it is held that "*an enquiry to be conducted against any person giving strict adherence to the statutory provisions and principles of natural justice and charges should be specific, definite and giving details of the incident which formed the basis of charges and no enquiry can be sustained on vague charges.*"

(ii) **Surath Chandra Chakraborty Vs. the State of West Bengal**, reported in **AIR 1971 SC 752**, wherein the Apex Court had held that it is not permissible to held an enquiry on vague charges, as the same do not give a clear picture to the delinquent to make an

effective defence as he will be unaware of the exact nature of allegation against him and what kind of defense he should put up for rebuttal thereof.

(iii) **Government of Andhra Pradesh & Ors. Vs. Venkata Rayudu**, reported in **(2007) 1 SCC 338**, wherein it has been held by the Hon'ble Apex Court that "*it is a settled principle of natural justice that if any materials is sought to be used in an inquiry, then copies of that material should be supplied to the party against whom such inquiry is held.*"

(iv) **Krushnakat B. Paramar Vs. Union of India**, reported in **(2012) 3 SCC 178**, wherein the Hon'ble Apex Court has expressed the view that "*in the departmental proceeding, if allegation of unauthorized absence is made, the disciplinary authority is required to prove that the absence is willful, in absence of such finding, the absence will not amount to misconduct.*"

(v) **Chairman cum Managing Director, Col India Limited & Anr. Vs. Mukul Kumar Choudhuri & Ors.**, reported in **(2009) 15 SCC 620**, wherein the Hon'ble Apex Court has held that unauthorized absence for few days under compelling circumstances the penalty of removal from service for unauthorized absence for 6 months was considered not only to be unduly harsh but grossly excess to the allegations.

23. Mr. Tamuli further relied on the decision of this Court reported in **1998 (2) GLT 315 (Elangbam Nimai Singh Vs. State of Manipur)**, wherein it has been held that the penalty of dismissal from service for unauthorized absence of

68 days was found to be disproportionate to the gravity of the offence.

24. Mr. Tamuli also relied on a decision of Hon'ble Gujarat High Court passed in the case of **Cargo Motora (Gujarat) Limited Vs. Kritikant Shivajirav Jadav, decided on 07.08.2023**, wherein it has been held that in case of wrongful termination of service, 100% back wages can be provided. He further relied on another decision of Hon'ble Patna High Court passed in case of **Shri Umesh Jha Vs. the Union of India represented through the General Manager, N.F. Railway, Maligaon, Guwahati [2015 0 Supreme(Pat) 231]**, wherein it has been held that punishment for removal of service for unauthorized absence of 27 days is found to be highly disproportionate to the gravity of the offence.

25. Mr. Tamuli further relying on a decision of Hon'ble Apex Court passed in the case of **Jayantibhai Raojibhai Patel Vs. Municipal council, Narkhed & Ors. (Civil Appeal No. 6188 of 2019)** submitted that the present respondent is entitled for full back wages for the period for removal of service.

26. Accordingly, it is submitted by Mr. Tamuli that the order of learned Tribunal dated 30.11.2017 is rightly passed considering all aspects of the case directing for payment of 50% of the back wages to the present respondent and hence, there cannot be any reason for interference of this Court in the order passed by the learned Tribunal.

27. We have considered the submissions made by the learned counsels appearing on behalf of the parties and also perused the materials available on record.

28. From the submissions made above, it is seen that the Railway

Authorities/petitioners have filed the present writ petition against the order of learned CAT, Guwahati, dated 30.11.2017, whereby the learned Tribunal passed the order for reinstatement of respondent from the date of his removal from service with 50% back wages. As per the petitioners, the order passed by the learned Tribunal is in contradiction to well settled principle of "no work no pay" which is now the law of the land as held by the Hon'ble Supreme Court and various High Courts.

29. It is the case of the petitioners that the present respondent is in the habit of remaining unauthorized absent from his duty very frequently. Though lenient view was taken by the DAR to offer him scope for his improvement, but he never improved himself. Rather, he repeated the same offence of remaining unauthorized absence from his duty without any justifiable ground and for which, the Railways Authorities left with no other option and compelled to take disciplinary action against the respondent for his repeated unauthorized absence from duty. Accordingly, the concerned authority on 04.04.2018 had served a Memorandum of Charges on the respondent under Rule 9 of Railway Servant (Discipline & Appeal) Rules, 1968 through the standard form dated 04.04.2008 along with necessary documents annexed to it and considering the report of the inquiry officer, the Disciplinary Authority provided him penalty of "removal from service".

30. On the other hand, it is the case of the respondent that he admitted the charges framed against him only for the period of his absence from 01.01.2008 to 21.03.2008 and the other part of the allegation regarding absence from his duty on earlier occasion was vague and do not have any valid foundation. More so, there was no mention about the specific period of absence and there was no

DAR against him on earlier occasion. As per the respondent as well as from the report submitted by SSE/CRS, from 01.01.2008 to 21.03.2008, he was remain absent from his duty in full for 10 days and for 19 days in half, i.e. he was found absent either first half or second half. There is no specific mention as to whether any Departmental Proceeding was initiated against him in earlier occasion or the penalty imposed on him. More so, the service particular, which is annexed as Annexure-8 to the petition, is produced for the first time in the writ petition. As there was no detail of the earlier misconduct, the respondent could not respond to such allegations and as such, a serious prejudice was caused to him. Further it is also the plea of the respondent that he had to remain absent from his duty only for some compelling circumstances, particularly for the illness of his mother, who is a Psychiatric Patient, and the Departmental Authority did not consider his medical documents which was furnished before the authority at the time of proceeding. More so, he was not provided with every particular document to prepare his defence and the allegation of his unauthorized absence in earlier occasion is also not specific and distinct for which he could not make any respond to such vague allegation which was brought against him.

