CENTRAL ADMINISTRATIVE TRIBUNAL
KOLKATA BENCH
KOLKATA

O.A. No. 350/00607/2019
O.A. No. 350/00608/2019
O.A. No. 350/00636/2019
O.A. No. 350/00637/2019
O.A. No. 350/00638/2019
O.A. No. 350/00735/2019

Hon'bleMrs.Bidisha Banerjee, Judicial Member

Hon'ble Dr.(Ms) NanditaChatterjee, Administrative Member

O.A. 607 of 2019

ManoranjanNikap,
Son of Late LaxmanNikap,
Aged about 42 years,
Residing at Quarter no. S/11/33 Unit 12,
New Development,
Post Office – Kharagpur,
District – West Medinipore,
Pin – 721301, West Bengal.

O.A. 608 of 2019

Amit Kumar Yadav,
Son of Narendra Prasad Yadav,
Aged about 28 years,
Residing at C/o Ramprasad Singh, Chairman Galli,
Near SivMandir, Jhapetapur,
Post Office – Kharagpur,
District – West Medinapore,
Pin – 721301, West Bengal.

O.A. 636 of 2019

Raj Kumar Ranjan,
Son of Ram Shankar Prasad,
Aged about 33 years,
Residing at C/o T: Solomon, Joseph Niwas,
Ward no. 6, Bhawanipur, Near Janahit Club,
Post Office – Kharagpur,
District – West Medinapur,
Pin – 721301, West Bengal.

O.A. 637 of 2019

Radha Kant Prasad,
Son of Sri Raghu Nandan Prasad,
Aged about 40 years,
Residing at Qtr. No. OS/II/9,
Behind Gitanjali Community Hall,

Near Girimaidan Railway Station,
Kharagpur,
District – West Midnapur,
Pin – 721301, West Bengal.

O.A. 638 of 2019

Tridib Kumar Mahapatra,
Son of Achintya Kumar Mahapatra,
Aged about 41 years,
Residing at Village – Barbetia (Behind ShibMandir),
Post Office – Changual,
P.S. – Kharagpur (L),
District – PaschimMedinipur,
West Bengal – 721301.

O.A. 735 of 2019

Suvendu Sur,
Son of SankarPriya Sur,
Aged about 42 years,
Residing at Village – Shyampur, (Sasan Kali Mandir),
Post Office – Anara (RS),
P.S. – Para,
District – Purulia,
Pin – 723126, West Bengal.

.....Applicants

By Advocate : Mr A. Chakraborty, Ms P.Mandal

Versus

1) Union of India,
Service through the General Manager,
South Eastern Railway,
Garden Reach Road,
Kolkata – 700 043.

2) The Additional Divisional Railway Manager,
South Eastern Railway,
Kharagpur,
PaschimMedinipore – 721301.

3) The Senior Divisional Electrical Engineer (OP),
South Eastern Railway,
Kharagpur,
PaschimMedinipore – 721301.

..... Respondents (in All the O.As.)

By Advocate : Mr A. Mitra

Date of Hearing : 27.11.2019 **Date of Order :** 15.1.2020

ORDER

MS BIDISHA BANERJEE, MEMBER(J)

In these O.As the applicants have questioned the authority of the respondents to invoke Rule 14(ii) of RS (D&A) Rules 1968 to penalize them with dismissal from service without even holding any formal enquiry in accordance with established procedure.

2. Since identical issues have been raised, and identical reliefs have been sought for in these O.As, these six O.As are taken up for hearing analogously, to be disposed of by this common order and with the consent of the parties.For the sake of brevity, O.A.No.607/2019 is delineated and discussed herein below.

3. The O.A No.607/2019 has been preferred to seek the following reliefs:

> *"8.i) Office Order being no. RSO/KGP/D&A/Removal/18 dated 03.11.2018 issued by the respondent No. 3 is not tenable in the eyes of law and as such the same should be quashed.*
>
> *ii) Office Order being No. RSO/KGP/D&A/Removal/18 dated 12.04.2019 issued by the respondent No. 2 is not tenable in the eyes of law and as such the same should be quashed.*
>
> *iii) re-instate the applicant in his service and to grant all consequential benefits in his favour along with the back wages and interest accrued thereon,*
>
> *iv) Grant all Consequential benefits;*
>
> *v) Costs of and incidental to this application;*
>
> *vi) Pass such further or other order or orders; "*

The order impugned, dated 03.11.2018, as issued by the Sr.DEE/OP/KGP,South Eastern Railway is extracted hereunder for clarity :

"On 03.11.2014 the following staff :-

1. *RADHA KANTA PRASAD, L.P (GOODS)KGP*
2. *RAJ KUMAR, SR. ALP/KGP, EMP No.50714107680*
3. *MANORANJAN NIKKAP, LP(PASSENGER)/KGP*
4. *TRIDIB KUMAR MAHAPATRO, LP(GOODS)/KGP*
5. *SUVENDU SUR, LP(GOODS)/KGP*
6. *AMIT KUMAR YADAV, SR. ALP/KGP*
7. *RAKESH KUMAR RANJAN, ALP/KGP*
8. *SUBHABRATA MUKHOPADHYAY, LP(GOODS)/KGP*

Held an unlawful demonstration in front of Combined Crew Lobby which is situated in front of Kharagpur Railway Station. In addition, these persons manhandled Government officials, forcibly prevented other Govt. officials from performing official duty misbehaved with higher Railway Administrative Officers. They also indulged in violence and vandalism in the Combined Crew Lobby and instigated other running staff to gherao combined crew lobby, and disturbed peace. This led to stoppage of movement of trains incurring significant loss of revenue as well as disrupted traffic eventually causing great inconvenience to the public.

