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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

~~XO XXX NO.~~
~~T.A. NO.~~

198

1. OA 2516/89 with
MPs 82/90 & 247/90
2. OA 2517/89
3. OA 2515/89

DATE OF DECISION 22.02.1990

Shri Dhan Ram & Others

Petitioner

Shri K.L. Bhatia with Shri R.

Venkataramani & Shri G. Ramaswamy, Advocate for the Petitioner(s)
Sr. Counsel for the applicants in items 1 to 3.

Versus

Union of India

Respondent

Shri P.P. Khurana with Shri Atul

Wig and Shri Kapil Sibal, Addl.

Solicitor General of India in items
No 1 to 3.

Shri P.P. Rao, Sr. Counsel with Shri Raj Jumar Gupta,
Counsel for the Intervenors/Petitioners in MP 247/90

CORAM :

The Hon'ble Mr. P.K. KARTHA, VICE CHAIRMAN(J)

The Hon'ble Mr. D.K. CHAKRAVORTY, ADMINISTRATIVE MEMBER

1. Whether Reporters of local papers may be allowed to see the Judgement? *yes*
2. To be referred to the Reporter or not? *yes*
3. Whether their Lordships wish to see the fair copy of the Judgement? *No*

Deshbandhu

- 22/2/1990

Member (A)

Om Prakash

ve (J)

22/2/90

Central Administrative Tribunal
Principal Bench, New Delhi

Nos. 1. OA-2516/89 with
MPs-82/90 & 247/90
2. OA-2517/89 and
✓ 3. OA-2515/89

Date: 22.2.1990.

1. Shri Dhan Ram Applicant

Versus

Union of India Respondents

For the Applicants in items 1, 2 & 3 Shri K.L. Bhatia with
Shri R. Venkataramani &
Shri G. Ramaswamy,
Senior Counsel

For the Respondents in items 1, 2 & 3 Shri P.P. Khurana with
Shri Atul Wig and
Shri Kapil Sibal, Addl.
Solicitor General of India

2. Shri Shyam Singh Applicant

Versus

Union of India Respondents

✓ 3. Shri Vijay Pal Singh Applicant

Versus

Union of India Respondents

4. Intervenors

For Intervenors Shri P.P. Rao, Sr. Counsel
with Shri Raj Kumar Gupta,
Counsel for the Intervenors/
Petitioners in MP-247/90.

CORAM: Hon'ble Shri P.K. Kartha, Vice-Chairman
Hon'ble Shri D.K. Chakravorty, Administrative Member

(Judgement of the Bench delivered by Hon'ble Shri
P.K. Kartha, Vice-Chairman)

The first applicant has worked for about 27 years as Heavy Vehicle Driver/Van Checker, while the other two have worked for about 15 years as Transport Mates in the Office of the Delhi Milk Scheme (hereinafter referred to as 'DMS'). The first applicant is a Trade Union leader and was formerly the General Secretary of the D.M.S. Employees Union. The present President and General

Secretary of the Union have sought to become parties in view of certain allegations made against them in the applications. The Counsel for the applicants stated that the statements contained in some paragraphs of the applications about the intervenors are not going to be relied upon for the purpose of seeking relief against the respondents and that we may ignore them. In view of this, we have ignored the allegations made against the intervenors. The application for review of MP-247/90 filed by them was disposed of as infructuous by our order dated 12.2.1990.

2. The applicants have challenged the validity of the impugned orders dated 11.12.1989 issued in exercise of the powers vested under Rule 19 (ii) of C.C.S. (CCA) Rules, 1965 whereby they have been sought to be removed from service. As common questions of law have been raised in these applications, it is proposed to deal with them in a common judgement.

3. The facts in brief are that the General Manager, D.M.S. (respondent No.2), recently decided to increase the number of milk containers to be loaded in the vehicles, which according to the staff employed on the distribution duty, was not possible. They represented against the implementation of the new orders. On the night of 5th/6th December, 1989, there was a lightning strike by about 300 workers, resulting in disruption of supply of milk to the public at large in Delhi.

The allegations against the applicants pertain to their role in the alleged lightning strike. The impugned orders which are couched in almost similar language, contain the following allegations:-

(i) They indulged in acts of gross indiscipline and misconduct on the night of 5th/6th December, 1989 in the premises of D.M.S.

which is a public utility service under the Industrial Disputes Act, 1947. D.M.S.

has to function round the clock in order to ensure supply of milk to the members of the public, including hospitals, military units and other institutions.

