IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW DELHI

O.A. No. 526 of 1988
T.A. No. 199

DATE OF DECISION 15.XI.91

Kula ~~Kala~~ Nand — Petitioner

Shri Umesh Misra — Advocate for the Petitioner(s)

Versus

Union of India — Respondent

Shri O.N. Moolri — Advocate for the Respondent(s)

CORAM

The Hon'ble Mr. Justice Ram Pal Singh, Vice-Chairman (J)

The Hon'ble Mr. I.P. Gupta, Member (A)

1. Whether Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgement ?
4. Whether it needs to be circulated to other Benches of the Tribunal ?

(Judgment of the Bench delivered by Hon'ble Shri Justice Ram Pal Singh, Vice-Chairman (J).)

JUDGMENT

The applicant has filed this O.A. under Section 19 of the Administrative Tribunals Act of 1985 praying the relief to set aside the impugned order dated 16.12.1987 passed by the respondents and also to set aside the order of his removal from service. He further prays for a direction to the respondents to reinstate the applicant with full back wages and continuity of service.

2. The applicant, according to his O.A., is a permanent employee and at the relevant time, he was working as Driver Grade 'C', posted at Diesel Shed, Tughlakabad, Northern Railways. He was Branch Secretary of the Tughlakabad Branch of the All India Loco Running Staff Association. There was a call of strike from midnight between 28th and 29th January, 1981. The applicant was marked absent on 29.1.81 and was not allowed to work by the respondents on 30.1.81 though he contends that he did not participate in the

strike. According to the O.A., the applicant was removed from service in the year 1980, but later on the removal order was withdrawn. The applicant was also involved in a criminal case under Section 506 of the IPC and alongwith Narottam Kumar, Fireman, was arrested and next day on 3.2.81 was released on bail.

3. The applicant by order dated 2.3.81 was removed from service (Annexure 'C'). He is alleged to have been responsible for instigating the staff to join the illegal staff strike and intimidating them with dire consequences for failure to do so, thereby disrupted the railway traffic and inconvenienced the travelling public and loss to railway administration. Because of disturbed conditions and circumstances, the DME-1 held in Annexure 'C' that it is not reasonably practicable to hold an enquiry in the manner provided under Railway Servants (D&A) Rules, 1958 (hereinafter referred as 'Rules'). The said authority, therefore, in exercise of the powers conferred by Rule 14 (ii) of the Rules directed the applicant to be removed from service with immediate effect. The applicant was further informed that the appeal lies with the DRM, Northern Railway, New Delhi. The applicant challenged this order by way of a review petition before the General Manager, Norther Railways, who passed the following order:

> "I have also gone through the review petition of Shri Kula Nand who has also brought out that he was removed without holding an inquiry and has also requested for a DAR inquiry. Now I have seen the DAR case including his office order under 14(ii),.........."

The authority also observed that the case of the applicant has arisen under peculiar circumstances when industrial peace was disturbed and normal DAR procedure was not reasonably practicable to follow. The appeal, according to him, has also been disposed of by the DRM. "In this case also there is no new point........." Consequently, the request for inquiry, as prayed for by the applicant, was rejected. Aggrieved by the order of his removal from service and rejection of his representation and appeal, the applicant has filed this O.A.

4. The respondents, on notice, supported the order of dismissal from service of the applicant because in the opinion of the authorities, the applicant was an instigator in the strike. The respondents also contended that under 14(ii) of the Rules, the disciplinary authority has passed the arbitrary orders.

5. All these matters were decided by the Supreme Court in the case of **Union of India vs. Tulsi Ram Patel (1985 (2) SLJ. 145 (S.C.))** with regard to Rule 14(ii) of the Rules and other points raised therein. Again, by a Full Bench of this Tribunal in O.A. Nos. 13, 14,15,16,17, 18 and 19 of 1987, judgment dated 14.12.87, this was considered. In the case of **Tulsi Ram Patel** (supra), the Supreme Court held:

> "A conspectus of the above service rules and the CISF Act shows that a government servant who has been dismissed, removed or reduced in rank without holding an inquiry because his case falls under one of the three clauses of the second proviso to Article 311(2) or a provision of the service rules analogous thereto is not wholly without a remedy. He has a remedy by way of an appeal, revision or in some cases also by way of review. Sub-clause (ii) of clause (c) of the first proviso of Rule 25(1) of the Railway Servants Rules expressly provides that in the case of a major penalty where an inquiry has not been held, the revising authority shall itself hold such inquiry or direct such inquiry to be held. This is, however, made subject to the proisions of Rule 14 of the Railway Servants Rules. The other service rules referred to above do not appear to have a similar provision nor does the Railway Servants Rules make the same provision in the case of an appeal. Having regard, however, to the factors to be taken into consideration by the Appellate Authority which are set out in the service rules referred to above a provision similar to that contained in sub-clause (ii) of clause (c) of the first proviso to Rule 25(1) of the Railway Servants Rules should be read and imparted into provisions relating to appeals in the Railway Servants Rules and in the other service rules and also in the provisions relating to revision in the other service rules. This would, of course, be subject to the second proviso to Article 311 (2), Rule 14 of the Railway Servants Rules, Rule 19 of the Civil Services Rules and Rule 37 of the CISF Rules. Thus, such a right to an inquiry cannot be availed of where clause (a) to the second proviso of Article 311 (2) or a similar provision in any service rule applies in order to enable a government servant to contend that he was wrongly convicted by the criminal court. He can, however, contend that in the facts and circumstances of the case, the penalty imposed upon him is too severe or is excessive. He can also show that he is not in fact the government servant who was convicted on a criminal charge and that it is a case of mistaken identity. Where it is a case falling under clause (b) of the second proviso or a provision in the service rules analogous thereto, the dispensing with the inquiry by the disciplinary authority was the result of the situation prevailing at that time. If the situation has changed when the appeal or reision is heard, the government servant can claim to have an inquiry held in which can establish that he is notguilty of the charges

