

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH**

OA No. 169 of 2012

**Present : Hon'ble Mr. Gokul Chandra Pati, Member (A)
Hon'ble Mr. Swarup Kumar Mishra, Member (J)**

Arakhita Chandra Pal, aged about 59 years, S/o Late Dhukhiram Pal, At/Po-Arabal, PS-Dharmasala, Dist.- Jajpur.

.....Applicant.

VERSUS

1. Union of India represented through the Secretary, Department of Railway, Rail Bhawan, New Delhi.
2. Divisional Railway Manager, S.E.Railway, Chakradharpur Division, At/Po- Chakradharpur, Dist.-Singhum, Jherkhanda.
3. Senior Divisional Personnel Officer, S.E.Railway, Chakradharpur Division, At/PO./Cjhakradharpur, Dist.-Singhum, Jherkhanda.
4. Senior Divisional Mechanical Engineer (DLS), S.E.Railway, At/Po./Bandhamunda, Dist.-Sundargarh Orissa.
5. A.D.R.M., S.E.Railway, Chakradharpur Division, At/PO/PS – Chakradharpur, Dist.- Singhum, Jherkhanda.

.....Respondents

For the applicant : Mr.S.Mohanty, counsel

For the respondents : Mr.T.Rath, counsel

Heard & reserved on : 5.02.2020

Order on : 26.2.2020

O R D E R

Per Mr. Gokul Chandra Pati, Member (A)

The applicant has filed this OA with the prayer for the following reliefs:-

“Under such circumstances, it is humbly prayed that the Hon'ble Tribunal may kindly be pleased to admit the case and issue notice to the respondents to file their show cause reply as to why the case of the applicant shall not be allowed and after hearing the parties, the case of the applicant be allowed and order of removal passed against the applicant vide Annexure-2 dtd. 9.1.2012, the order of appellate authority vide Annexure-5 dtd. 23.2.2012 and order of revisional authority vide Annexure-6 dt. 26.12.2012 be quashed and the applicant be reinstated in the service with full back wages along with all financial and consequential benefit.

And/or pass any other order(s) which deems fit and proper for the case.

And for this act of kindness, the petitioner shall be ever prayed.”

2. The applicant, while working as Office Superintendent under the respondents, was dismissed from service vide order dated 9.1.2012 (Annexure-2 of the OA) without conducting any enquiry. The allegation against the

applicant was that he was leading the agitation of railway employees which led to stoppage of train movement on 5.1.2012 from 10.10 hour to 11.50 hour in the morning due to blockade of the railway track near Bandamunda, Rourkela and which resulted a loss of Rs.64.71 lakh to the Railways. The applicant preferred an appeal before the respondent No. 5 and when no action was taken, the applicant filed the OA No. 54/2012, which was disposed with direction to the respondent No. 5 to dispose of the appeal. It is averred in the OA that the respondent No. 5 rejected the appeal vide the order dated 23.2.2012 (Annexure-5 of the OA) without considering the facts of the case and the past service record of the applicant.

3. The applicant averred in the OA that he filed a Revision petition dated 8.10.2012, which was rejected by the revisionary authority vide order dated 26.12.2012 (Annexure-6 of the OA) without considering the points mentioned in the Revision petition. It is stated in the OA that the view of the respondent No. 5 that the applicant being the branch secretary of Railway Men's Union, was very influential person, is not correct as the said Union was not functioning since 2007 and that there was no valid ground available to the disciplinary authority for dispensing with the enquiry under the rule 14(ii) of the Railway Servants (Discipline and Appeal) Rules, 1968.

4. The respondents have filed preliminary objection to the OA on 3.4.2019 on the point of maintainability stating that the applicant has not exhausted departmental remedy available internally inspite of the observation in the order dated 23.2.2012 of the Appellate Authority to prefer revision before the competent authority. It is stated that the applicant has chosen not to avail the departmental remedy through revision and that the unwarranted agitation by the Railway employees resulted in delay of six passenger trains resulting in loss of revenue of approximately Rs.64.71 lakhs. It is further averred that in view of the applicant's influence as he is the Secretary of the Union, Bondamunda Branch, there was a likelihood of witnesses turning hostile which would be detrimental to the enquiry proceeding and would result in the guilty going unpunished. Further, the atmosphere in the concerned office was extremely tense as far as internal relation was concerned.