(ii) They also instigated their fellow workers to desist from their normal duty and created a situation in which the work of D.M.S. was disrupted, thereby resulting in breakdown of the supply of milk to the consumers of Delhi in the forenoon of 6th December, 1989. This was an act of subversive of discipline.

(iii) In view of the "proven ability" and "inclination" of the applicants to resort to acts of gross indiscipline and instigation which are likely to result in paralysing the working of D.M.S. and consequently, disrupting the milk supply by going on illegal lightning strike in future, their continued association with the D.M.S. will be prejudicial to the maintenance of supply of milk.

(iv) They have threatened and intimidated the witnesses who are likely to give evidence against them with fear of reprisal in order to prevent them from doing so.

(v) The misconduct and act of gross indiscipline amounts to failure to maintain absolute integrity, devotion to duty, and also amounts to an act which is unbecoming of a Government servant under Rule 3 of the C.C.S. (Conduct) Rules, 1964 so as to render their further retention undesirable in public interest.

to the disciplinary action against Subhash Chandra

(vi) Such conduct and act of gross indiscipline,

apart from causing hardship to the D.M.S.

conduct of Subhash Chandra was illegal and it is causing bad name to the D.M.S. consumers and bringing bad name to the D.M.S.

conduct is not fit to be brought to the Management as well as Government of India,

or Government as well as Government of India,

is a "most serious offence" meriting the

highest penalty.

(vii) The circumstances of the case are such that

it is not reasonably practicable to hold any inquiry in the matter provided in Rule 14 of the C.C.S. (CCA) Rules, 1965.

Subhash Chandra has filed a report before it a report dated 11.12.1989 submitted by Shri P.B. Gurung, the Security Officer of the Office of D.M.S., together with statements of 7 employees. It constituted the material on the basis of which the impugned orders were passed.

5. The basic submissions of Shri Ramaswamy, Counsel

for the applicants, were that there was no relevant

material to dispense with the entire inquiry, that the impugned orders decision to dispense with the inquiry on the ground that witnesses were threatened, was taken without application of mind and was arbitrary, that the material did not disclose any threat to witnesses to depose at an inquiry as there was no contemplation of such an inquiry

at the time of recording of the statements, that the report of the Security Officer and the statements of

7 persons had, in fact, been fabricated later in point

of time, that the dispensation of inquiry was not in

conformity with the requirements of law laid down in

Union of India Vs. Tulsi Ram Patel, 1985 (3) S.C.C. 398,

and Satyavir Singh Vs. Union of India, 1985 (4) S.C.C. 252,

and that the impugned orders were stereo-typed and in

each case the same.

routine standard form, indicating non-application of standard, but having in reading, found it to be (iv) mind.

6. The first applicant had also called in question

the legality of the impugned order on the additional ground that it has been passed by an incompetent authority. voluntarily

7. Shri Sibal, Additional Solicitor General of India, appearing for the respondents, argued that the disciplinary authorities had passed the impugned orders after going

through the relevant material consisting, amongst others, of the report of the Security Officer and the statements of witnesses, that the conclusion reached by the disciplinary authorities was bonafide, that the disciplinary authorities who issued the impugned orders, were competent to do so, and that though the orders of removal are non-appealable orders, the applicants have not preferred appeals.

8. At the outset, we may deal with the contention raised by the first applicant that the General Manager of the D.M.S. who has passed the impugned order is not competent to do so as he is subordinate in rank to the Chairman, who had appointed him to the present post. The respondents have denied this contention.

9. The first applicant was appointed as Milk Van Driver w.e.f. 1.3.1964 by office order dated 25.6.1964. He was confirmed in the same post w.e.f. 1.1.1970 by office order dated 11.3.1971. The appointment order was issued by the Director of Administration while the confirmation order was passed by the Deputy General Manager, Administration. On 10.10.1968, the Chairman issued an office order stating that the post of Milk Van Driver to which he was appointed w.e.f. 1.3.1964, has

been created with retrospective effect from 21.12.1963

and that he is regularised in the said post w.e.f.

