

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

O.A.No.100/1395/2017
&
M.A.No.100/1753/2020 in O.A.No.100/1395/2017
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Dated this the 6th day of November,2020

(Through Video Conferencing)

Hon'ble Mr. Justice L. Narasimha Reddy, Chairman
Hon'ble Mr. Aradhana Johri, Member (A)

1. Sh.Subham S/o Sh.Yoginder Singh, Ex-Track Maintainer Grade-4,
Under SSE, P Way Shamli, R/o Shiv Vihar Colony,Mohalla Railpur, Shamli,
Distt, Muzaffarnagar,Uttar Pradesh.
2. Sh. Gaurav Kumar, S/o Sh. Sansar Singh, Track Maintainer Grade-4,
Under SSE, P Way shamli, r/o Village Kheri Sundiyan,
Distt. Muzaffarnagar, Uttar Pradesh.
3. Sh.Piyush Kumar S/o Sh.Om Prakash, TrackMaintainer Grade-4,
Under SSE, P Way shamli, Uttar Pradesh r/o Town Sisauli,
Distt. Muzaffarnagar, Uttar Pradesh.Applicants

(By Advocate: Shri R.K.Shukla and Shri A.K.Behra, Counsel for Applicants)

Versus

1. Union of India, through the GM,
NR Headquarter, Baroda House,
New Delhi.
2. The Divil. Railway Manager,
Delhi Division, State Entry Road,
Paharganj, N.D.
3. The Sr Divl. Engineer-II, New Delhi,
Delhi Diviion, State Entry Road,
Paharganj, N.D.
4. Sh. Sanjay Kumar Sharma, Sr.Section Engineer,
Permanent Way, Shamli, Distt. Muzaffarnagar,
Uttar Pradesh. ... Respondents

(By Advocate:Shri K.K.Sharma and Shri S.C.Rajpal, Counsel for Respondents)

ORDER (Oral)

Justice L. Narasimha Reddy, Chairman

The applicants herein were working as Track Maintainers Grade-4 in Shamli Division of Northern Railway. The Senior Section Engineer (SSE) was one Mr.Sanjay Kumar. An unfortunate incident occurred on 05.09.2016. The work of Switch Expansion Joints was taking place at 98/4-5 KMs. The SSE came to the place at 09.50 AM, and on noticing that the three applicants herein did not wear the uniform provided by the Railway administration, the SSE is said to have asked them the reason. It is stated that the three applicants became wild and tried to attack the SSE. When the SSE tried to inform this to his superiors, his mobile phone is said to have been snatched by the applicants. Thereafter the applicants are said to have beaten the SSE with Phawra Handle on all parts of the body so much so, that he sustained injuries of fractures in lower shaft of right leg and certain other parts. Immediately he was taken to Railway Hospital at Shamli and on finding that the injuries are of severe nature, he was referred to the District Hospital, Shamli. From there, he is said to have been shifted to the Private Hospital for treatment.

2. On 14.09.2016, the Disciplinary Authority passed individual orders dismissing the applicants from service by invoking Rule 14 (2) of the Railway Servants (Disciplinary & Appeal) Rules, 1968. The applicant exhausted the remedy of appeal and revision and not being successful there, they filed this OA challenging the order of dismissal.

3. The applicants contend that the conduct of the SSE was abnormal and in fact he was harassing the Gangmen, and accordingly a complaint was made to the higher authorities at various points of time. It is stated that the SSE started harassing them first, and the version presented in the impugned order is one sided. They contend that the invocation of Rule 14 (2) is totally unwarranted and unjustified and they are deprived of their valuable rights guaranteed under Article 310 of the Constitution of India. Various other contentions are also urged.

4. The respondents filed a detailed counter affidavit. They stated that the three applicants became unruly and have caused serious injuries on the SSE. It is stated that the conduct and behavior of the applicants is so wild that no Gangmen would come forward to depose as a witness against them, and in that view of the matter, it is felt that conducting of the inquiry would not be possible. Rule 14 (2) is said to have been invoked accordingly.

5. Shri A.K.Behra, learned counsel for the Applicants, submits that the invocation of Rule 14 (2), in the instant case, is unwarranted. According to him, the Disciplinary Authority must clearly state the reasons on account of which he came to the conclusion that it is not practical to conduct inquiry and no such reasons are evident from the impugned order. He placed reliance upon the judgment of the Hon'ble Supreme Court in *Union of India & Another v. Tulsiram Patel & Others* (1985 AIR 1416/1985 SCR Suppl. (2) 131). He further contends that the valuable right of the applicants to be heard on the allegations made against them was wrongly taken away.

6. Shri S.Rajappa, learned counsel for the Respondents, on the other hand, submits that it is one of the fittest cases for invocation of a provision similar to Article 311 (2) (b). According to him, the very incident that gave rise to the passing of the order would justify the dispensing with the ordinary inquiry. By referring to the medical reports of the SSE and the behavior of the applicants as is evident from other correspondence, he contends that it would not be possible to conduct inquiry at all and accordingly the impugned order was passed.

7. One of the rights guaranteed to a civil servant is the one not to be dismissed or removed from service except by conducting inquiry. For protection of such a valuable right guaranteed under Article 310 of the

Constitution, the conduct rules framed by various ministries and departments contain the relevant provisions. Even while guaranteeing such a right, the constitution has carved out an exception under Article 311(2), which reads as under:

“**Article 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 an 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 is 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.”