In the light of above circumstances the service of all above mentioned staff is considered undesirable, and a clear case of serious insubordination and it is considered that the gravity of situation is such that it is not reasonably practicable to hold D&A enquiry in the manner as provided for in the Railway Servant (Disciplinary & Service) Rules, 1968.

Therefore, in the interest of Railway Administration and also general public all the above mentioned Railway Employeees are REMOVED FROM SERVICE WITH IMMEDIATE EFFECT, in exercise of powers conferred by Rule 14(ii) of Railway Servants (Disciplinary & Appeal) Rules, 1968."

The applicant preferred a representation on 08.11.2018 to the Sr.DEE/OP, South Eastern Railway praying for a review and cancellation of removal order (Annexure A-3). Since he failed to receive a reply he preferred an appeal to Additional DRM which is extracted herein below :

"Most humbly, I would like to submit that on dated : 18/11/2018, on receipt of above quoted letter I have submitted a representation against the removal order as referred above on the ground that the application of Rule 14(ii) of D&A rule is completely unlawful. Such situation was then not prevailing which was needed for application of Rule 14(ii).

Sir, no doubt the appointing authority has only right to apply Rule 14(ii) but only in the situation when the inquiry could not be conducted and that situation was not then prevailing and also after that. The very normal situation had been prevailing. I was not involved in any such incidence which may attract application of Rule 14(ii) of D&A Rules 1968 but my representation could not be considered and the principle of natural justice have been denied.

A copy of my representation to Sr.DEE(OP/KGP) is hereby attached for your kind and favourable consideration please.

I hope that justice be given by cancelling the removal order under Rule 14(ii).

Thanking you."

His appeal was turned down by the Addl. DRM by his order dated 12.04.2019 with the following conclusions :

"No. RSO/KGP/D&A/Removal/18 Dated 12.04.19

SriManoranjanNikap
Ex. Loco Pilot (Passenger)/KGP
Under Sr. DEE (OP)/KGP

(Through Sr. DEE/OP/KGP)

Reg: Appeal, dtd. 18.12.18.
Ref: Punishment Notice No. RSO/KGP/D&A/Removal/18 dtd.03.11.18.

I have carefully gone through the entire D & A case file consists of Punishment Notice No. RSO/KGP/D&A/Removal/18 dtd.03.11.18, your appeal dtd. 18.12.18 addressed to Sr. DEE/OP, subsequently forwarded with its comments thereon together with the relevant records to the undersigned being the Appellate Authority in this instant case & all other papers in the file.

It is observed that:

1. *On 03.11.18, consequence upon the sad incident of the sudden demise of Guddu Kumar Keshari, Ex. ALP/KGP, a group of running staff including you started unlawful demonstration, in front of the Combined Crew lobby, situated near Kharagpur Railway station.*
2. *As reported by the Crew Controller/KGP, and, as confirmed in the subsequent enquiry, you, along with some others were leading the mob on that day.*
3. *Considering the situation, the higher official attended the Lobby and effort was made to control the situation. But, the mob, led by you and some others, were not in mood of any peaceful dialogue. Rather than controlling the mob, you along with the other leaders, provoked the mob, who then started vandalism inside the Lobby.*
4. *Situation was so bad that some on duty staff present in the Lobby were injured by the mob led by you and some other persons, while the others, somehow escaped by the help of RPF officials present in the place of occurrence.*
5. *The Branch officers, who were present in the lobby at that time, tried their level best to control the situation. They had even tried to give all kind of assurance possible to the agitating staff led by you and others. But, unfortunately you were in a mood of vandalism and did not pay any heed to the officers.*
6. *Rather, the mob led by you and some others, started shouting and sloganeering against the administration.*

7. Insisted upon by the leaders, i.e. you and some others, the mob did not allow any of the willing running staff to sign on or sign off their Railway duties. You have forcefully impeded the Railway staff to perform their duties.
8. Consequence upon, the train movement was badly disrupted for almost 8 hrs.
9. Considering the situation the higher officials attended the lobby and tried to control the situation. But, the mob led by you and some others, did not even show any interest in pacifying the situation, as requested by the higher officials.
10. The vandalism did not stop after abusing the Railway staff and officers. Even one journalist was covering the situation was manhandled and the press reporter got injured.
11. The sequence of happenings itself establish the gravity of the offence committed by the mob led by you and some others.

From the above circumstances, it is clear that you yourselves have compelled the administration to take immediate action, as a disciplinary measure, and the Disciplinary Authority & Sr. DEE/OP has decided to remove you from Railway service exercising the powers conferred by Rule 14(ii) of Railway Servants (D&A) Rules, 1968.