21.12.1963. He was also ordered to be paid the

difference of pay of a regular Driver and daily-wager

for the period from 21.12.1963 to 1.3.1964. With

effect from 5.6.1978, the General Manager is the appointing

authority in respect of all posts in Group 'B'. He is

also the authority to impose all penalties under Rule 11

and example of the C.C.S.(CCA) Rules, 1965, vide order dated 12.2.1980.

It is also observed in the Explanatory Memorandum appended to the order, it

was stated as follows:-

"As per this Ministry's sanction No. 3-13/78-

LDI dated 4.5.78, the post of Chairman, DMS, was

redesignated and downgraded to the post of

General Manager. While issuing this sanction,

it was decided that the General Manager will

enjoy all the powers vested in the Chairman,

D.M.S. General Manager took over with effect

from 5.6.78. While prior to this date, Chairman

was Head of the Department, with effect from

5.6.78, General Manager became Head of the

Department. The interests of no one will be

prejudicially affected by the retrospective

effect being given to this order."

In the light of the above, we are of the opinion

that the General Manager was competent to pass the

two impugned order in his capacity as the disciplinary

authority.

We may now consider whether the impugned orders

are vitiated on legal or constitutional grounds. The

law laid down by the Supreme Court in Tulsi Ram Patel's

case in this regard still holds the field. Accordingly,

the scope of judicial review in a case of this kind is

restricted to considering whether clause (b) under the

second proviso to Article 311(2) of the Constitution or

analogous provision in the Service Rule was properly

applied or not. Reasonable opportunity to show cause

against the action proposed to be taken is not required to be given where the authority concerned is satisfied

that for some reason, to be recorded in writing, it

is not reasonably practicable to do so. Article 311(3) of

the Constitution provides that if any question arises

whether it is reasonably practicable to give to a person

an opportunity of showing cause under clause (2), the

decision thereon of the authority empowered to dismiss

or remove such person, or to reduce him in rank, as the

case may be, shall be final. The finality given to his

decision is not, however, binding upon the Court. The

Court will examine the charge of mala fides, if any,

mentioning out made in the writ petition. In considering the relevancy

of reasons, the Court will consider the situation which,

according to the disciplinary authority, made it come

to the conclusion that it was not reasonably practicable

to hold the inquiry. If the Court finds that the

reasons are irrelevant, then it will be an instance of

abuse of power and would take the case out of the purview

of clause (b) and the impugned order of penalty would

stand invalidated. In considering the relevancy of the

reasons, the Court will not, however, sit in judgement

over them like a Court of first appeal. In order to

decide whether the reasons are germane to clause (b),

the Court must put itself in the place of the disci-

plinary authority and consider what in the prevailing

situation a reasonable man acting in a reasonable way,

would have done. The matter will have to be judged in

the light of the then prevailing situation and not in

the cool and detached atmosphere of a Court Room, and that, ~~any~~ ~~any~~ ~~any~~ ~~any~~ ~~any~~ removed in time from the situation in question.

Where two views are possible, the Court will decline to interfere.

no power (a) to do. It is not a total or an absolute impracticability of the contemplated course to be accepted by the authorities which is required by clause (b) of the Second proviso.

What is required is that the holding of the inquiry is

not practical or not practicable in the opinion of a reasonable man taking a reasonable view of the prevailing circumstances.

This is a matter of assessment to be made by the disciplinary authority who is on the spot and knows what is ~~happening~~ happening and must be judged in the light of the ~~existing~~ circumstances then prevailing.

The author of para 13. The exigencies of a situation may require that addition (1) of para (a) of (b) be held to mean that prompt action should be taken. Otherwise, it may sometimes result in the trouble spreading and the situation worsening and at times, becoming uncontrollable.

Not taking prompt action may also be construed by the trouble makers and agitators as a sign of weakness on the part of the authorities and thus encourage them to take a random step up the tempo of their activities or agitation.

When prompt action is taken in order to prevent a mishappening, there is an element of deterrence in it.

But that is an unavoidable and necessary concomitance of such an action resulting from a situation which is not of the creation of the authorities.

For example, where a civil servant, particularly through or together with his associates, so terrorises, intimidates or threatens or intimidates witnesses who are going to give evidence against him, with fear of reprisal as to prevent

them from doing so, or (b) where he by himself or together with, or through others, threatens, intimidates or terrorises the disciplinary authority or members of his family so that he is afraid to hold

the inquiry or direct it to be held, or (c) where an atmosphere of violence or of general indiscipline and insubordination prevails, it being immaterial whether

the concerned civil servant is or is not a party to the circumstances giving rise to the situation.

bring about such a situation, it would not be reasonably practicable to hold the enquiry. In all these cases, numbers coerce and terrify while an individual may not.

