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CENTRAL ADMINISTRATIVE TRIBUNAL: PRINCIPAL BENCH: DELHI

O.A. NO. 2175 OF 1990

DATE OF DECISION: 19-9-1991.

R.T. Katiyar and others.

.. Applicants.

Vs

Chairman Railway Board  
New Delhi and others.

.. Respondents.

Shri Umesh Misra, Counsel for the Applicants.

Shri B.K. Aggarwal, Counsel for the Respondents.

CORAM:

Hon'ble Mr. G. Sreedharan Nair,

.. Vice-Chairman.

Hon'ble Mr. I. K. Rasgotra,

.. Member (A).

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J U D G M E N T

Hon'ble Mr. G. Sreedharan Nair, Vice-Chairman (J):

The applicants who belonged to the Loco Running Staff under the respondents were removed from service in the year 1981 without holding enquiry by invoking clause (ii) of Rule 14 of the Railway Servants (Discipline and Appeal) Rules. The applicants challenged the order imposing the penalty before the High Court of Allahabad. The writ petitions filed by them there were taken over to the file of the Supreme Court and were decided along with Tulsi Ram Patel's case. After the decision of the Supreme Court, the applicants filed representations demanding enquiry and also review/revision petitions for the purpose. Since the review/revision petitions were not decided by the respondents despite reminders, the applicants filed original applications before this Tribunal in O.A. Nos. 2356 of 1988 and 89 of 1989. In both the applications, the respondents were directed to dispose of the revision petitions on merits in accordance with law.

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2. The grievance of the applicants is that the revision petitions were arbitrarily rejected by the respondents by the order dated 23-2-1990. They have prayed for quashing the said order and for the issue of a direction to the respondents to hold a full-fledged enquiry within a reasonable time.

3. In the reply filed by the respondents it is stated that the revision petitions were rejected on the ground that it is not possible to hold enquiry since about 10 years have elapsed after the alleged misconduct. It was submitted by counsel of respondents that it may not be possible to produce the evidence required consequent to transfer/normal attrition of the staff who were witness to the entire episode.

4. The counsel of the applicants invited our attention to the decision of a Division Bench of this Tribunal sitting at Patna of which one of us was a member (Hon'ble Shri G. Sreedharan Nair, Vice-Chairman) in SHRI RAM PRAVESH SINGH v. UNION OF INDIA AND OTHERS [1991(2) SLJ (CAT) 20]. The decision is on all fours. It was held therein:-

"6. It is settled that in a departmental appeal of this nature, it is open to the appellant to claim that an enquiry be held with respect to the charges on which the penalty of removal from service has been imposed upon him. Though the enquiry was dispensed with by the disciplinary authority, as a result of the situation prevailing at that time, if the situation has changed when the appeal is heard, the government servant is entitled to have an enquiry held so that he can establish that the imputations are not true and that the charge on the basis of which he has been removed from service cannot be sustained. As such, it is the bounden duty of the appellate authority to examine the reasons that prompted the disciplinary authority to dispense with the enquiry, and to find out whether the circumstances on the basis of which the disciplinary authority arrived at the said conclusion continued to exist. A mechanical statement in the order that "the circumstances that prevailed at the time of

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passing the order of removal by the disciplinary authority are still continuing" will not do duty especially in a case where about 9 (nine) years have elapsed from the date of passing of the order by the disciplinary authority".

5. It was further held:-

"7. There may be various circumstances which led the disciplinary authority to arrive at the conclusion that the holding of an enquiry is not reasonably practicable. The government servant either by himself or with his associates may terrorise, threaten or intimidate the witnesses who are proposed to be examined to establish the truth of the imputation. It may be that the disciplinary authority himself has been threatened so as to make him reasonably believe that holding of the enquiry will be at the risk of his life. There may be cases where on account of peculiar circumstances the local atmosphere is vitiated by indiscipline or insubordination, and violence prevails. These are factors which are not continuing for all time....."


6. In the circumstance of the case, we are of the view that no purpose is served in remitting the matter to the revisional authority once again, 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 enquiry, continue even at this stage so as to arrive at a reasonable conclusion that it is not reasonably practicable even now to hold an enquiry.

7. In view of the above, we quash the orders of the 3rd respondent dated 23-11-1989 and 22-3-1990 (Annexure-C) and remit the matter to him for holding an enquiry in accordance with law. The enquiry has to be completed within a period of 6 months from the date of receipt of this

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order.

8. The application is disposed of as above.

  
(I. K. RASGOTRA)  
MEMBER (A)

  
(G. SREEDHARAN NAIR)  
VICE-CHAIRMAN  
12-9-1991