After reviewing all the above the following points vis-a-vis, it has been concluded that:

a) The sudden demise of Guddu Kumar Keshari, Ex. ALP/KGP is a incident not only for the running staff, but also for all the Railway Administration. Being the part of the extended Railway family everybody left sorry on death of one of our employee. If there was any issue or grievance, the appropriate authority was present in the place of occurrence for discussion. But, you have not allowed any type of dialogue, and, also misbehaved with the officials.
b) While the administration was trying to expedite the all kind of due benefits to the eligible family members of the deceased employee, you were shouting and sloganeering against the administration.
c) The mob led by you and some others, also committed offence by forcefully preventing the willing employees from performing their duty.
d) The on-duty staff, present in the lobby were man-handled by the mob led by you and some others.
e) The mob led by you and some others, also misbehaved with higher Railway official present on the lobby.
f) Your unlawful activities of preventing the running staff from performing their duties disrupted the train movement very badly, resulting in huge loss of Railway revenue. Due to detention of passenger trains, a large Nos. of passengers had to face the inconvenience.
g) The mob led by you and some others, also committed grave misconduct by man-handling the reporters, and by preventing them from collecting news. A FIR has also been lodged in the local police station by the reporters in this regard.
h) Total 60 nos. of RPF officials (including Sr. DSC, 2 ASC, 6 IPFS and 51 RPF staff), 10 officers and staff of local police along with RAF were deployed to control the situation, itself showing the gravity of the situation caused by the mob led by you and some others.
i) A case has also been lodged in this regard vide No.398/18 at RPF Town Post/Kharagpur, dtd. 03.11.18 u/s 145, 146 & 153 of Railways Act, 1989.

j) No new point has been brought out in your appeal.

In view of all the above, considering the gravity of the offence and after applying my full mind, I do not find any merit for any consideration of the appeal and have decided to ***"uphold"*** *the punishment imposed by the DA.*

However, you are at liberty to submit Revision petition, if any, to the Revising Authority i.e. PCOM/S.E Railway/GRC in polite and decent language within 45 days of receipt of this order.
Please acknowledge the receipt of this order.

(M. Pradhan)
Appellate Authority
&
Addl. Divl. Railway Manager
Kharagpur/S.E. Railway"

Pursuant to the liberty granted by the appellate authority the applicant could have preferred a revisional application but the applicant did not prefer any revisional application and instead approached this Tribunal.

4. The respondents to justify invoking of Rule 14(ii),have averred that *"indeed it was an exceptional situation and the situation aggravated when a mob started vandalism inside the crew lobby. Meanwhile some of the staff in the lobby got injured and some escaped with the help of RPF staff. These employees then instigated the mob to make situation worse for the railway officials present there. First RPF with force tried to control the situation but mob was furious. At the time officers were inside the lobby trying to handle the situation but the agitating staff did not listen to the railway officers present there. The officers even tried to give all kind of assurances possible but no one was ready to pay any heed. The mob started shouting and sloganeering against the administration. The mob of running staff did not allow any of the willing running staff to sign on or off. All the branch officers proceeded to the spot & tried to control the mob but of no avail. Almost for continuously 8 hours the train movement was disrupted. Rule 14(ii) of D&A Act 1968 was applied to prevent the situation, as the conduct of the applicant and 7 other associates not found suitable*

and movement of train was disrupted for long 8 hours resulting in acute sufferance and painful inconvenience to the passengers. The Govt. officials i.e. RPF department have filed FIR Case No.398/18 U/S 145, 146, 153 of Railway Act, while the journalist had filed an FIR KGP Town Police Case No. 536/18 U/S 341/323/325/307/427/34 against the 08 accused which is still subjudice. The situation took an ugly turn in as much as the applicant with others manhandled Government officials, forcibly prevented other Govt. officials from performing official duty, misbehaved and insubordinated the higher Railway Administrative Officers. All of these including the applicant also indulged in violence and vandalism in the Combined Crew Lobby and instigated other running staff to gherao apart from disturbing peace, leading to stoppage of movement of trains for long 8 hours incurring significant loss of railway revenue as well as disrupted traffic eventually causing great inconvenience to the public, thereby disturbing the peace of administrative functioning despite counseling extending all types of assurances by Branch Officers. They did not pay any heed to their superior officers as he was in vandalism mood, evidently recorded in the CD. Thereby the applicants compelled the administration to invite RAF on the scene to control the situation and take action under D&A Rules 1968 but for the prevailing situation serious in nature and the sequence of offence committed by the applicant, it is not reasonably practicable to hold D&A enquiry in the manner as provided for in the Railway Servant (Discipline & Appeal) Rules, 1968. Therefore, in the interest of Railway administration and also general public the applicant was removed from service with effect from 03.11.2018 invoking Rule 14(ii)."

5. By way of rejoinder, the applicant has alleged that the respondents have failed to mention the names of the Officer who were allegedly manhandled. In ***State ofU.P vsMohd. Sharif, reported in (1982) 2 SCC 376,*** Hon'ble Apex Court has been pleased to hold that "*charge was vague as the sufficient particulars were absent in the charge sheet.*" Further, although it was found not reasonably practicable to hold enquiry against 8 railway staff, major penalty proceedings were in fact initiated against 10 other staff on the basis of a fact finding enquiry and therefore, there was no material to suggest as on the date of issuing the impugned removal order about any prevailing condition that would justify subjective satisfaction of the disciplinary authority to invoke Rule 14(ii).

