IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW DELHI

O.A. No. 997 of 1986
T.A. No. 199

DATE OF DECISION 19.11.91

Bhauri Ram — Petitioner

Shri O.P. Gupta — Advocate for the Petitioner(s)

Versus

Union of India & Ors. — 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).)

J U D G M E N T

The applicant was appointed as Gate Keeper in the Northern Railway DRM/DLI/Divn and belong to Class IV category of the employees. He and others were allotted residential quarters in Mandaoli Fazalpur, Delhi, without any toilet facilities. Hence, they decided to represent their case to respondents and VIPs of the Department. On 9.10.85, the applicant and his co-workers received information that on Rail Motor Car higher officials of the Railway Department were coming. Hence, a large group consisting of railway employees, their wives and children, collected at K.M. 4 from Delhi. The applicant is alleged to have put his turban on the track due to which the car stopped. The railway car contained not only the departmental VIPs, but also the Hon'ble Minister for Railways. For this misbehaviour, the applicant was chargesheeted by the Department. 6 railway employees were placed under suspension.

The applicant was served with the chargesheet for having contravened Rule 3 (i), (ii) and (iii) of Railway Servants (Conduct) Rules, 1966. The applicant was awarded the punishment of removal from service by order dated 8.1.86. Hence, on 10.2.86, he preferred an appeal under Rule 18 of the Rules, which, according to him, has not yet been decided. As a result of removal from service, the applicant was also directed to vacate the residential quarter. Aggrieved by this order, he filed this O.A. under Section 19 of the Administrative Tribunals Act of 1985 and a Bench of this Tribunal on 30.3.87 by an ad interim order directed the status quo as regards the occupation of the government premises to be maintained which continues still today.

2. The inquiry was not conducted. The removal from service was passed by the procedure laid down in Rule 14 (ii) of the Railway Servants (D&A) Rules, 1958 (hereinafter referred as 'Rules'). The penalty was imposed for contravening Rule 3(i), (ii) and (iii) of the Railway Servants (Conduct) Rules, 1966. Annexure-III is the impugned order passed by the Assistant Engineer, Northern Railway, New Delhi, from where the order of removal from service was passed. In para 4 of this impugned order it was written:

> "4. And also whereas it is felt that it is not feasible nor possible to take departmental action under Railway Servants (Discipline and Appeal) Rules, 1966, under the circumstances that Shri Bhauri Ram being the notorious ring leader, may bring physical harm or create unwarranted indecent atmosphere".

The order further proceeds:

> "5. Now, therefore, the undersigned, considering fit to take exemplary action for upkeep of discipline for smooth working, removes said Shri Bhauri Ram from service with immediate effect as provided under Rule 14 (ii) of Railway Services (Conduct) Rules, 1966."

3. The respondents who on notice filed filed their return and opposed the contents of the O.A., inter alia, contended that the departmental inquiry for major penalty was not possible due to disturbed conditions and apprehension of violence.

4. No doubt, Rule 14 (ii) of the Rules provide that where due to disturbed industrial peace, the normal DAR procedure is not reasonably practicable to follow, then the disciplinary anuthority

may under this provision pass the orders. This rule came for consideration by the apex court in the case of **Union of India vs. Tulsi Ram Patel (1985 (2) SLJ 145 (S.C.)).** In this case the apex court observed:

> "A conspectus of the above service rules and the CISF Act shows that a government servant who has been dismssed, removed or reduced in rank without holding an inqury 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 provisions of Rul 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 revision is heard, the government servant can claim to have an inquiry held in which can establish that he is not guilty of the charges on which he has ben dismissed, removed 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) of the decision on this point of the disciplinary 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, however, 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)

(12)

> of Rule 14 of the Railway Servants Rules and clause (iii) of Rule 19 of the Civil Services Rules envisages 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 mentiond in Articl 311 (2) as being the proper penalty to be imposed would be of the disciplinary authority. The satisfaction of the President or the Governor cannot be challenged in appeal or revision but the government 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 revision, the interest of the 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....."

This 14(ii) Rule also came for consideration by a Full Bench of this Tribunal in OA Nos. 13, 14, 15, 16, 17, 18 and 19 of 1987 by judgment dated 14.12.87.

The law, thus, on this point, is clear. 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 even subsequently, during the course of an inquiry, for instance, after service of the chargesheet upon the delinquent, or after he has filed his written statement or even after evidence has been led in part. Therefore, even where a part of inquiry has been held and the rest is dispensed with, under sub-clause (ii) of Rule 14 or a provision in the service rules analogous threto, 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. It is imperative for the disciplinary authority to record in writing its reason for its satisfaction that it was not reasonably practicable to hold the inquiry as contemplated by Article 311 (2) of the Constitution. This provision of law has not been complied with by the disciplinary authority in Annex.III by which the disciplinary procedings have been dispensed and the applicant has been punished. This constitutional obligation, if not followed in writing, the order dispensing with the inquiry and the order of penalty following thereupon would both be void and unconstitutional. Furthermore, no

evidence on the fact that the industrial peace was not congenial to holding a departmental inquiry has been placed on record by the respondents.

5. In view of the settled principle of law, we are constrained to quash the orders of the disciplinary authority passed on 8.1.86 by Annexure-III removing the applicant from service. We, therefore, set aside this order and direct the respondents to conduct the departmental inquiry, if possible, according to law. This inquiry shall be completed within a period of 6 months from the date of rrceipt of this order. The parties shall bear their own costs.

(I.P. GUPTA) 19/11/91
MEMBER (A)

(RAM PAL SINGH) 19.XI.91
VICE-CHAIRMAN (J)