

**(1980) 08 KAR CK 0016**  
**In the Karnataka High Court**  
**Case No : W.P. 13389/1977**

Bharat Earth Movers Ltd.

APPELLANT

Vs

Arokiyam and Another

RESPONDENT

**Date of Decision :** 19-08-1980

**Acts Referred:**

Industrial Disputes Act, 1947 — Section 33(2)(B)

**Citation :** (1981) 1 KarLJ 574

**Hon'ble Judges :** N. D. Venkatesh, J

## **Judgement**

1. This petition is directed against two orders of the Industrial Tribunal, Bangalore (2nd respondent herein) passed in Industrial Dispute No. 32 of 1972 on its file. The first order is dated 30-10-75 (Annexure-E) and the second order is dated 7-9-77 (Annexure-F)

2. The facts giving rise to this dispute may briefly be stated; Petitioner is a Government Company and is engaged in the manufacture of Railcoaches, Trailers and Earth Moving Equipments. The 1st respondent was a workman under the Company. On the allegation that he had committed misconduct as contemplated under the certified Standing Order No. 21.20, a charge-sheet (Annexure-A) was issued to him on 8-8-74 calling upon him to submit his explanation. On receiving his explanation (Annexure-B) the matter was referred to a Domestic Enquiry. The Enquiry Committee found him guilty of the charge of the misconduct complained of (Annexure-C). The 1st respondent was issued with a second show-cause notice communicating to him the decision of the factory Manager, and after considering his explanation a decision was taken to dismiss him from service and an order was passed accordingly on 7-12-74 (Annexure-D). Since, at that time, an industrial dispute was pending before the Tribunal in Industrial Dispute No. 32 of 1972 and that dispute also concerned the 1st respondent, the Management made an application to the Tribunal under Section 33(2)(b) of the Industrial Disputes Act, 1947 (the Act) seeking its approval for the action taken against the 1st respondent. The Tribunal, by its first order referred to above; held that the domestic enquiry was invalid and proceeded to record evidence, calling upon the

Company to substantiate the charge levelled against the workman. After recording some evidence and hearing the parties concerned the Tribunal passed the 2nd order rejecting the approval sought for by the petitioner. Being aggrieved by these two orders the petitioner, as stated above, has approached this Court seeking a writ of Certiorari quashing the said two orders.

3. It was argued by the learned Counsel for the petitioner that the Tribunal, misconstruing the relevant standing order and drawing inferences which ought not to have drawn from the facts placed before it, had passed the impugned orders and therefore the same deserve to be quashed.

4. On the other hand, it was argued by the learned Counsel for the 1st respondent that the Tribunal's findings are based on facts; on proper appreciation of evidence; and that substantial justice between the parties has been done, and, therefore the same do not call for any interference at the hands of this Court.

5. It is Standing Order No. 21 of the certified Standing Orders applicable to this industry that enumerates the acts of misconduct on the part of workmen. Standing Order No. 21. 20 is the one invoked by the Management here to take action against the 1st respondent. That order reads like this:

"21. 20: Habitual absence without leave or without permission, or absence without leave for more than 10 consecutive days."

6. It is a fact that, in the instant case, the 1st respondent was absent from work continuously from 8-7-74 to 24-7-74. He had not obtained previous permission and he had not applied for leave or obtained leave of absence. On reporting for duty on 25.7.74 he gave two leave letters requesting for grant of leave. The charge framed against him reads as follows:

Annexure-A

(Confidential)August 8, 1974.

RK/24(38) 2769.Sri Arokiyam,B. No. 8666-208,Manufacturing Progress Dept.,Railcoach Division, B.E.M. Ltd.,Bangalore-560017.Through: RPR.

Dear Sir,

It is reported that you were absent from work without permission contionuously from 8-7-74 to 24-7-74 and after reporting for work on 25-7-74 submitted two leave letters requesting for grant of leave though you do not have any leave at your credit.

2. The act as above alleged to have been committed by you amounts to "Misconduct" under Clause 21. 20 of the Standing Orders, viz., "Habitual absence without leave or without permission or absence without leave for more than 10 consecutive days" punishable under clause 22.2 of the Standing Orders.

3. You are hereby called upon to submit your explanation in writing and also

show cause as to why one of the penalties provided under Clause 22.2 of the Standing Orders should not be imposed on you for the above said "Misconduct". Your explanation should reach the undersigned within 3-00 p.m., on 16-8-1974.

4. If no explanation is received within the stipulated time, it will be presumed that you have no explanation to offer and action will be taken on that basis without any further reference to you.

Yours faithfully, For BHARAT EARTH MOVERS LTD., Sd. P. Krishnamurthy, Asst. Personnel Manager."

7. Admitting his absence but trying to explain away the same, he has stated as follows in his answer to the said show-cause notice;

Annexure-B

To:

The Asst. Personnel Manager, Bharat Earths Movers Ltd., Bangalore-560017.

THROUGH PROPER CHANNEL, Sd/- Dt. 17-9-74.

Respected Sir,

Ref: Letter No. RK/24(38)/2769 dated 8th August, 1974 and subsequent letter dated 22nd August & 8th September, 74.