Having drawn our attention to the decision of ***Tulsiram Patel's*** case the applicants would contend that '*a disciplinary authority is not expected to dispense with a disciplinary inquiry lightly or arbitrarily or out of ulterior motive or merely in order to avoid the holding of an inquiry or because their departments case against the government servant is weak and must fail.*' They would further allege that subjective satisfaction recorded in the impugned order was not fortified by any independent material to justify the dispensing with the enquiry envisaged by Article 311 (II) of the Constitution. Therefore, on that ground the impugned order of removal from service cannot be sustained in the eye of law. Further that, the disciplinary authority did not submit any material which supports their contention for avoiding enquiry. On the date of alleged incident 03.11.2018 the applicant was advised through phone to work Train No. 68015 Ex KGP to TATA and applicant accordingly followed all the mandatory procedures like breath analyzer test reading the order book, reading the caution order and signed on 20.30 Hours. The Train also

departed KGP (Kharagpur) station right time, after running 100 Km at Dalbhumgarh Station the applicant was forcibly relieved and advised for return pilot to Head quarter ultimately the applicant signed off (Duty Off) at 02.30 Hrs. of dated 04.11.2018. From this it is crystal clear that there prevailed such situation which attracted the disciplinary authority to dispense with a disciplinary enquiry.

6. The applicant has further alleged that when the disciplinary authority was himself involved in the incident, the next higher authority in the hierarchy ought to act as disciplinary authority and that the officerwho issued the removal orderbeing neither the appointing authority nor empowered to penalize the applicant with removal or dismissal from service should not have invoked Rule 14(ii). Further, that there was no recording of reasons why it was not reasonably practicable to hold an enquiry when an enquiry was in fact initiated against atleast 10 staff present at the site.

7. We heard the learned counsel for the parties, perused the materials on record. We discern the following :

1. **Article 311** lays down the following:

"311. Dismissal, removal or reduction in rank of persons employed in civil capacities under the Union or a State

(1) No person who is a member of a civil service of the Union or an all India service or a civil service of a State or holds a civil post under the Union or a State shall be dismissed or removed by a authority subordinate to that by which he was appointed

(2) No such person as aforesaid shall be dismissed or removed or reduced in rank except after an inquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges Provided that where it is proposed after such inquiry, to impose upon him any such penalty, such penalty may be imposed on the basis of the evidence adduced during such inquiry and it shall not be necessary to give such person any opportunity of making representation on the penalty proposed: Provided further that this clause shall not apply

(a) where a person is dismissed or removed or reduced in rank on the ground of conduct which has led to his conviction on a criminal charge; or

(b) where the authority empowered to dismiss or remove a person or to reduce him in rank ins satisfied that for some reason, to be recorded by that authority in writing, it is not reasonably practicable to hold such inquiry; or

(c) where the President or the Governor, as the case may be, is satisfied that in the interest of the security of the State, it is not expedient to hold such inquiry

(3) If, in respect of any such person as aforesaid, a question arises whether it is reasonably practicable to hold such inquiry as is referred to in clause (2), the decision thereon of the authority empowered to dismiss or remove such person or to reduce him in rank shall be final"

2. Rule 14 (ii) of Railway Servants (Discipline & Appeal) Rules 1968 envisages the following :

*"14. **Special procedure in certain cases***
Notwithstanding anything contained in Rules 9 to 13 :

(i) Where any penalty is imposed on a Railway servant on the ground of conduct which has led to his conviction on a criminal charge; or

(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; or

(iii) Where the President is satisfied that in the interest of the security of the State, it is not expedient to hold an inquiry in the manner provided in these rules;

The disciplinary authority may consider the circumstances of the case and make such orders thereon as it deems fit:

[Provided that the Railway servant may be given an opportunity of making representation on the penalty proposed to be imposed before any order is made in a case falling under Clause(i).

Provided further that the Commission shall be consulted, where such consultation is necessary, before any orders are made in any case under this rule.]"

3. Bahri's Railway Servants (D&A) Rules clarifies the situation when 14(ii) of Railway Servants (D&A) Rules can be invoked. It clarifies as under :

*"**Rule 14(ii)** – As regards action under clause (c) of the second proviso to Article 311(2) of the Constitution, what is required under this clause is the satisfaction of the President or the Governor, as the case may be, that in the interest of the security of the State, it is not expedient to hold an inquiry as contemplated by Article 311(2). This satisfaction is of the President or the Governor as a constitutional authority arrived at with the aid and advice of his Council of Ministers. The satisfaction so reached by the President or the Governor is necessarily a subjective satisfaction. The reasons for this satisfaction need not be recorded is the order of dismissal,*

removal or reduction in rank; nor can it be made public. There is no provision for department appeal or other departmental remedy against the satisfaction reached by the President or the Governor. If, however, the inquiry has been dispensed with by the President or the Governor and the order of penalty has been passed by disciplinary authority subordinate thereto, a departmental appeal or revision will lie. In such an appeal or revision the civil servant can ask for an inquiry to be held into his alleged conduct, unless at the time of the hearing of the appeal or revision a situation envisaged by the second proviso to Article 311(2) is prevailing. Even in such a situation the hearing of the appeal or revision application should be postponed for a reasonable length of time for the situation to become normal. Ordinarily the satisfaction reached by the President or the Governor, would not be a matter for judicial review. However, if it is alleged that the satisfaction of the President or Governor, as the case may be, had been reached mala fide or was based on wholly extraneous or irrelevant grounds, the matter will become subject to judicial review because, in such a case, there would be no satisfaction in law, of the President or the Governor at all. The question whether the court may compel the Government to disclose the materials to examine whether the satisfaction was arrived at mala fide or based on extraneous or irrelevant grounds, would depend upon the nature of the documents in question i.e. whether they fall within the class of privileged documents or whether in respect of them privilege has been properly claimed or not.