31. On perusal of the case record, it is seen that at the time of initiation of Disciplinary Proceedings, following Articles of Charges were framed:

"*Article – I*

As per attendance report submitted by SEE/CRS/DBWS,, vide L/No CRS/1-Leave Dt. 21.03.08, Shri Pradip Kr. Nandy, Tech GRIII, T/No1718 working under SSE/CRS/DBWS is most irregular in his duty. He is in the habit of remaining unauthorized absent from duty very frequently. This is serious misconduct in violation to Rule 3.1(ii & iii) of Rly services (conduct) rules, 1966.

Article – II

Shri Pradip Kr. Nandy, T/No1718 while working as Tech GRIII under SSE/CRS/DBWS is mot irregular in his duty. He is in the habit of remaining

unauthorized absent from duty very frequently and subsequently reports for duty covering the period of unauthorized absence from duty under PMC. Previously, Shri Nandy was taken up under DAR for several times for his habit of remaining unauthorized absent from duty and lenient view was taken to offer him scope for improvement. But, it has been seen that he has not improved at all, rather he is repeating the same offence of remaining unauthorized absent from duty. This persistent habit of remaining unauthorized absence from duty indicates the gross lack of devotion and negligence to duty which is serious misconduction the part of Shri Pradip Kr. Nandy, Tech. III, T/1718 showing himself as unbecoming of a Rly. Servant."

32. So, from the Articles of Charges framed against the respondent, it is seen that as per the statement of the Article-I, the attendance report was submitted by SSE/CRS/DBWS on 21.03.2008, which is also annexed along with the petition, and from the leave report, it is seen that the respondent was submitted by DAR only for the period of 01.01.2008 to 21.03.2008 and apart from that, there is no other specific mention about his unauthorized absence from the duty. Further, as per the statement of Article-II, the respondent is in habit of unauthorized absence from his duty very frequently and previously the respondent was taken up under DAR for several time for his habit of remaining unauthorized absence from duty, however lenient view was taken to offer him scope for improvement. But, from the statement made in Article-II of the Charge, it is seen that the statement is vague and there is no specific and distinct charge against the present petitioner showing his unauthorized absence from his duty.

33. Further it is the plea of the respondent that the report of DAR was never placed before the Disciplinary Authority at the time of enquiry. However, the respondent admitted the charge framed against him wherein he was reported to be absent from his duty for 10 days in full and 19 days in half for the calculated period from 01.01.2008 to 23.03.2008. But on perusal of the enquiry report as well as the findings of the Inquiry Officer, it is seen that except report of

SSE/CSR dated 21.03.2008, there is no other mention about any DAR in the report wherein some Departmental Proceeding was initiated against him. Further it is seen that the increment was stopped on 2 occasions and there was a service break for the respondent, but it is not supported with any particular documents and from the report of the Inquiry Officer as well as from the Order passed by the Disciplinary Authority, it is seen that there is no mention about the earlier proceeding, if any, initiated against the respondent nor there is any discussion about the earlier DAR in the report of the Inquiry Officer as well as the Order of Disciplinary Authority. The Disciplinary Authority had passed the order only on the basis of the enquiry report of the Inquiry Officer, wherein the absence of the present respondent was considered for the period from 01.01.2008 to 21.03.2008 and the statement of Charge of Article-II is found to be vague and no distinct charge was framed against the respondent. In this regard, the respondent relied on the above referred decision of the Hon'ble Apex Court wherein it is the view expressed by the Hon'ble Supreme Court that the charges should be specific, definite and giving details of the incident, which form the basis of charges and no enquiry can be sustained on a vague charge. Thus, in absence of any particulars of the documents or the relevant records, it cannot be held that all particulars of the documents in regards to the earlier service record of DAR etc. was placed before the Inquiry Officer or the documents were furnished to the present respondent to take his proper defence.

34. Further, from the report of SSE/CSR, dated 21.03.2008, it is seen that the respondents found to be remain absent in full for 10 days and he was on half day leave for 19 days, which means that he either worked in the first half or in the second half for 19 days, and on the basis of said report, the entire enquiry

proceeding was initiated against the respondent. Thus, the penalty of "removal from service" imposed by the Disciplinary Authority for unauthorized absence of 10 days in full and 19 days in half cannot be considered as proportionate to the offence committed by the delinquent official. It is also seen that the Disciplinary Authority did not consider the ground of illness of the mother of the respondent which was pleaded by the respondent before the Inquiry Officer at the time of enquiry. However, it is an admitted fact that the respondent had admitted his unauthorized absence as calculated for the period of 01.01.2008 to 21.03.2008. But for such period of absence, the penalty of removal from service cannot be considered as proportionate to the offence committed.

35. Coming to the delay in preferring the petition before the learned CAT, Guwahati, it is seen that the delay has already been condoned by the learned Tribunal and that was not challenged by the petitioners. More so, form the submission made by Mr. Goswami, learned Standing Counsel, Railway Department, it is seen that the respondent was reinstated in his service on 04.04.2018 and the salary was paid to him regularly till the date of his superannuation on 31.03.2020.

36. In view of the entire discussions made above, we are of the opinion that the learned Central Administrative Tribunal, Guwahati Bench, Guwahati, while passing the impugned Judgment and Order dated 30.11.2017, in Original Application No. 040/00410/2015, has not committed any error or mistake and rightly reinstated the respondent from the date of removal of his service on 12.12.2008 with 50% back wages, which requires no interference of this Court and therefore, the same stands upheld.

37. Consequently, the present writ petition, being devoid of merit, stands dismissed.

JUDGE **JUDGE**

Comparing Assistant