With reference to your show cause notice No. RK/24(38) 2769 dated 8.8.74 and subsequent letters, I wish to state the following for your kind consideration and favourable action.

It is true that I was absent from my work from 8th July to 24th July, '74 due to some unavoidable and compelling reasons wherein my entire family members were suffering from one or the other diseases which warranted my presence" throughout at home to attend the suffering persons, to prepare food for them and to get them medical treatment etc., until they recover from sickness which lasted up to 26-7-74. And I was so busy I had no time to send my leave letters through somebody or to come and submit the leave letter in person.

It is also true that I had submitted leave letters the very same day of my returning to work but unfortunately to my bad luck my absence was not regularised by granting leave as requested by me. But it is not true to say that I had no leave at my credit. For your information I had 14 days V.L., and 8 days S.L., totalling 22 days leave at my credit then according to my pay slips of June, July & August 1974 which I produce herewith for your perusal and verification. With this above explanation in response to your letter I wish to state that I had not absented myself from work deliberately but for inevitable circumstances as stated above, I request you to regularise my attendance by granting leave or treat it as authorised leave and excuse me for the same by withdrawing your show Cause Notice and oblige."

8. At this stage itself it may be noted that the 1st respondent had absented himself from work without leave or permission in the month of March of that year and the Management had refused to sanction him any leave when he requested for the same after joining duty though there was some leave at his credit. He had not been paid his wages for that period of absence without leave in the month of March. Now, on being absent in the month of July, when the 1st respondent was trying to secure leave after joining on the 25th of that month, the Management finding that there was some leave at his credit, granted the same towards his absence in the month of March and granted him full pay for that period. The result was that, on record, there was no leave at his credit for sanctioning him, even if the Management wanted to sanction for his absence, in the month of July. Considerable arguments were advanced by the learned counsel on this action of the Management in adjusting the leave that was at his credit in the month of July for the period of his absence in the month of March. The learned Counsel for the 1st respondent argued that this was a motivated action on the part of the Management deliberately made to show that there was no leave at his credit, and, according to him, this clearly shows the mala fide intention of the Management to victimize the 1st respondent. He also argued that if there was leave at his credit in the month of July, as undoubtedly there was, the Management could not have refused sanctioning the same when sought for subsequently by his client and taken action for this alleged violation of the Standing Order. The Counsel said that, in fact, the Standing Order invoked did not attract itself to the facts of the instant case so as to dub the conduct of his client as misconduct. In answer to this contention it was argued by the learned counsel for the petitioner that whether there was leave or no leave to the credit of the 1st respondent in the month of July, his absence from duty without prior permission and without obtaining leave, in the circumstances of the case, did amount to misconduct. He argued that even if there was leave at his credit the 1st respondent would not have been, ipso facto, entitled to the grant of leave since the Management had the discretion either to sanction or refuse the leave depending on the circumstances of the case. In the instant case, according to the learned Counsel, since there were no valid reasons to sanction leave, apart from there being no leave, the Management had refused to sanction leave, and, on finding that the conduct of the 1st respondent called for an enquiry, directed the Enquiry Committee to hold an enquiry into the matter in accordance with the rules. It is his case that his client was fully aware that, in the light of the relevant Standing Order, the act of the 1st respondent amounted to misconduct even though he might have had some leave at his credit to cover the period of absence, if the same had been granted. In the circumstances, it was argued, that no malafides could be attributed to his client for adjusting the leave that was at the credit of the 1st respondent towards his absence in the month of March.

9. The first para of the charge (extracted above) contains the following averments; That the 1st respondent was absent from work without permission continuously from 8-7-74 to 24-7-74; and that after reporting for work he had

submitted two leave letters requesting for grant of leave though he did not have any leave at his credit. In the 2nd para what is alleged is that under Standing Order No. 21.20 absenting for more than 10 consecutive days without leave amounts to misconduct punishable under Clause 22.2 of the Standing Order. It is clear that it was in respect of this alleged misconduct the attention of the 1st respondent was drawn and he was called upon to explain. In so far as this charge of being absent without leave is concerned, in his explanation, the 1st respondent states that he was absent, though qualifies that statement by further stating that due to some unavoidable and compelling reason, the reason being that his entire family members were suffering from one or the other disease demanding his presence throughout, he was absent. After considering this explanation the Enquiry Committee observed at para-5 of its report, Annexure-C, as follows:

"The Committee, on going through the records, noted that Sri Arokiyam was absent without leave or permission from 8-7-1974 to 24-7-74 and after reporting for work on 25-7-1974 submitted a leave letter requesting for 13 days leave from 8-7-74 to 22-7-74 and two days sick leave on 23-7-74 and 24-7-74. The Committee also noted, on going through the records, that Shri Arokiyam was not having any leave at his credit though he states that he was having 14 days vacation leave and 8 days sick leave, as he had exhausted all his leave earlier. Even supposing Sri Arokiyam was having leave at his credit, he cannot absent himself without permission and then request for sanation of leave after reporting for work. It is, therefore, proved that he was absent without permission from 8-7-1974 to 24-7-74. The reasons given by him for his absence are that all members of his family were sick and he was, therefore, busy and could not send leave letter or come in person. He has, however, not produced any document in support of his plea. Even supposing his family members were sick he should have either sent leave letter or come in, person and obtained leave which he failed to do. The Committee, after taking into consideration all the facts discussed above, came to the conclusion that the absence of Shri Arokiyam from 8-7-74 to 24-7-74 was unauthorised."