10. The preceding paragraphs clarify the scope of clauses (a) and (c) of the second proviso to Article 311(2) of the Constitution, Rule 19 of CCS (CC&A) Rules, 1965 and other service rules similar to it, in the light of the judgments of the Supreme Court delivered on 11.7.85 and 12.9.85. It is, therefore, imperative that these clarifications are not lost sight of the while invoking the provisions of the second proviso to Article 311(2) or service rules based on them. Particularly, nothing should be done that would create the impression that the action taken is arbitrary or mala fide. So far as clauses (a) and (c) and service rules similar to them are concerned, there are already detailed instructions laying down the procedure for dealing with the cases falling within the purview of the aforesaid clauses and rules similar to them. As regards invoking clause (b) of the second proviso to Article 311(2) (Rule 14 (ii) of DAR) or any similarly worded service rule, absolute care should be exercised and it should always be kept in view that action under it should not appear to be arbitrary or designed to avoid an inquiry which is quite practicable.

[D.O. P&T No.11012/11/85-Estt.(A) dt. 11.11.1985]

It may kindly be recalled that in Union of India v. Tulsiram Patel [(1985) 2 SLJ 145] the Supreme Court has had the occasion to explain the scope and reach of Articles 309, 310 and 311, and in particular of the second proviso to Article 311(2) of the Constitution. This case was decided by the five Judge Constitution Bench of the Supreme Court. Immediately bench of the Supreme Court gave a clear summary of the conclusions reached by the majority in Tulsiram Patel case. This summary was given by Madon, J., who earlier delivered the majority judgment in Tulsiram Patel case.

2. The Department of Personnel and Training have issued an Official Memorandum dated 11 November, 1985 setting out therein what are essentially the conclusions reached by the Supreme Court in the aforesaid two judgments. It appears that the Department have requested the Railway Board to bring the said OM to the notice of the Railway Authorities. It may be recalled that the scheme of the CCS (CCA) Rules, 1965 so far as disciplinary proceedings are concerned is very similar to that of the Railway Servants (Discipline and Appeal) Rules, 1968. There may, therefore, be no objection to circulating the said OM to all the Railways.

3. It may, however, be borne in mind that the said OM does not set out all the findings of the Supreme Court. In the nature of things, there can never be an acceptable substitute to the judgment of the Court. While forwarding the said OM to the Railways, we may also draw their attention to the following:

(i) The OM offers useful clarification in respect of the second proviso to article 311(2) of the Constitution, in the light of the Supreme Court Judgments in Tulsiram Patel and Satyavir Singh cases, and for its fuller understanding, the said judgments should also be consulted. In this regard, the summary of the conclusions reached by the majority in Tulsiram Patel case, as set in paras 6 to 8 of the Supreme Court judgment in Satyavir Singh's (SS) case, may prove to be specially helpful.

(ii) The OM sets out only the major findings of the Supreme Court. Some of the observations of the Court which have not been set out in the said OM but which may prove to be useful in the day-to-day operation of the Railway Service Rules, have been extracted below:

(a) "The word 'inquiry' in clause (b) of the second proviso includes a part of an inquiry. It is, therefore, not necessary that the situation which makes the holding of an inquiry not reasonably practicable should exist before the inquiry is instituted against the civil servant. Such a situation can also come into existence subsequently during the course of the inquiry, for instance, after the service of a charge-sheet upon the civil servant or after he has filed his written statement thereto or even after evidence has been led in part."

(b) "It will also not be reasonably practicable to afford to the civil servant an opportunity of a hearing or further hearing as the case may be, when at the commencement of the inquiry or pending it, the civil servant absconds and cannot be served or will not participate in the inquiry. In such case, the matter must proceed ex parte and on the materials before the disciplinary authority.

(c) "Railway service is a public utility service within the meaning of clause (b) of Section 2 of the Industrial Disputes Act, 1947, and the proper running of the Railway service is vital to the country.

"Where, therefore, the Railway employees went on an illegal all India strike without complying with the provisions of Sections 22 of the Industrial Disputes Act, 1947, and thereby committed an offence punishable with imprisonment and fine under Section 26(1) of the

said Act and the situation became such that the Railway services were paralysed, loyal workers and superior officers assaulted and intimidated, the country held to ransom, and the economy of the country and public interest and public good prejudicially affected, prompt and immediate action was called for in order to bring the situation to normal. In these circumstances, it cannot be said that an inquiry was reasonably practicable or that clause (b) of the second proviso was not properly applied. The fact that the Railway employees may have gone on strike with the object of forcing the Government to meet their demands is not relevant because their demands were for their private gain and in their private interest and the Railway employees were not entitled in seeking to have their demands conceded to cause untold hardship to the public and prejudicially affect public good and public interest and the good and interest of the nation."

"The quantum and extent of the penalty to be imposed in cases such as the above would depend upon the gravity of the situation at a particular centre and the extent to which the acts said to be committed by particular civil servants, even though not serious in themselves, in conjunction with acts committed by others contributed to bringing about the situation. The fact, therefore, that at a particular centre certain civil servants were dismissed from service while at some other centres they were only removed from service does not mean that the penalties were arbitrarily imposed."