5. The Counter of the OA has also been filed by the respondents on 13.5.2013, stating therein that one day before the alleged incident of blockade of Railway track on 5.1.2012, one Railway employee in the colony was murdered. The Railway employees on 5.1.2012 being led by the applicant had blocked the train movement on the tracks from 10.10.hours to 11.50 hours. The documents like copy of the FIR, report of the Railway officers as well as photography and video recording of the incident were examined by the

disciplinary authority and it was revealed that the applicant was primarily responsible for inciting the Railway staffs for blockading of Railway track near the 'K' Cabin and he was the ring leader in the agitation. It is submitted that such an agitation by the Railway employees, who are responsible to run the train, to block their movement was 'completely unwarranted' and that the applicant has displayed gross disregard to the organization by his conduct. It is further averred that the applicant being a Secretary of Railwaymen's Union, Bondamunda Branch, was an influential Union leader and he was in a position to influence and intimidate several staff. Hence there was possibility of the staff not being willing to co-operate in the enquiry proceeding under Railway Services (Discipline & Appeal) Rules, 1968 (in short DAR). The applicant could have pressurized the administration to take a soft approach in the matter, which would encourage furthermore agitations. Therefore, after considering the facts and circumstances, the disciplinary authority has issued the order dated 9.1.2012 under the Rule 14(ii) of the DAR dismissing the applicant from service.

6. It is further averred in the Counter that the appeal filed by the applicant before the Appellate authority was duly considered. The entire file was sent to the Appellate authority, who has rejected the appeal dated 17.1.2012 vide the order dated 23.2.2012 (Annexure A/5). It is further stated that the Appellate Authority has passed a reasoned and speaking order dated 23.2.2012 giving detailed reasons for upholding the punishment of removal from Railway service imposed vide order dated 9.1.2012 (Annexure A/2).

7. It is further stated that in the case of Arun Kumar Jain -vs- Union of India & Ors. [1986 (1) SLJ 51] it was held by the Principal Bench of the Tribunal that remedy of revision in a disciplinary proceeding should have been exhausted within the prescribed time limit. This similar finding was also recorded in the case of J.K.Kumawat -vs- Union of India & Ors. in OA No. 2113/2002 by Jabalpur Bench and in Sudama Prasad Kori -vs- Union of India & Ors. It is further averred that in view of the above judgment, the OA filed by the applicant is liable to be dismissed.

8. Further, to justify the action of the disciplinary authority to pass the impugned order under Rule 14(ii), the respondents have cited the Railway Estt. Circular No. 38/2003. It is stated in paragraph 13 of the Counter as under :

"It will be significant to mention herein that Rajasthan High Court has held that action of the Railway Administration under Rule 14(ii) was valid when the orders which were conveyed to the concerned employees contained particulars of the misconduct alleged to have been committed by them and on the basis of which the concerned Disciplinary Authority came to the conclusion that the concerned employees have committed such serious misconduct that

the penalty of dismissal or removal from service was required to be imposed upon them. It was further held that in such cases there was a speaking order passed by the Disciplinary Authority and the same was also communicated to the delinquent Railway employees giving an effective right of appeal to the employees. The Hon'ble High Court held that the orders passed under Rule 14(ii) which did not indicate the reasons for their removal or dismissal and there was no indication also on the orders that the Competent Authority had separately recorded reasons on the file in respect of their alleged misconduct, or that the same would be supplied to the delinquent employees on demand, were invalid because in the absence of any indication whatsoever it was not possible for the petitioners to imagine that the Competent Authority had recorded reasons on the file or to make demand for the same. It was also held that when action is taken under Rule 14(ii) reasons for the same must be recorded on the file but communication of the reasons was not necessary. It was further held that opportunity to be heard of summary enquiry in regard to the nature and quantum of punishment to be imposed was not necessary."

