

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
PRINCIPAL BENCH,
NEW DELHI.

Date of Decision: 16.3.93

OA 2102/90

BHAGWAN SINGH ... APPLICANT.

Vs.

UNION OF INDIA & ORS. ... RESPONDENTS.

CORAM:

HON'BLE SHRI J.P. SHARMA, MEMBER (J).
HON'BLE SHRI S.R. ADIGE, MEMBER (A).

For the Applicant ... SHRI UMESH MISHRA.

For the Respondents ... SHRI P.S. MAHENDRU.

JUDGEMENT

(DELIVERED BY HON'BLE SHRI S.R. ADIGE, MEMBER (A).)

This is an application dated 9.10.90 filed by Shri Bhagwan Singh, a dismissed Diesel Electric Fitter, Northern Railway, praying for quashing of the impugned order of dismissal from service dated 8.9.83 (Annexure-C), upheld ⁱⁿ revision by the impugned order dated 1.2.90 (Annexure-A), and praying for his reinstatement with continuity of service and backwages.

On 26.8.83, a worker lost his life in a accident in the Diesel Shed Tughlakabad, as a consequence of which the applicant allegedly incited the staff of the Diesel Shed to violence, who interrupted the free running of trains; ⁱⁿ gheraoed ⁱⁿ the officers present in the Shed; ⁱⁿ interfered with the functioning of Loco Shed, and caused

M

....2.

damage to railway property, thereby also endangering public safety. The applicant was directed to submit his ~~and show cause as to why~~ explanation as to why proceedings should not be initiated against him, vide order dated 1.9.83 (Annexure-B) and soonafter, by impugned order dated 8.9.83 he was dismissed from service by the DvL Mechanical Engineer (Diesel)/TLD in exercise of the powers conferred upon him under Rule 14(ii) Railway Servants (Discipline & Appeal) Rules, 1968, without holding an enquiry, on the ground that none of the witnesses ~~were~~ willing to come forward to tender evidence against the applicant because they ~~had~~ categorically stated that they ~~were~~ likely to be assaulted by the charged officials, and it was not in the administrative interest to hold the enquiry as prescribed under rules. The applicant claims that he appealed against that order on 16.9.83 but no decision was communicated, upon which he filed Writ Petition in the Delhi High Court, which however was withdrawn on 31.7.85. Thereafter, on 6.8.88, he filed an OA in this Tribunal against the impugned orders, but it was held as barred u/s 21(2)(b) A.T. Act. He then filed a SLP in the Hon'ble Supreme Court, which was dismissed on 16.8.88. Thereafter, he filed a Revision Petition in the department on 18.8.88, but no order was communicated to him, upon which he filed a fresh OA 687/89 in this Tribunal, who ~~by an~~ order dated 13.9.89 directed the respondents to dispose of the Revision petition dated 18.8.88. The respondents finally disposed of the same by

the impugned order dated 1.2.90, upholding the order of dismissal from service, and it is those two orders that the applicant has now assailed.

We have heard Shri Umesh Mishra, learned counsel for the applicant, and Shri P.S. Mahendru, learned counsel for the respondents.

Shri Mishra has argued that the applicant's service conditions are governed by Article 311 of the Constitution, under which dismissal from service without proper enquiry is illegal and unconstitutional. In the instant case, not even was an opportunity to show cause against the dismissal ~~not~~ given, but even if it had been given, it would have been insufficient, because the Hon'ble Supreme Court's decision in Chellappan's case (AIR 1975 SC 2216) had been overruled by their judgement in Tulsi Ram Patel's case (AIR 1985 SC 1416), wherein a five judges bench by majority judgement had held as under :~

"Where it is a case falling under clause (b) of the second proviso or a provision in the rules analogous there to the dispensing with the enquiry 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 Govt. servant can claim to have an enquiry held in which he can establish that he is not guilty of charges on which he has been dismissed, removed or reduced in Rank."

In the instant case, an enquiry was possible, but although the applicant demanded opportunity to prove his innocence through a proper enquiry, the same was denied to him by the respondents, and no reason had been assigned why it was not practicable to hold an enquiry even at this stage. Shri Mishra has also referred to Satyavir's case (1986 LIC-1) and Gokul Chand Barua's case (1989 (2) SLJ 187), wherein it has been held that the right to full and complete enquiry in appeal or revision must be given. It can be postponed for a reasonable length of time till the situation becomes normal, but once situation normalises the enquiry must be held. He has also referred to a decision of the Central Administrative Tribunal, reported in TA 1864/86, decided on 5.6.90, wherein it has been held that the disciplinary authority was not justified in dispensing with an enquiry against the applicant after the situation had normalised.