15. The counsel for the applicants argued that the dispensation of the enquiry should be in proportion to the impracticability and in this context, referred to provisions of Rules 11, 14(1) to (16) and 19(ii) of the C.C.S. (CCA) Rules, 1965. Rule 11 provides that the penalties enumerated therein may "for good and sufficient reasons" be imposed on a Government servant, Rule 14(1) to (16) contemplates drawing up of a charge-sheet, serving it on the Government servant, requiring him to submit a written statement of his defence, appointment of an inquiry officer, discovery or production of documents and examination of witnesses for the prosecution before calling upon the Government servant to produce his evidence, as contemplated in Rule 14 (17). According to Rule 19 (ii), notwithstanding anything contained in Rules 14 to 18, 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 disciplinary

authority, may consider the circumstances of the case and make such orders thereon as it deems fit. He laid emphasis on the words "for good and sufficient reasons" occurring in Rule 11 and "in the manner provided in these Rules" and argued that it was open to the disciplinary authority to dispense with only that part of the enquiry which it was not reasonably practicable to hold and not the enquiry in its entirety. A similar contention had been raised in Tulsi Ram Patel's case on behalf of the Government servants. On behalf of the Union of India, it was contended that where under the Second proviso, clause 311(2) and (2) of Article 311 is made inapplicable, there is no scope for holding any partial enquiry. The Supreme Court overruled the contention that even though it may not be reasonably practicable to hold an enquiry, the explanation of the Government servant can at least be asked for with reference to the charges made against him so that he would have an opportunity of showing in his written reply that he was not guilty of any of those charges, and observed thus:-

"In the present case, clause (2) of Article 311 is expressly excluded by the opening words of the Second proviso and particularly its key words "this clause shall not apply". As pointed out above, clause (2) of Article 311 embodies in express words the audi alteram partem principle. This principle of natural justice having been expressly excluded by a constitutional provision, namely, the second proviso to clause (2) of Article 311, there is no scope for reintroducing it by a side-door to provide once again the same inquiry which the constitutional provision has expressly prohibited."

16. In view of the foregoing, we do not see any force in the contention raised by the applicants.

17. Similar orders passed by the Government have been upheld by the Supreme Court in Tulsi Ram Patel's case, Satyavir Singh's case, A.K. Sen & Others Vs. Union of India & Others, 1986 S.C.C. (L&S) 141, Ikramuddin Ahmad Borah Vs. Superintendent of Police, Darrang, AIR 1988 SC 2245 and in Prakash Dutt Ramesh Chander and Another Vs. D.T.C. and Another (S.L.P. (Civil) Nos.437, 1019, 1077, 1078 of 1989 decided on 1.3.1989.

18. In Tulsi Ram Patel's case, the Supreme Court had dismissed petitions before it, among others, appeals filed by dismissed members of the Central Industrial Security Force and some of whom were employees of the Indian Railways. In the C.I.S.F. matters, several thousand members of the members of the CISF Unit at Bokaro Steel Plant of the Bokaro Steel Ltd. had formed an All India Association and called for recognition. Out of 1900 persons, about 1,000 participated in the processions and violent demonstrations. They indulged in acts and violent indiscipline, unleashed a reign of terror in the Unit Lines, openly incited others to disobey the lawful order and created a very serious law and order problem and an atmosphere of collective violence and intimidation. Army had to be called by the State authorities to restore normalcy in the area. The State Government had also deployed nine Magistrates to assist the Army authorities. On seeing the arrival of the Army, the agitators started making preparations for armed resistance. They had gained control of CISF Lines and the officers were not allowed to have any access to the lines or to other ranks. The

Army, along with 9 Magistrates, took up positions
opposite the CISF Lines and called upon them to give up
and yield the control and charge of the Armoury. They did not do so but instead
resorted to violence. They started firing at the Army.

The Army returned the fire. This lasted for three hours.