9. Rejoinder has been filed by the applicant to the Counter filed by the respondents on 3.4.2019, which was also referred as 'preliminary objection vide para 5, highlighting the fact that Rule 14(ii) can be applicable only when the disciplinary authority is satisfied, for reasons to be given in writing, that it is not practicable to hold enquiry in the manner provided under the rules. The applicant vehemently denied the contention of the respondents that it was practically not possible to conduct the disciplinary enquiry and that the applicant has not admitted his fault anywhere. It is stated that he has written the representation as per the advice of the authorities and that the documents referred to in paragraph 5 & 6 of the Counter have never been supplied to the applicant. It is further averred in the Rejoinder that for the same incident major charge sheet was issued to one A.Sahoo, Technician-1, R.R.Mahato, Technician-1 and both of them were suspended and the suspension letter was revoked later on and the departmental proceeding initiated against them was concluded with their exoneration from the charges and they were allowed promotion. It is also stated that other persons who have participated in the agitation as per the statement of Mr.P.K.Patnaik vide Annexure A/8 of the OA the disciplinary proceedings were initiated, which shows that regular disciplinary proceeding could also have been initiated by the disciplinary authority against the applicant. It is further stated that no step was taken against Mr.A.K.De and Mr.K.N.Pandey although the FIR mentioned the names of 3 employees including the name of those officers and of the applicant. But against Mr.A.K.De and Mr.K.N.Pandey, no action was taken by the respondents, while dismissing the applicant although there was also no concrete evidence against the applicant. Since there was RPF to protect the tracks, there was no ingredient for conclusion justifying application of Rule 14(ii) against the applicant. Further, it is stated that the respondents have not punished other employees who were present and participated in the said agitation. There was nothing on record to show that the applicant has threatened the witnesses.

10. The respondents have filed a reply to the rejoinder broadly reiterating the similar contentions in the Counter and stating that such irregular action resulted in loss of Rs.64.71 lakhs to the Railways. It is reiterated that the situation at that time was not conducive for conducting normal departmental proceeding for which the regular departmental proceeding through enquiry has been dispensed with by the respondent authorities and the applicant was removed.

11. Heard learned counsel for the applicant, who also filed a written note citing the following judgments :

- (i) Union of India (UOI) and others –vs- R.Reddappa & Anr. [(1993) 4 SCC 269]
- (ii) Indra Deo Singh –vs- Union of India & Anr. [1977 LABIC 105]
- (iii) Subhendu Kumar Mohanty –vs- Orissa Power Generation Corp. Ltd. & Ors. [2012 (ii) ILR-CIT-426]

It was submitted that the reasons recorded by the disciplinary authority for coming to the conclusion that enquiry was not reasonably practicable have not been communicated to the applicant and these have not been disclosed in the impugned order.

12. Learned counsel for the respondents was heard, who reiterated the contentions in the pleadings that in view of the prevailing situation as explained in the Counter duly supported by the documents enclosed with the Counter the action under the rule 14(ii) was justified. He also produced the original file in which the disciplinary authority had recorded the reasons for concluding that the regular enquiry was not practicable. The photocopy of the said file, which was kept in the file and the original file was returned to the learned counsel for the respondents after perusal by us.

13. On the point of maintainability of the OA, raised by the respondents in Counter filed on 3.4.2019, it is noticed that the applicant had filed the revision petition against the order of the Appellate Authority and the said revision petition was rejected vide order dated 26.12.2012 (Annexure-6 of the OA) before he approached this Tribunal. Hence, the contentions of the respondents that the applicant has approached the Tribunal before exhausting the revision forum is factually incorrect. Further, the issue of filing revision as an alternative remedy was considered by Hon'ble Calcutta High Court in the case of **Amitava Sarkar –vs- Union of India & Ors.** in W.P.C.T. No. 27 of 2017 and vide judgment dated 14.6.2017, it was held:

“It is well settled that the rule of exhaustion of alternative remedy, being a rule of discretion rather than a rule of compulsion, in an appropriate case, the Court would be justified in exercising its discretion. The learned first Judicial Member exercised such discretion upon arriving at a finding that there had

been a violation of the principle of natural justice as the appellate authority did not indicate the penalty that he proposed to inflict as enhanced penalty. Such finding could not be negated by the learned Administrative Member and the learned third Member.”

Hence, it is the discretion of this Tribunal to allow an application even without exhausting the alternative remedy.

14. It is also noticed that the Tribunal, after a detailed hearing of the matter had admitted the OA for adjudication vide order dated 5.3.2012 and the question of maintainability of the OA was not raised by the respondents at that time. Hence we are unable to consider the ground of maintainability of the OA raised by the respondents at this stage when the OA has been finally heard on merit after its admission on 5.3.2012.