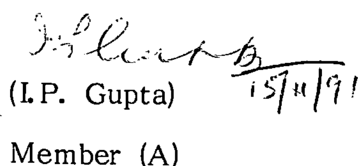
on which he has been dismissed, remoed or reduced in rank. He, however, cannot by reason of the provision of clause (3) of Article 311 contend that the inquiry was wrongly dispensed with and it was reasonably practicable to hold an inquiry because by the said clause (3) the decision on this point of the disicplinary authority has been made final. So far as clause (c) is concerned, dispensing with the inquiry depends upon 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. In such a case, an order imposing penalty can, howeer, be passed by a disciplinary authority because in such a case the President or the Governor, as the case may be, can direct the disciplinary authority to consider the facts of the case and impose the appropriate penalty without holding any inquiry. Clause (iii) of Rule 14 of the Railway Serants Rules and clause (iii) of Rule 19 of the Ciil Serices Rules enisage this being done. In such a case the satisfaction that the inquiry should be dispensed with as not being expedient in the interest of the security of the State would be that of the President or the Governor, the selection of one of the three penalties mentioned in Article 311 (2) as being the proper penalty to be imposed would be of the disicplinary authority. The satisfaction of the President or the Governor cannot be challenged in appeal or revision but the goernment servant can in appeal or revision ask for an inquiry to be held into his alleged conduct unless even at the time of the appeal or reision, the interest of he security of the State makes it inexpedient to hold such an inquiry. Of course, no such right would be available to a Government servant where the order imposing penalty has been made by the President or the Governor of a State, as the case may be......"

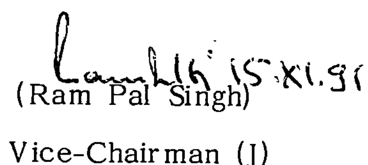
It is thus answered that a situation which makes the holding of an inquiry not reasonably practicable should exist before the disciplinary inquiry is initiated against the Government servant. Such a situation can come into existence subsequently, during the course of an inquiry, for instance, after the service of the chargesheet upon the delinquent or after he has filed his written statement thereto or even after evidence has been led in part. Therefore, even where a part of an inquiry has been held and the rest is dispensed with under clause (b) or a provision in the service rules analogous thereto, the exclusionary words of the second proviso operate in their full vigour and the Government servant cannot complain that he has been dismissed or removed in violation of Article 311 (2) of the Constitution of India. The disciplinary authority should record in writing its reason for its satisfaction that it was not reasonably practicable to hold the inquiry contemplated by Article 311 (2) of the Constitution. This is a constitutional obligation and if such a reason is not recorded in writing, the order dispensing with the inquiry and the order of penalty following thereupon would both be void and unconstitutional.

6. The industrial peace was not congenial to holding of a departmental inquiry has been mentioned by the disciplinary authority in Annexure 'C', but this order was passed on 2.3.81. Now, it is the end of year 1991 and it cannot be said that the same conditions prevailed even today which prevailed in the year 1981, but since 1981, 10 long years have passed and it would not be possible to hold an inquiry because the evidence with regard to the culpability of the applicant may have disappeared or the witnesses may have died or retired. In such a situation, even if we direct the respondents to hold an inquiry, it would be an exercise in futility. Where the inquiry is not held and the Government servant is saddled with the punishment under the provisions of Rule 14(ii) of the Rules, then great responsibility lies upon the shoulders of the appellate/revisional authority to consider the case of the delinquent.

7. In the case of R.T. Katiyar and others vs. Chairman Rly. Board New Delhi and others (III (1991) CSJ (CAT) 91), the Principal Bench held the view that no purpose will be served in remitting the matter to the revisional authority as ex-facie it cannot be expected that the peculiar conditions that prevailed in the year 1981, which was on account of a strike by the railway employees at that time, on account of which the disciplinary authority dispensed with the inquiry, continue even at this stage so as to arrive at a reasonable conclusion that it is not reasonably practicable even now to hold an inquiry.

8. In view of the above, we quash the orders of the disciplinary authority (dated 2.3.81 by which the applicant was removed from service) and the appellate authority and remit the matter to the respondents for holding any inquiry, if possible in accordance with law. The inquiry has to be completed within a period of six months from the date of the receipt of this order. The parties shall bear their own costs.





(I.P. Gupta)
Member (A)

(Ram Pal Singh)
Vice-Chairman (J)