As a result of this exchange of fire 22 persons died

The violent exchange of fire resulted in the death of one
Army Major and two more Army personnel were killed as a
result of firing by the CISF personnel. 22 persons died
in pitched battle. The Army rounded up 800 personnel
who were later on arrested by the local Police. A

substantial number of agitators was, however, at large

who had either fled away or had gone underground and
large number of arms and ammunition were also with them.

Some of these arms and ammunitions were recovered
subsequently. An F.I.R. had been lodged in this

connection. The atmosphere at the Bokaro Steel Plant

continued to be vitiated due to terror and collective
fear and the functioning of the CISF Unit and its

administration there had broken down. There had also
been mass terror and intimidation and threats to super-
visory and loyal staff.

19. In the railway matters, the employees concerned

had gone on an All India strike, paralysing a public

utility service. Loyal workers and superior officers

had been assaulted and held to ransom and the economy of the country and
public interest and public good had been prejudicially
affected.

20. In Satyavir Singh's case, a number of staff
belonging to the Research & Analysis Wing (R&AW) of the

Cabinet Secretariat, Government of India, had protested against certain security regulations imposed by the

respondents and had demanded their withdrawal. The

Director, Assistant Director and Security Officer had

been 'gheraoed'. Local Police had to be sent for to rescue them. They collected inside the building and in the afternoon the Court of the police with

the premises in groups stopping work in many branches.

A pen-down strike took place on All India basis. There

was complete insubordination and total breakdown of

discipline. The atmosphere was charged with tension.

21. A.K. Sen's case related to the dismissal from

service of six Security Guards belonging to CISF. The

acts of misconduct charged against two of them were the

same as were before the Court in Tulsi Ram Patel's case

and the original court had accepted the allegations

and the situation which prevailed was very similar. In

relation to the others, the materials on record showed

that the situation was similar but ultimately returned

to normal in June, 1980. However, the agitation was

revived and clandestine meetings were held in collabora-

tion with some of the dismissed members of the Force.

In order to prevent the possible recurrence of a near

mutiny by the units posted in the southern zone, swift

and deterrent action was necessary and required and the

petitioners were dismissed. Witnesses were being

threatened and intimidated from coming forward to give

evidence and attempts were made to serve the charge-

sheet but the same could not be served.

22. In Ikramuddin Ahmed Borah's case, it was alleged

that since the applicant's joining the Department, his

service in all branches of Police work where he had been

tried, left much to be desired and consistent efforts by his senior officers for improving his work had proved abortive. Despite the above drawbacks, his conduct and integrity had recently been found to be beyond question, to be honourable and reliable characters. It was doubtful and he had been recently misusing his official position to the detriment of general social well-being and to his personal gain. It was not practicable to hold an enquiry because of non-availability of witnesses who would not testify against him out of various considerations such as fear and because of the likelihood of causing of damage to the Police image and administration before the general public in the event of holding of such an inquiry.

23. In Ramesh Chander's case, penalty of dismissal from service had been imposed on about 3125 employees of the D.T.C. most of whom were before the High Court in the batch of writ petitions filed there. The strike of the D.T.C. workers had made the normal functioning of the transport system impossible which had resulted in disruption of the transport system causing inconvenience and hardship to the residents, visitors and commuters of Delhi specifically to the economically weaker sections of the society and daily-wage-earners. They incited and instigated other classes of people with whom they had been in contact to strike. The Delhi High Court observed that prompt and urgent action was imperative to bring the situation under control and to avert the agitation which was likely to take an ugly turn possibly with grave loss to life and property. No witnesses could be available or forthcoming to depose against the striking employees. It was held that the strike was justified in the circumstances when the substantial numbers of the

employees were on illegal strike. In retrospect, it is evident that the rigour of the strike petered out and, accordingly, no substantial evidences have been adduced before the Appellate Authority in support of the claim of the respondents that the employees guilty of the misconduct of instigating and inciting other workers to illegal strike." The Delhi High Court upheld the validity of the impugned action as evidence can be adduced in support of the orders but quashed the orders by the Appellate Authority in so far as they were passed in respect of whichever cases they have been passed wherein it is necessary to determine whether the illegal strike was instigated and incited by the employee or not. The Court directed that the Appellate Authority shall hold the enquiry itself or direct that such enquiry be held in accordance with the provisions of clause 15(2)(c) and then pass such orders as it deems fit. The Court further directed that the respondents who have not preferred the appeals may do so within the same prescribed period and those appeals will also be determined in the similar manner as indicated above. The S.L.P. filed by the petitioners in the Supreme Court was disposed of with the following directions:-