15. We have considered the pleadings as well as submissions made on behalf of both the parties. **One relevant question that is to be answered is whether the disciplinary authority was justified in invoking the rule 14(ii) of the DAR in this case.** Rule 14(ii) of DAR states as under :

“14. Special procedure in certain cases - Notwithstanding anything contained in Rules 9 to 13 –

(ii) where the disciplinary authority is satisfied, for reasons to be recorded by it in writing, that it is not reasonably practicable to hold an inquiry in the manner provided in these rules; ”

16. In the impugned order of punishment dated 9.1.2012 (Annexure A/2), after discussing the factual aspects, following observations were recorded by the Disciplinary Authority (Respondent No.4) :

“3. It is evident that the agitation on Railway tracks was completely unwarranted as the railway staff exist to run the train and not to block their movement. In view of the fact that the law and order situation is the responsibility of the State government and not of the Railways the action by the staff led by you is all the more reprehensible. By your act of leading the agitation on the Railway tracks and instigating the staff to block train movement, you have displayed gross indiscipline and utter disregard to the prime responsibility of the Railway organization – that of running the trains. Our act also resulted in as many as 06 passenger trains getting delayed and a loss of revenue to the tune of app. Rs.64.71 lakhs due to the obstruction of freight operations.

4. Further, I am of the considered opinion owing to reasons that I have recorded on file that under the prevailing circumstances, holding a departmental enquiry under the provisions of Rule 9 of D&A Rule’ 1968 is not reasonably practical.

5. In view of the unambiguous and overwhelming evidence against you, and the fact that the holding an enquiry under rule 9 of D&A rules, in 1968 is neither practical nor feasible under the prevailing circumstances, I hereby invoke the powers vested in me under Rule 14(ii) of D&A Rules, 1968 as amended from time to time and dispensing with the enquiry proceedings, hold you guilty of lack of devotion to duty, displaying conduct unbecoming of a Railway Servant and of having led a demonstration detrimental to public order and of having thereby violated Rule 3.1 (ii), (iii) and Rule 7 of Railway Service Conduct rules. I accordingly order the following punishment to be imposed

upon you which in my view would be commensurate with the gravity of your offence :

'Removal from Railway Service with immediate effect without the benefit of compassionate allowance.' ”

17. As observed by the disciplinary authority in para 4 of his order, he has recorded in the file the reasons for coming to the conclusion that holding a departmental enquiry under the rules is not reasonably practical. In order to answer the question framed in paragraph 15 of this order, it would be required to examine if on the basis of the reasons recorded by the disciplinary authority in the file, any reasonable person can will conclude that regular departmental enquiry against the applicant was not practicable as required under the rule 14 (ii) of the DAR. This question assumes significance in this case since the applicant has averred specifically that in a large number of cases of other Railway employees who had participated in the same agitation on 5.1.2012, regular disciplinary proceedings were initiated against the participating employees and such averments have not been denied by the respondents.

18. The respondents, in their Counter filed on 3.4.2019 have relied on the judgment of Hon'ble Rajasthan High Court in the case of Ram Khilari vs. UOI 1976 (2) S.L.R. 827 to justify the impugned order dated 9.1.2012 (Annexure-2), removing the applicant from service under the rule 14(ii). In this case, a number of railway employees who had participated in railway strike in 1974 were dismissed from service invoking the rule 14(ii) of the DAR. Such orders were challenged before Hon'ble Rajasthan High Court and it was held that the disciplinary authority is required to communicate the reasons for imposing the punishment. The cases where the reasons were communicated through speaking orders, the writ petitions were dismissed and where no reason was communicated for imposing penalty, such punishment orders were quashed. In the present OA, the disciplinary authority has communicated the reasons to the applicant in order dated 9.1.2012 without disclosing the reasons for reaching a conclusion that it was not reasonably practical to hold the enquiry against the applicant. He mentioned that such reasons have been recorded by him in the file.