(d) *"The next point was that it was not alleged by the authorities that anyone was physically injured in the agitation. This is another argument which is difficult to understand. As held in Tulsiram Patel case, it will not be reasonably practicable to hold an inquiry where an atmosphere of violence or of general indiscipline and insubordination prevails. It is, therefore, not necessary that the disciplinary authority should wait until incidents take place in which physical injury is caused to others before dispensing with the inquiry."*

(e) *"Where the disciplinary authority feels that crucial and material evidence will not be available in an inquiry because the witnesses who could give such evidence were intimidated and would not come had been forward and the only evidence were which would be available, namely, in this case, of policemen, police officers and senior officers, would only be peripheral and cannot relate to all the charges and that, therefore, leading only such evidence may be assailed in a court of law as being a mere farce of an inquiry and a deliberate attempt to keep back material witnesses, the disciplinary authority would be justified in coming to the conclusion that an inquiry is not reasonably practicable".*

(f) *"Where a large group of members of the Central Industrial Security Force Unit posted at the plant of the Bokaro Steel Ltd. indulged in acts of insubordination, indiscipline, dereliction of duty, abstention from physical training in the 'gherao' of supervisory officers, going on hunger strike and 'dharna' near the Quarter Guard and*

Administrative Building of the Unit, indulging in threats of violence, bodily harm and other acts of intimidation to supervisory officers and loyal members of the said unit, and thus created a situation whereby the normal functioning of the said unit of the Central Industrial Security Force was made difficult and impossible, the disciplinary authority was justified in applying clause (b) of the second proviso to those who were considered responsible for such acts. Clause (b) of the second proviso to Article 311(2) was also properly applied in the cases of those member of the Central Industrial Security Force who were considered responsible for creating a similar situation at Hoshangabad".

"In cases such as the above, it is not possible to state in the order of dismissal the particular acts done by each of the members of the concerned group as such cases are very much like a case under Section 149 of the Indian Penal Code.

In situations such as the one where a large group was acting collectively with the common object of coercing those in charge of the administration of the Central Industrial Security Force and the Government to compel them to grant recognition to their Association and to concede their demands, it is not possible to particularize in the orders of dismissal the acts of each individual members who participated in the commission of these acts. The participation of each individual might be of a greater or lesser degree but the acts of each individual contributed to the greater or lesser degree but the acts of each individual contributed to the creation of a situation in which a security force itself became a security risk."

(g) "An order imposing penalty passed by the President or the Governor, as the case may be, cannot be challenged in a departmental appeal or revision."

xxx xxx xxx

Important Points decided in Tulsi Ram Patel's case – (1) The pleasure of the President under Article 310 is not absolute but is subject to other restrictions as given at other places notably in Article 311(2).

(2) While imposing a penalty under Rule 14(i) the authority need not give any hearing the delinquent and shall decide the case ex parte on consideration of the judgment of the court and the record of service of the employee and nature and gravity of the offence.

(3) While proceeding under Rule 14(ii), it is not necessary that a minimal opportunity of showing cause should be given to the delinquent.

(4) It is not necessary to wait for the situation to improve before finally taking action under Rule 14(ii).

(5) It is not advisable to suspend a person, where it is not reasonably practicable to hold inquiry, rather than taking an action against him, as suspension causes drainage on public resources.

(6) After the inquiry has been dispensed with, the penalty may be imposed straight away and no further requirements of natural justice are attracted.

(7) Circumstances necessitating application of Rule 14(ii) may arise at any time, not only while issuing charge-sheet, but any later stage till the inquiry is complete. At any stage Rule 14(ii) may be applied.

(8) Omission to mention the rule number or quoting wrong rule may not be a fatal mistake where the powers clearly flowed from a rule.

(9) While taking action under Rule 14(ii), the authority must record reasons in writing. Such reasons may or may not be communicated to the employee, though it will be advisable to communicate them.

(10) The satisfaction of the authority will be subjective but on objective consideration and not male fide.

(11) ***The employee is not without any remedy in case where action is taken under Rule 14(ii). He can still file an appeal.***

(12) ***If the employee has filed an appeal and the situation has improved and it is not such as to make holding of inquiry not reasonably practicable, then the appellate authority must hold the inquiry.***

(13) The disciplinary authority on the spot is the best Judge of the situation and reasons recorded by him are final.

(14) The reasons though final, yet are not above the judicial review of the courts.

(15) None in our country is above the public good, public welfare, and cannot hold the public to ransom.

(16) It is not necessary that the delinquent himself must have rendered holding of inquiry not reasonably practicable. In the matter of mass agitation it is not necessary for one to be present there physically.

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(18) The Appellate Authority must pass a speaking order in disposing the appeal and not a cryptic one, or a mere repetition of language of Rule 22.

'Impractical' v. 'Impracticable' *– 'Impossible' is sometimes synonymous with 'Impracticable'. 'Impracticable means not practicable', incapable of being performed or accomplished by the means employed or at command. 'Impractical' is defined as incapable of being effected from lack of adequate means, impossible of performance, not feasible. Impracticable means impossible or unreasonably, difficult of performance and is a much stronger term than inexpedient.*

Impracticable and impractical are not the same thing. Impracticable means impossible to carry out and is normally used of a definite procedure a course of action ... 'Impractical' on the other hand is tended to be used in more general sense, often to mean simply 'unrealistic' or not sensible.