Justice J.S. Khehar held that the Appellate Authority will be directed to complete the enquiry at the appellate stage within two and half months from today. In such enquiry, no fresh charge-sheets will be issued to the workmen. Mr. M.K. Ramamurthy, learned Counsel appearing on behalf of the workmen, has no objection to the enquiry being completed at the appellate stage within two and half months from today and assures that the workmen would still be available for the proceedings before the appellate authority. If, however, the proceedings cannot be completed within two and half months from today, the workmen in respect of whom the enquiry is not so completed, will be entitled to receive payment of subsisting allowances in accordance with the rules for payment of subsisting allowance. The workmen who have

not preferred any appeal, will be at liberty to file an appeal within a week from today. If any such appeal is filed, the respondents will not take any objection to the maintainability of the same on the ground of limitation. In all the cases, there will be an enquiry at the appellate stage, notwithstanding any subsequent order to the contrary passed by the appellate authority."

24. In the instant case, a perusal of the report submitted by the Security Officer as well as the statements on the basis of which the report was prepared, clearly indicate that there was no damage to Government property, that there was no untoward incident like 'gherao' or violent demonstrations, and that the Police had not to be called to the scene of the incident, let alone para-military forces, or the Army. According to the version given in the report of the Security Officer dated 11.12.1989, Shri Inder Raj Singh, Security Supervisor, went to the house of the Security Officer on 6.12.1989 at about 0015 hours and informed him that when he went to have tea in the Canteen on 5.12.1989 at about 2320 hours in the night, the Drivers and Mates gathered there were discussing that the General Manager had promised that the supply of milk on each route will be made upto 400-450 crates from the morning of 6.12.89, but on seeing the route schedules, it was noticed that his promise had not been kept. The workers, therefore, decided to initially raise a voice that from the morning of 6.12.1989, the number of milk crates on each route may be 400 crates or otherwise they would not make the supply. Inderjit Singh went to the Security Gate and informed Shri S.P. Singh, Security Supervisor about this. Shri S.P. Singh took Shri Mohan Singh, Watchman, with him

and went to the Docket Section, where the workers had moved to talk to the O.S.D. there. The Security Officer who was apprised about this, in turn, talked to Shri P.N. Sarin, M.D.O., on phone who was on O.S.D. duty on that night. Shri Sarin tried to persuade the workers stating that according to the route schedules of 6.12.1989, the supply of only one route was more than 500 crates. The workers sought for 10-20 minutes' time. Most of them agreed to go on duty but two of them, namely, Shyam Singh and Vijaypal Singh, Mates, the second and third applicants who were in the crowd, stood up and stated that if their demands were accepted in writing on that day, they are ready to supply milk. Shri Sarin told them that he could not give it in writing as demanded but promised that if they made the supply as per route schedules, their demands would be considered shortly. The workers did not agree to this. The Security Officer also tried to persuade them but failed. Thereafter, he talked to the General Manager on phone and apprised him of this. He called for Shri Krishan Kumar and Shri Madan Lal, President and General Secretary, respectively of the Workers' Union from their residences who also tried to persuade the workers promising that they will get their demands accepted on that day itself. The workers did not pay heed to it and insisted on acceptance of their demands in writing.

25. In Shri Dhan Ram's case, Shri Inder Raj, the Security Officer, has mentioned in his statement that 15-20 workers came to the workshop where Shri Dhan Ram was working and he asked them to continue the strike.

But when Shri S.P. Singh, the Security Supervisor, asked him not to say so, Shri Dhan Ram went to him without saying anything to the workers and left the place. Shri Dhan Ram called Shri Inder Raj Singh aside and said that if he gave statement against him, "I will see". In spite of this, he gave his statement on 6.12.1989. Nothing untoward happened thereafter. Shri S.P. Singh, Security Officer, has also mentioned in his statement that 10-15 workers went to the workshop and Shri Dhan Ram asked them to remain firm on strike. But when asked to avoid this, he went to his office without saying anything and the workers also left. Shri Shyam Singh told Shri S.P. Singh that Shri Dhan Ram wanted to discuss something with him, but the latter refused to go.