19. Perusal of the photocopy of the concerned file in which the disciplinary authority is stated to have recorded the reasons for concluding that it was not reasonably practical to hold the departmental enquiry against the applicant, reveals that in his note dated 6.1.2012, copy of which is available at page 26 and 27 of the photocopy of the file submitted by the respondents' counsel, the paragraph 4 of the note states as under :

“I am also convinced that since Sri Pal is an influential union leader, he is in a position to influence and intimidate the staff. As such, there is every possibility of the staff not being willing to cooperate in the departmental enquiry proceedings as envisaged under D&A Rule’1968 or to give testimony as prosecution witnesses. Further, owing to his influence there is a strong likelihood of witnesses turning hostile which would be detrimental to the enquiry proceeding and would result in the guilty going unpunished. Further, I am also convinced that the atmosphere in the DLS is extremely tense at the moment and the staff owing allegation to Sri A.C.Pal are likely to impede the enquiry proceedings against him and try to continuously pressurize the administration into taking a soft approach by creating an Industrial Relations situation in the DLS through agitations and frequent work blockages in the shed during the pendency of the enquiry proceedings.”

In rest of the note, the facts and reasons mentioned in the order dated 9.1.2012 have been recorded by the disciplinary authority.

20. It is seen from the above that the Disciplinary Authority’s note dated 6.1.2012 mentions his apprehension that the witnesses will not be willing to co-operate in the disciplinary proceeding against the applicant because of his influence as a union leader and that the atmosphere of DLS was extremely tense and the staffs are like to impede the enquiry proceeding and to try pressurize the administration to take a soft approach in the matter. The other facts which have been recorded by the disciplinary authority in his note dated 6.1.2012 are also mentioned in the impugned order dated 9.1.2012 (Annexure 2) related to the fact that the applicant has taken leadership of the group of employees who have indulged in the agitation programme by blocking of the Railway track on 5.1.2012. Hence, the reasons recorded by the disciplinary authority for dispensing with the enquiry under the rule 14 (ii) mostly comprise of his apprehensions on account of the applicant’s influence as a union leader.

21. On this issue, we refer to the paragraph 17 (c) of the Master Circular No. 67 of the Railway Board, which states as under :

“(c) The provision in Rule 14(ii) for dispensing with the inquiry and imposition of the penalty straightway should be used with abundant caution and only where the circumstances are such that it is not reasonably practical to hold the inquiry. The decision of the Disciplinary Authority in this regard cannot be a subjective decision but should be one based on objective facts supported by independent materials. Written and signed statements must invariably be obtained from the witnesses concerned indicating their knowledge of the serious delinquency on the part of the delinquent employee. Before invoking Rule 14(ii), the Disciplinary Authority should make an objective assessment of the situation, collect necessary material in this connection and record in writing detailed reasons as to why it is not possible to hold the enquiry. The circumstances quoted by the Disciplinary Authority should actually subsist at that time and should not be anticipated one. The recorded decision of the disciplinary Authority in this respect should withstand judicial scrutiny.”

22. In view of the above stipulations in the Mater Circular No. 67 of the Railway Board, the Disciplinary Authority was required to objectively assess the situation based of the version of the independent materials and should not base on the anticipated situation. But in this OA, the Disciplinary Authority

apprehended that the witnesses will not co-operate if a regular inquiry is conducted against the applicant because he was a union leader. If this reason is considered to be correct, then no regular proceeding can be instituted against any influential union leader. Perusal of the file and the Counter indicates that the report of the DPO dated 6.1.2012 available in the file stated that the agitation started at the diesel loco shed at around 8.30 hours led by the representatives of all Unions and Associations. Then the agitators under the leadership of the applicant and Sri KN Pandey went towards K-cabin and stopped the train. DPO also recorded his opinion that as the applicant was 'an influential union leader who is in a position to influence and intimidate the staff.' He, therefore, expressed his view that holding of a departmental enquiry as stipulated under the DAR was neither practical nor feasible. The agitation on 5.1.2012 was undertaken in presence of persons and employees who are not the members of the Union in which applicant was a leader like officers of Railways, RPF and Police personnel. Why such eye witnesses could not have been taken as witness for departmental enquiry against the applicant (as they could not have been influenced by the applicant) has not been explained by the respondents. DPO's report dated 6.1.2012 also did not explain why witnesses who were not the members of Railway Employees Union, could not have been made witnesses for the departmental inquiry against the applicant and how the applicant could have influenced such witnesses. Perusal of the file shows that the Disciplinary Authority appears to have simply accepted the views of the DPO as stated in his report dated 6.1.2012, without any independent assessment of the situation by the Disciplinary Authority before reaching a conclusion under the rule 14(ii), which was required as per the stipulations of the paragraph 17(c) of the Master Circular No. 67 and his assessment appears to have been based on anticipated situation of witnesses turning hostile in view of the influence of the applicant, which is not appropriate based on the material available on record as discussed above. Further, taking the decision on the basis of such anticipated situation or conjecture is contrary to the Master Circular No. 67 as extracted above. Therefore, the reasons recorded by the disciplinary Authority for dispensing with regular departmental proceeding or enquiry as per the DAR are not as per the paragraph 17(c) of the Master Circular No. 67 and are also not convincing.