8. One of the instances is where the disciplinary authority finds that it is not practical to conduct inquiry. However, before arriving at such a conclusion, he is required to record reasons. Such reasons in turn are amenable to review by the concerned Courts. The opinion formed by the disciplinary authority must be supported by reasons.

9. In the instant case, the circumstances that gave rise to the passing of the impugned order are clearly mentioned in Para 1 thereof. We feel it necessary to reproduce the same so that the facts are known and appreciated.

“On 05.09.2016 Gang No.13 under SSE/P-Way/SMQL (Headquarter Hind) was deputed for packing of Switch Expansion Joints at KM 98/4-5 Sh. Sanjay Kumar, SSE/P-Way/Shamli (Sectional) reached the site at 09/50' hrs to check the working of gang. It was noticed by him that Sh.Subham S/o Sh.Yogender Singh, Track Maintainer Grade IV, Sh.Piyush Kumar S/o Sh.Om Prakash, TrackMaintainer Grade IV and Sh. Gaurav Kumar, S/o Sh. Sansar Singh, Track Maintainer Grade IV, were not wearing the uniform provided by Railway Administration. On hearing this, the above named Track Maintainers became violent. Sh. Sanjay Kumar, SSE/P-Way/Shamli, tried to inform his Higher Ups about their behavior, then these Track Maintainers snatched his mobile and started attacking Sh.Sanjay Kumar, SSE/P-way/Shamli. He was attacked by Phawra Handle repeatedly on his leg and thereafter on all body. Mate of the gang, Sh. Rula and Trolleman, Sh. Hans Raj tried to protect Sh.Sanjay Kumar, SSE/P-way/Shamli, but they were also threatened and side lined. Sh. Sanjay

Kumar, SSE/P-Way/Shamli sustained major injuries and he was immediately taken to Railway Hospital at Shamli by Mate, Sh.Rula and Trolleyman, Sh. Hans Raj by multi utility vehicle. He was provided with First Aid at Railway Hospital, Shamli, but due to severe injuries, he was referred to District Hospital, Shamli. Seeing the condition of patient, Doctors referred Sh Sanjay Kumar, SSE/P-Way/Shamli to District Hospital, Muzaffarnagar. X-Ray and other investigations were performed at District Hospital, Muzaffarnagar. Doctors advised that he has sustained multiple fractures in lower shaft of right leg besides other major injuries in the body including shoulder. Doctor advised him to take into some Private Hospital for better treatment and at present, Sh.Sanjay Kumar, SSE/P-way/Shamli, is undergoing treatment in Minocha Nursing Home, Muzaffarnagar.”

10. This is not a case, in which a verbal exchange has taken place, in which event, the truth thereof can be found after conducting inquiry. The officer under whom the applicants and several others were supposed to work, was beaten in a brutal manner. Some of his bones were fractured and serious injuries are noticed on the other parts of the body. The nature of injuries was such that not only the hospitals at Shamli, but also the District Hospital at Muzafarnagar expressed their inability to treat him and he was ultimately shifted to a Private Hospital i.e., Minocha Nursing Home, Muzzaffanagar.

11. The applicants do not dispute these developments. It is not even their case either that the officer did not sustain any injuries at all or that the cause for such sustaining injuries was something else. They made an

attempt to justify by stating that they too sustained injuries in the hands of the officer. That is flatly belied by the material on record. It is only as an after thought, that the applicants came forward with the plea that the officer beat them with stick. Assuming that such an incident has taken place, there cannot be any justification for them to beat the officer to the extent of breaking his bones. The attempt made by the officer to complain to his seniors was thwarted by snatching his phone.

12. No organization worth its name, in any country whatever, can allow such a situation. If the applicants have any grievance about the functioning of an officer, there are channels for redressal. If an employee feels it free and as of right, to beat his superior, once he feels that the officer wrong, the immediate casualty will be the orderliness, in the entire Organization.

13. The reasons for dispensing with the inquiry and for invoking the exception are amenable to review. In the instant case, the disciplinary authority has referred to in detail the incident that took place on 5.9.2016 and formed an opinion that the amount of fear and terror among the employees is such that it would not be practicable to conduct inquiry. Once it is not in dispute that the officer who sustained injuries is undergoing treatment, one just cannot expect the other Gangman to depose against the applicants. Their

fear would be that if the officer himself was so helpless and had to sustain injuries, the fate of others can easily be imagined, in case they speak against the applicants.

14. In the judgment relied upon by the learned counsel for the Applicants, the circumstances under which, the Article 311 (2) (b) or similar provisions can be invoked, were discussed in detail. The gist thereof is that while holding of an inquiry, provided under Article 310 is a rule, the dispensing with the same is an exception; and that the reasons invoked for that must justify it. Granting of relief was on the facts of the case, such as there not being any basis to justify the by-passing of the inquiry, or the apprehension being without any basis.

15. In the instant case, the incident mentioned in the impugned order would clearly justify the invocation of the exceptional provision. One does not have to look for any other material to form an opinion that it would be not possible to conduct inquiry. From the record, it is evident that the applicants entered into service recently. If their behavior at that stage is so wild and violent, one can easily imagine the impact of the logical progression of their conduct.

16. We do not find any merit in the OA and the same is accordingly dismissed.

17. The MAs also stand disposed of. There shall be no order as to costs.

(Aradhana Johri)
Member (A)

(Justice L.Narasimha Reddy)
Chairman

Dsn/skshaya28dec/RKS