Referring to this, Shri Shyam Singh said "Shri Dhan Ram is saying that if Shri S.P. Singh will not come now, he will proceed to tell him that he should think it over properly, otherwise result will be bad". In the statement of Shri Mohan Singh, Chowkidar, he has given a similar account of the day and the subsequent meeting of 15-20 workers at the workshop. He also added that he heard that Shri Dhan Ram called him in the morning near the Canteen and threatened him that if he came to know that he had given statement against him, it will not be good for him. Despite this, Shri Mohan Singh gave his statement on 6.12.1989 and nothing untoward happened thereafter.

In the statement of Shri Jagdish Chander, Security Officer, he has stated that he came to the Office at 9.00 a.m. on 6.12.1989, when the strike had ended. Shri Dhan Ram had gone home after his duty hours at 6.00 p.m. on 6.12.1989. Similarly, Shri Hava Singh, Mate, had also gone home on 6.12.1989. He had also given his statement on 6.12.1989.

... reported for duty at 9.00 a.m., when the strike had already ended. Shri Sukhi Ram, H.V.D., has not made any statement about the strike by the Drivers and mates at the Docket. He has, however, stated that he saw the same workers at the workshop who were being asked by Shri Dhan Ram not to go for supply. Shri Dhan Ram told him that if he tried to make any report against him about this, it will be bad for him.

From affidavit No 26, no direct allegations have been made against Shri Shyam Singh and Vijaypal Singh, the other two possible串犯 applicants. The above and besides per-

petrators of the strike in view of the foregoing, learned counsel for the applicants argued that there is no material to substantiate the above mentioned allegations contained in the impugned order dated 11.12.1989 that the applicants instigated their fellow workers to desist from their normal duty or that they had "proven ability" and inclination to resort to acts of gross indiscipline and instigation which is likely to result in paralysing the working of the D.M.S. in future. Assuming that the persons who made statements before the Security Officer, were to figure as witnesses in a regular departmental inquiry, there is no material to suggest that they have been threatened and intimidated by the applicants. The very fact that some of them had mentioned the names of the applicants in the statements made to the Security Officer, disproves any such threat or intimidation. He also drew our attention to the mentioned facts. Copies of the commendation letters given to Shri Dhan Ram, the first applicant by Dr. Chhattrasal Singh, the celebrated ~~ex~~ former Chairman, on two occasions in 1987 which were to be kept in his C.R. dossiers. In the letter dated 7th

March, 1987, he has stated that he had an opportunity of watching him as a Trade Union leader as also the workers' representative participating in the management of the Dairy, which work he had entrusted to him. He also stated that he appreciated him for the excellent work done by him during his period towards the welfare of the workers in general. He has added that he is proud of him as a worker and as a leader. In the letter dated 30th May, 1989, he has expressed his appreciation for the excellent cooperation and understanding displayed by the D. M. S. Employees Union of which he was then the General Secretary. According to the learned counsel, the opinion of the learned trial court that these commendation letters disproved the allegation in the impugned order that the applicant has got proven propensity to resort to gross indiscipline.

Answering this question, Mr. Justice Jagannath Singh, according to the counsel for the respondents, what is relevant is not whether there was violence or heads were broken but the agitational atmosphere built up in the premises of D. M. S. which is a public utility service like the Railways, at the crucial time. Once it is established that a public utility service was paralysed, one has not to look for any further reasons to sustain the impugned action. He recalled the observation of the Supreme Court in Kameshwar Prasad Vs. State of Bihar, A.I.R. 1962 S.C. 1166 that there is no fundamental right to resort to strike and that no person employed in a public utility service like the Railways, can go on strike in breach of contract without giving his employer a notice of strike as prescribed by Section 22 of the Industrial Disputes Act, 1947 and that the strike of the workers in the instant case was illegal. He referred to the observations

and held that it was the duty of the Courts to decide the question of the Supreme Court in Tulsi Ram Patel's case that

the railway servants went on the strike with the object of forcing the Government to meet their demands. Their demands were for their private gain and in their private interest. In seeking to have these demands conceded, they caused untold hardship to the public and prejudicially affected public good and public interest and also the welfare and the good and interest of the nation." According to the learned counsel to him, the above observations equally apply to the instant case where untold hardship was caused to the leading men and members of the general public due to the strike of the appellants and workers of the D.M.S. and the D.M.S. was held to ransom.