23. The applicant has averred in his Rejoinder that many other Railway employees who had also participated in the said agitation were proceeded against in a regular manner and ultimately they were exonerated from the charges vide paragraph 5 of the Rejoinder filed by the applicant. In the reply to above paragraph of the Rejoinder, the respondents in their reply have stated the following :

“That in response to the submissions made in Para 5(i) of the rejoinder it is humbly submitted that the staffs mentioned in this para namely Sri A.Sahoo, Tech.-1, Sri R.R.Mahato, Tech.-1 were only agitating in Diesel Shed at BNDM, where as the applicant was leading the agitation on the Railway tracks and instigating the staff to block train movement, this act had also resulted in as many as 06 (six) Passenger trains getting delayed and a loss of revenue to the tune of approx. Rs.64.71 lakhs due to the obstruction of freight operation and had expressed his regret.”

The respondents have distinguished the case of other employees who had simply participated in the agitation, whereas the applicant was leading the agitation. It is noticed that the regular departmental proceedings were taken up against the employees mentioned in para 5 of the Rejoinder. Hence, it was not reasonable to anticipate that all the eye witnesses including those from other departments/agencies who are not members of Railway Employees Union would have been influenced by the applicant since he is a union leader in Bondamunda.

24. Learned counsel for the applicant has cited some judgments in support of his case as stated earlier. In the case of Indra Deo Singh (supra) it has been held that the order of removal from service to be passed under Rule 14(ii) must be a speaking order and failure to pass and communicate such speaking order would be non-compliance of the statutory rules. It has been held as under :

“Rule 14(ii) requires that the Disciplinary Authority while exercising the exceptional power must record reasons disclosing the circumstances which may make it clear that the holding of enquiry was reasonably not practicable. This lays down a safeguard against the arbitrary and whimsical exercise of power. The reasons so recorded are liable to be examined in appeal as the rules contemplate appeal against the order passed under rule 14. An aggrieved railway servant may approach this Court under Article 226 of the Constitution and in the absence of any reasons it would be difficult for the petitioner and this Court to appreciate the grounds which may have persuaded the Disciplinary Authority to adopt this unusual course. The purpose of recording reasons would be defeated if the reasons so recorded are not communicated to the Railway servant against whom the order is passed, and the same are kept on file. I am therefore of the opinion that the reasons recorded must be communicated to the Railway servant, consequently the order of removal issued under R. 14(ii) must be a speaking order.”

In the present OA, it is seen that the reasons for concluding that the departmental enquiry was not practicable, were recorded by the Disciplinary Authority in the file without communicating the same to the applicant. Such reasons were not considered by the Appellate Authority to examine if these were adequate and as per the rules. As discussed earlier, the decision of the Disciplinary Authority was based on anticipation that the applicant is likely to influence all possible witnesses who would not co-operate with the departmental enquiry and such assessment of the situation is unreasonable and violated the provisions of the Master Circular No. 67.

25. The Appellate Authority's order dated 23.2.2012 has stated as under :

“You have stated in Para 7 that the Disciplinary Authority did not apply his mind. I have examined the speaking order and the notings by the Disciplinary Authority on file for reasons of dispensing the enquiry invoking

Rule 14(ii) of Railway Servants D&A. I have concluded that it has been done with due application of mind. The reasons of application of Rule 14(ii) has been recorded by the disciplinary Authority on file at NS-4 & 5 of the relevant confidential file maintained by Sr.DME and hence there is no reason to believe that proper procedure has not been followed.