As to how many times in the past the 1st respondent had absented himself without prior permission, has been referred to with particulars in para-6.

10. It is on the basis of this report further action was taken to dismiss him from service. It may also be noted that the 1st respondent made a statement in the Enquiry Committee admitting his mistake, and that statement reads as follows:

"Statement of Shri Arokiyam, B. No. R666-208 given before the Enquiry Committee Meeting held on 7-11-74:

The charge sheet dated 8-8-74 and my written explanation dated 17-9-74 were read over to me and translated in Tamil and I understood the same. As regards my absence from 8-7-74 to 24-7-74 I submit that my absence was due to the reasons stated in my written explanation and I could not submit my leave

request in time. I admit my mistake in having absented without prior permission and I request that I may be excused and a lenient view is taken on this occasion. I assure you that I will be regular to work in future....." Here itself it may be noted that one of the grounds of attack against the report of the Enquiry Committee was that it was based on no evidence, at all. Is that argument available, in the circumstances of this case, is the question. The 1st respondent admitted of his absence and that in the light of this admission what further proof, on facts was required? What was required to be done by the Enquiry Committee was to apply the law to the facts of the case and try to find out as to whether that absence, in the circumstances, amounted to misconduct in the light of the Standing Order in question. Therefore, it cannot be said that the report of the Enquiry Committee is vitiated for there being no evidence at all as alleged.

11. I have gone through the 1st order dated 30-10-75 (Annexure-E) of the Tribunal. It was argued before the Tribunal, drawing its attention to the report of the Enquiry Committee, that the Enquiry Committee had misconstrued the charge levelled against the workman and had proceeded with the enquiry with a wrong notion. What the Tribunal did was, it directed its attention to that part of the report of the enquiry Committee wherein the Committee had summarised the charge and explained in its own language, and came to the conclusion that the charge levelled against the workman was something other than what had been understood to be in the charge by the Enquiry Committee, and having come to this conclusion, and I should say very wrongly, the Tribunal held that the Enquiry Committee had not applied its mind at all to the facts placed before it. This was the main reason for the Tribunal to discard the findings of the Enquiry Committee. The approach of the Tribunal was not correct. It has misread the report of the Enquiry Committee and had wholly misconstrued the facts at that stage in this connection the observation of the Supreme Court in *M/s. Bharat Iron Works v. Bhagubhai Balubhat Patel*, AIR 1976 SC 98, may be seen.

12. Now, to consider the 2nd order of the Tribunal. This order is equally misconceived. The Tribunal failed to address itself to the relevant question involved. How it misdirected itself is clear from what it says in para-3 of its order (An.F) which reads as follows:

"Thus, ultimately the question that would fall for consideration in determining the question, as to whether the Opposite party remained absent without leave for more than 10 consecutive days, i.e., during the period from 8-7-1974 to 24-7-74, is whether there was any leave to the credit of the Opposite Party which he could have availed of to cover his absence during the said period and he availed himself of the same on 25-7-74 by making the applications Exts. A(1) (a) and A(1)(b) when it was pointed out that his applications sent on 8-7-1974 were not received in the concerned Department".

The Tribunal appears to have proceeded with the view that, if there was leave at the credit of the workman, for the mere asking by the workman after his return to duty from a long period of absence, he would, ipso facto be entitled to the

grant of such leave, and that absence from work would have been of no consequence and would not have amounted to misconduct whatever be the circumstance occasioning that absence. At para-5 of the order the Tribunal says that the opposite party (workman) was entitled to the leave for which he had applied for in the month of July, 1974. Taking this view the Tribunal held that the charge levelled against the opposite party that he was absent without leave did not stand.

13. What does this sentence "absence without leave for more than 10 consecutive days" as found at Standing Order No. 21.20, mean? Does it mean, as understood by the Tribunal, absence without leave at his credit? Counsel for the 1st respondent also urged before me that that should be construed only in that fashion, as otherwise that sentence makes no sense if read with the earlier part of that Standing Order, "Habitual absence without leave or without permission" The dictionary meaning of the word "leave" is "permission: Liberty granted: permission to depart or be absent: permitted absence from duty" (Chambers" 20th Century Dictionary-1978 Edn). In the context in which that word leave is used here it means "Permission". What the latter part of Standing Order 21.20 means is being absent without prior permission or getting the leave sanctioned. The Tribunal has not properly construed this standing order-Standing Order No. 21.20. For the reasons stated above, both the orders of the Industrial Tribunal deserve to be quashed.

14. Hence, the petition is allowed; the rule issued is made absolute; and the impugned orders of the Industrial Tribunal, Annexures "E" and "F" are hereby quashed. The Tribunal is directed to consider the application of the Management for approval afresh according to law and in the light of the observations made above. No costs.