Learned Senior Lawyer drew attention to certain portions of the report

indicating the charged atmosphere of violence and indiscipline, the role of the applicants, their influence to a man to go with the fellow workmen and their potentiality for doing the same again.

Learned Senior Lawyer 29. We have, thus, before us two versions about the

same and the factual scenario presented before us by eminent counsel for both sides in different lights and with varying focus and emphasis, based on the same material.

30. We do not wish to express any opinion, one way or the other, on the correctness of the respective versions of the incident which took place more than two months back.

The applicants have not substantiated the allegation of mala fides on the part of the respondents. In our considered opinion, the exercise of the power by the disciplinary authorities concerned in the instant case was bonafide and proper and for relevant and germane reasons and we uphold the same.

Proceedings are adjourned till the next date of hearing.

31. (2) The applicants have not preferred appeals against the impugned orders against the appellate authorities concerned to whom concerned. The Counsel for the respondents stated that

in such a case the applicants prefer appeals, the same will be given soft & due consideration and the appellate authorities will pass appropriate orders. In Satyavir Singh's case,

the Supreme Court observed that a civil servant in similar circumstances can claim in appeal or revision

that an enquiry should be held with respect to the

charges on which such penalty has been imposed upon him and he can do so unless a situation envisaged in the second proviso to

Article 311(2) is prevailing at the hearing of the

appeal or revision application. Even in such a case,

the hearing of the appeal or revision application should not be postponed for a reasonable length of time for the

situation to return to normal. In our opinion, a

direction should be issued to the applicants to file

their appeals under the Central Civil Services

Classification, Control and Appeal) Rules, 1965. The

appellate authority shall hold an enquiry itself or

order direction direct that such enquiry be held in accordance with the

provisions of the said Rules and pass such orders as it

deems fit. Till such appeals are decided, we are of the

opinion that in the interest of justice and having regard

to the fact that the applicants belong to the category

of regular & low paid employees, they should be paid every month

an amount equal to their salary and allowances, for

their subsistence and of their families.

32. In the conspectus of the facts and circumstances

of these cases, we dispose of the application at the

admission stage itself with the following findings, directions, orders and directions:-

(i) We hold that the exercise of the power of the said order, in so far that it was not reasonably practicable to demand the disclosure of information, hold the enquiry was bona fide and for relevant and germane reasons and we uphold the same. We do not, however, wish to express any opinion on the correctness of and do not accept either of the respective versions regarding the alleged participation and/ or involvement of the applicants in the strike of the workers of the D.M.S. held on 5/6.12.1989.

(ii) The applicants may prefer appeals to the competent authorities within a period of three weeks from the date of communication of this order. The appellate authority, if any, ^{or} shall condone the delay in filing the appeal and hold an inquiry itself or direct the concerned authority to do so that such inquiry be held in accordance with the relevant provisions of the Central Civil Services (Classification, Control and Appeal) Rules, 1965 on the question of the participation of the applicants in the strike of the D.M.S. held on 5/6.12.1989. The particulars of the order made by the applicants are as follows:-

(iii) The appellate authorities are directed to conduct the inquiry and conclude the same as expeditiously as possible but in no event later than four months from the date of receipt of appeals preferred by the applicants and pass such orders as they deem fit.

(iv) The applicants are directed to fully cooperate in the conduct of such an inquiry when it is initiated.

(v) In case the applicants feel aggrieved by the decision of the appellate authority, they will be at liberty to file fresh applications in accordance with law, if so advised.

(vi) In the interest of justice, we direct that the applicants should be paid every month an amount equal to their salary and allowances from 11.12.1989 till the proceedings are completed as directed above for their subsistence and of their families, ~~or~~ ~~if they are dependent on the~~ not exceeding Rs. 100/-.

(vii) The interim orders passed on 10.1.1990 on MP-82/90 in OA-2516/89 to the effect that the respondents are directed not to dispossess the applicant from the Government accommodation in his occupation subject to his payment of licence fee, etc., in accordance with the relevant rules, shall continue till the proceedings are completed as directed above.

(viii) The parties will bear their own costs.

Let a copy of this order be placed in all the three case files.

(D. K. Chakravorty)
Administrative Member

22/2/1990

22/2/1990
(P. K. Kartha)
Vice-Chairman(Judl.)