Some of the other judgements, to which Shri Mishra has drawn our attention, are also mentioned as follows :-

K.N. Patel Vs. State of Gujarat & Anr.
(SLJ 1991 (2) 20)

Basanti Kumari Vs. State & Ors.
(CSJ 1991 (3) 91)

D.N. Singh & Ors. Vs. UOI & Ors.
(Full Bench CAT 1989-91 1)

Shri Mahendru, on the other hand, has taken the stand that a show cause notice was issued to the applicant

as to why proceedings under the Railway Servants (Discipline & Appeal) Rules, 1968 should not be initiated against him in respect of charges against him (Annexure-B) and no reply was received within the prescribed period. It was presumed that charges conveyed to the applicant stood admitted and accordingly the Disciplinary Authority after recording his reasons for being satisfied why enquiry could not be conducted in the prevailing circumstances, dismissed the applicant from service by invoking Rule 14(ii) Railway Servants (Discipline & Appeal) Rules, 1968.

During arguments, Shri Mishra has averred that the order directing the applicant to show cause against dismissal dated 1.9.83 (Annexure-B) as well as the order dated 8.9.93 terminating his services (Annexure-C) were received on the same date, which shows the premeditated plan of the respondents to terminate the applicant's services without giving him proper chance to explain his conduct, but that apart, there is little doubt that Shri Mahendru's stand is clearly untenable, for the reason that the order of dismissal is a major punishment, prior to which it was necessary to serve a formal charge-sheet on the applicant, but in the instant case, the order dated 1.9.83 (Annexure-B), only directs the applicant to submit his explanation and show cause why proceedings under Discipline & Appeal Rules should not be initiated against him. Even if action was proposed to be taken u/s 14(ii)

Railway Servants (Discipline & Appeal) Rules, 1968, the service of a charge-sheet upon the applicant could not be dispensed ~~with~~.

The circumstances, under which an enquiry must be held after a Govt. servant has been removed from service under the Railway Servants (Discipline & Appeal) Rules, 1968, has been discussed at some length in the case Kula Nand Vs. UOI (OA 526/88), decided by a bench of this Tribunal on 15.11.91. The facts in that case are not ~~similar~~ ⁱⁿ dissimilar to the facts before us in the instant case, and in ^{in case, the Tribunal} that case after discussing the ratio in Tulsi Ram Patel had held that where the Disciplinary Authority records its reasons in writing for ^{its} satisfaction that it is not reasonably practicable to hold the enquiry contemplated under Article 311(2) of the Constitution, the order dispensing with the enquiry and the order of penalty falling would neither be void nor unconstitutional, but as soon as the special conditions which made it impracticable and against the public interest to hold the enquiry ^{have} disappeared and the situation ^{is} normalised, an enquiry must be held, because where an enquiry is not held and the Govt. servant is saddled with the punishment under Rule 14(ii) of the Railway Servants (Discipline & Appeal) Rules, 1968, a great responsibility lies upon the shoulders of the Appellate/ Revisional Authority to consider the case of the delinquent.

A situation may, however, arise where, as in the instant case, considerable time has lapsed since the impugned order of punishment was passed. The conditions that prevailed at that time may not hold good today, and even if a direction is issued to the respondents to hold an ^{an} enquiry, it might be ^{an} exercise in futility, because evidence with regard to the culpability of the applicant may no longer be available or the witnesses may have died/retired or been transferred. Such a situation, however, cannot be presumed, but must be assessed in the light of each particular case, and the Appellate/Revisionary Authority must record its reasons in writing why even at this late stage, after the situation is normalised, it is not practicable to hold an enquiry. In the Revisionary Authority's order dated 1.2.90 (Annexure-A), which was passed nearly 6.1/2 years after dismissing the applicant from service, it has been stated as follows:-

"I am in agreement with the Disciplinary Authority that it was not practicable to hold a D&AR enquiry due to prevalent circumstances at that time and that the action was initiated under Rule 14(ii) of Railway Servants (Disciplinary & Appeal) Rules, 1968. I also do not consider it reasonably possible to hold an enquiry at this stage due to the same reasons."

I am in agreement with the views of Disciplinary Authority and the Appellate Authority. No new points have been brought out in the Revision Petition. I, therefore, find no reason to review the punishment imposed and dismiss the review petition."

It is clear from the above order that no reasons have been ascribed as to why the Revisionary Authority does

/W

(13)

- 8 -

not consider it reasonably possible to hold an enquiry even at this stage, because there is nothing to suggest with the peculiar conditions that obtained in 1983 at that time the applicant was dismissed, hold good even now. There is also no discussion, about the availability of evidence, presence or otherwise of witnesses etc.

Under the circumstances, the Revisionary Authority's order dated 1.2.90 cannot be sustained and is, therefore, quashed. The matter is remitted to him for holding an enquiry, if possible even at this stage, into the culpability of the applicant in accordance with law. The enquiry should be completed within six months from the date of receipt of the copy of this order. If, however, the Revisionary Authority after assessing the situation concludes that it is not reasonably practicable to hold an enquiry at this distance of time, he should record his detailed reasons in writing for coming to such conclusion.

This application is disposed of accordingly in terms of the above order. No costs.

Anjolge
(S.R. ADIGE)
MEMBER (A)

J. P. Sharma
(J.P. SHARMA)
MEMBER (J)

16.3.93