Rule 14(ii) talks not of impractical or impossible but 'not reasonably practicable'. Thus it is related more to practicability of an action rather than its impossibility. Mere difficulty is not relevant in this rule'.

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Guidelines on some of the important points to be borne in mind while taking action under Rule 14(ii)

Even though no formal enquiry is necessary, it is desirable that the Disciplinary Authority appoint investigating officer (s) (a committee of one or two officer) who can go into the entire issue

and put up an appreciation report bringing out the situation prevailing. The report should also contain the nature and magnitude of delinquency involved. The Disciplinary Authority should consider the report and all other issues connected with the situation and record the reasons in the file in support of its conclusion that it is not reasonably practicable to hold the enquiry into the allegation of misconduct and therefore the necessity of invoking Rule 14(ii).

2. In recording the reasons for dispensing the enquiry, the Disciplinary Authority can make use of the following factors, as may be applicable to the circumstances of the case :-

(i) The mere fact that the delinquent employees participated in an illegal strike will not be a sufficient reasons for removal under Rule 14(ii) of RS(D&A), 1968 unless such participation is accompanied by intimidation of co-workers and causing apprehension in the minds of co-employees that it would be hazardous to give evidence against him in case of an inquiry, in which case the inquiry will not be practicable. Such apprehension should preferably be available in writing.

(ii) The situation may be such that if the action is delayed the delinquent employee's conduct will lead to hooligans and other unruly elements taking opportunity and time to organise further unlawful activities which may result in the aggravation of the situation which is already explosive and which may lead to disturbances to public order and tranquillity and/or damage to vital installations/costly public property.

(iii) In view of above it would be necessary to take swift disciplinary action against such a potentially dangerous employee who is directly or indirectly responsible for the above situation toward of caution and defer other employees, who are intimidated by him, not to abstain from work.

3. It may be noted that the order imposing the penalty must also be a speaking order in the sense that the allegations constituting misconduct for which the employee is being removed, dismissed, etc. have to be set out in the order and the reasons for meting out the punishment in question should be indicated. A bald statement in the penalty order that it is undesirably to retain the employee in service is not sufficient.

4. After recording due reasons as per specimen of speaking order, the disciplinary authority can serve a notice of dismissal, removal etc. making use of the specimen enclosed. The specimens are only illustrative for a particular type of situation.

5. The above notice may be served on the party in person or by Registered Post and by resorting to pasting the order on the door of the employee's house and the Notice Board of the office, duly taking statements of two witnesses to the events, if the employee refuses or evades service of the above notice."

"**Rule 14(ii) and charge-sheet** – The inquiry under D&AR begins with the issue of charge-sheet. As such if the Disciplinary Authority holds that it is not reasonably practicable to hold an inquiry before serving the charge-sheet, then no action by way of issuing a charge-sheet would be necessary. This has been clarified in D.O.P., O.M. No. 11012/11/85-Estt.(A) dt. 4.4.1986. [Rly. Bd's No.E(D&A) 86 AE 5/2 dt. 25.5.1987 to AIRF]

Guidelines for applying Rule 14(ii) – (a) Situation because of which holding of inquiry becomes not reasonably practicable must

exist at that time when inquiry is decided to be dispensed with. (b) It will not be correct application of the rule if only such reasons are anticipated (as against actually existing). (c) Reasons impelling the authority to satisfy that it is not reasonably practicable to hold inquiry must be recorded in writing before actually imposing the penalty. (d) Reasons must be clear and unambiguous and germane, sufficient to warrant dispensation with inquiry and be supported by objective facts and/or independent material. (e) When the witnesses who are relevant to the case say that they will not attend due to intimidation, their statement to this effect must be obtained in writing.

Even in case of RPF such reasons as that it was not considered feasible to call the witnesses as that would expose them to danger and make them the ineffective in future and that in a confronted inquiry they were likely to face humiliation and insults, even their family members might become targets of violence cannot be accepted as adequate reasons to dispense with inquiry."

i) *RBE 53/92 lays down the following :*
"It was not reasonably practicable to hold the inquiry should actually subsist at the time when the conclusion is arrived at and that it would not be correct on the part of the disciplinary authority to anticipate such circumstances as those are likely to arise. Merely recording that if normal procedure is followed it is likely that evidence may be destroyed or witnesses may not come up to give evidence on account of fear of threat/harassment etc. would not be adequate for dispensing with the inquiry. It is essential that the reasons recorded by the Disciplinary Authority for dispensing with the inquiry are supported by objective facts and/or independent material.

ii) *Further RBE 133/17 clarifies as under:*
"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. The requirement that the reasons recorded by the Disciplinary Authority for dispensing with the inquiry should be supported by objective facts and/or independent material, was emphasized vide this Ministry's letter No.E(D&A) 92 RG6-48 dated 06.04.1992."

8. In the aforesaid backdrop we decipher the following legal lacunae in the procedure adopted to invoke Rule 14(ii) to order removal from service without enquiry;

i) The allegations against applicants was of unlawful demonstration, manhandling Govt. officials, forcibly preventing other from performing official duty, misbehaviour with other Railway officials but no official, who was manhandled, prevented as such or was misbehaved with, were named. The charge therefore lacks particulars.

ii) Other than the applicants, some Railway employees were charge sheeted on 02.07.2019 on the basis of an investigation report by a Committee constituted on 5.11.2018. They were proceeded against on the basis of the following indictments.