Regarding your contention that your photograph was not there in the newspaper, it does not absolve you of your misconduct. It rather strengthens the view that being an influential person this could be managed by you and hence it would not have been practically possible to conduct enquiry.

Regarding discrimination against other association persons, this does not fall within the purview of your appeal. However, action is necessarily taken by the administration against the staff depending on the gravity of their misconduct.

Your act of leading a mob to obstruct rail movement has caused great inconvenience to public (passengers) at large and Railways have suffered immensely. In view of the above, I am of the opinion that you have done serious misconduct by tarnishing the image of the Railways by stopping train even though you are an employee of Indian Railways and I consider no reason to reduce the punishment,. The punishment of "Removal from Railway service with immediate effect without the benefit of compassionate allowance" imposed by the Disciplinary Authority is upheld."

26. The Appellate Authority is required to examine the appeal of the applicant as per the provisions of the Rule 22(2) of the Railway Servants (D&A) Rules, 1968, which state as under :

"(2) In the case of an appeal against an order imposing any of the penalties specified in Rule 6 or enhancing any penalty imposed under the said rule, the appellate authority shall consider :-

(a) whether the procedure laid down in these rules has been complied with, and if not, whether such non-compliance has resulted in the violation of any provisions of the Constitution of India or in the failure of justice;

(b) whether the findings of the disciplinary authority are warranted by the evidence on the record; and

(c) whether the penalty or the enhanced penalty imposed is adequate, inadequate or severe; and pass orders:-

(i) confirming, enhancing, reducing or setting aside the penalty; or

(ii) remitting the case to the authority which imposed or enhanced the penalty or to any other authority with such directions as it may deem fit in the circumstances of the case."

It was the statutory responsibility of the Appellate Authority to have considered if the Disciplinary Authority while passing the order under the rule 14(ii) had complied with the requirement of the rules and the circular of the Railway Board and if the punishment imposed was adequate or excessive. It was also necessary on the part of the Appellate Authority to consider the points raised by the applicant in his appeal dated 17.1.2012 (Annexure 3). The issue of similarly placed employees who were treated differently, was raised by the applicant in his appeal. That issue was not considered by the Appellate Authority in his order. The Appellate Authority has accepted the conclusion of the disciplinary authority by stating that "It rather strengthens the view that being an influential person this could be managed by you and hence it would not have been practically possible to conduct the enquiry". But the Appellate Authority has also not stated anything as to why the witnesses present on the spot on 5.1.2012 and who were not the members of the union were not taken as witnesses in the departmental enquiry against the applicant. Clearly, there

was no proper application of mind on the part of the Appellate Authority as laid down under the Rule 22(2) of the Railway Servants (D&A) Rules, 1968. Since no departmental enquiry was held by the Disciplinary Authority in this case, the Appellate Authority could have been more careful to consider adherence to the rules before accepting the views of the Disciplinary Authority in this case.

27. For the reasons mentioned above, we are of the view that the Appellate Authority has not acted in accordance with the Rule 22(2) of the DAR and hence the impugned order dated 23.2.2012 (Annexure-5 of the OA) is not sustainable under law. As a consequence, the order dated 26.12.2012 of the Revisionary Authority is also not sustainable.

28. In view of the discussions above, the question framed in paragraph 15 of this order is answered as under:-

The grounds mentioned by the Disciplinary Authority in the file to dispense with the departmental inquiry against the applicant, under the Rule 14(ii) of the Railway Servants (Discipline & Appeal) Rules, 1968 are not in accordance with the statutory rules and instructions of the Railway Board and hence, there was no justification in this case for taking recourse to Rule 14(ii) of the DAR.

29. Accordingly, the impugned order dated 9.1.2012 (Annexure-2) of the Disciplinary Authority, the order dated 23.2.2012 (Annexure-5) of the Appellate Authority and the order dated 26.12.2012 (Annexure-6) of the Revisionary Authority are set aside and quashed and the matter is remitted to the Disciplinary Authority to take an appropriate decision after due consideration of the matter in accordance with law keeping in view the discussions in this order and pass a speaking and reasoned order, copy of which is to be communicated to the applicant within three months from the date of receipt of the copy of this order.

30. The OA is allowed as above with no order as to costs.

(SWARUP KUMAR MISHRA)
MEMBER (J)

(GOKUL CHANDRA PATI)
MEMBER (A)