"On 30.11.2018 at about 1205 hrs information received at control room from CC on duty /KGP that running staff assembled at combined crew lobby vandalizing Railway Property. During joint committee inquiry it has been pinpointed in the video footage that ShriBIJAN MAJUMDAR, LP(Goods)/KGP is alleged to have committed an act of misconduct in which he was physically present in the crew booking lobby on 03.11.2018 when an act of Indiscipline and vandalism took place in the crew booking lobby and he was involved in making the situation even worst. As a result, it caused a significant loss of revenue to Railways by way of detention of coaching trains, freight services and damage to Railway properties.

By the above cited act Shri BIJAN MAJUMDAR LP(Goods)/KGP under CCC(E)KGP has violated G&SR 2.05 (Prevention of trespass, damage or loss) and acted in a manner unbecoming of a Railway servant contravening Rule No.3.1 (iii) of R.S (Conduct) Rules 1966 rendering himself liable for disciplinary action in terms of Railway Serant D & A Rules 1968 as amended from time to time."

iii) Whether such situation as was prevailing on the day of incident, i.e. on 30.11.2018 continued to prevail when appeal was preferred on 18.12.2012 or when it was disposed of on 12.4.2019 is not forthcoming. The appellate authority do not mention whether situationprevail even on 12.4.2019 which made holding enquiry impracticable only for the present officials, when in fact an enquiry was held against others.

Thus, the situation that existed on 3.11.2018, presumably did not exist subsequently. The appellate authority on 12.04.2019 ought to have but failed to justify why enquiry, that was not "reasonably practicable"on 3.11.2018, could not be ordered on 12.4.2019.

iv) The applicant has alleged that Sr. D.E.E was a witness himself but acted as the disciplinary authority and imposed punishment which is in gross violation of the Maxim "*Nemojudex in suacausa*"that no one should be the judge in his own cause.

v) No formal report was obtained from any Committee, prior to invoking Rule 14(ii) on 3.11.2018. However, a Committee was constituted on 5.11.2018 by the Sr.D.E.E, whose report formed the basis of the enquiry against other officials, while the applicants were denied an open enquiry.

vi) One SubhabrataMukhopadhyay, Ex LP(Goods)/KGP under Sr.DEE(OP)/KGP was identically charged and was identically removed from service along with 7 others under Rule 14(ii) of R.S.(D&A) Rules, 1968. On an appeal dated 14.11.18, ADRM/KGP, the Appellate Authority even upheld the punishment imposed by the Disciplinary Authority vide speaking order dated 12.04.19. However, in his revision petition and mercy appeal he tendered unqualified apology which was considered on purely humanitarian grounds where he accepted his mistake and undertook not to repeat such

offence in future, and as his young daughter and aged parents were intrinsically linked to his livelihood he was reinstated in railway service as LP (Goods) and posted under SR.DEE(OP)/KGP with the punishment of reduction from the post of LP(Goods) PB Rs.9300-34800/-+GP4200/-(Level-6, 7th CPC) and Pay Rs.43600/- to Sr.ALP PB Rs.5200-20200/-+GP Rs.2400/- (Level-4, 7th CPC) on initial pay Rs.25500/- for a period of 5 years with bottom seniority, with a rider that the penalty shall be a bar to his promotion during pendency of punishment to the scale of pay/pay band, Grade, Post or Service from which he is reduced with a further direction that on promotion on the expiry of the said specified period, the period of reduction to the Pay Band, Grade, Post or Service shall operate to postpone future increments of Pay to the former post of LP (Goods). He will not regain his original seniority in the higher Pay Band, Grade, Post or Service on expiry of the punishment. The intervening period between his removal to re-instatement will be treated as '**dies non**'.

Such being the position, it is incomprehensible why the present applicant can not be treated identically.

8. In the aforesaid backdrop having noted that the present applicant has not approached the Revisionary Authority, we dispose of the O.A with a liberty to the applicant to approach the Revisionary Authority within 4 weeks citing all the orders, circulars, decisions, they wish to cite in support of their right to be reinstated, which, if preferred shall be disposed of by the Revisionary Authority with due and proper application of mind coming to a definite conclusion ;

I) whether the penalty order deserved to be quashed

(a) in view of the maxim, "*nemo judex in sua causa*" if the Sr.DEE who issued the penalty order had himself witnessed the incident

b) as it was imposed invoking Rule 14(ii) without obtaining any report from an investigating Committee that was constituted on 5.11.2018 as such whether it could be allowed to sustain,

If not,

2) whether the Appellate Order deserves to be quashed as the Appellate Authority failed to discharge its duty to record whether the same situation as on 3.11.2018 prevailed when it disposed of the appeal,

making it reasonably impracticable to hold an enquiry on a subsequent date when it disposed of the appeal,

OR,

3) whether the penalty of removal from service deserves to be modified as in the case of Subhabrata Mukhopadhyay, cited supra.

Appropriate reasoned and speaking order shall be issued within 3 months from the date of receipt of a copy of this order which shall then govern the right of the applicant for reinstatement and consequential benefits.

No order as to costs.

(DR NANDITA CHATTERJEE)
MEMBER (A)

(BIDISHA BANERJEE)
MEMBER (J)

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