

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD

Original Application No. 1163 of 1997

Allahabad this the 27th day of November, 2003

Hon'ble Mr. Justice S.R. Singh, Vice Chairman
Hon'ble Mr. D.R. Tiwari, Member(A)

Mahabali S/o Shri Ram Pratap, Ex.Gangman under
 PWI/Meja Road, R/o Vill.Kachari Post Beerpur
 (Karchana), District Allahabad.

Applicant

By Advocate Shri Sudama Ram

Versus

1. Union of India through General Manager,
 Northern Railway, Baroda House, New Delhi.
2. Divl.Railway Manager, Northern Railway,
 Allahabad.
3. Divl.Superintending Engineer-I/Northern
 Railway, Allahabad.
4. Asstt.Engineer, Northern Railway, Mirzapur.

Respondents

By Advocate Shri G.P. Agarwal

O_R_D_E_R(Oral)

By Hon'ble Mr. Justice S.R. Singh, V.C.

The applicant was appointed as a Gangman
 on 09.02.1981 under P.W.I., Northern Railway, Meja
 Road, Allahabad. He worked as such till 17.04.88
 but thereafter, it is alleged, he seriously fell
 ill and "due to long sickness, he was mentally
 disturbed and left the home for several years
 and his whereabouts was not known even to the

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family of the applicant." A charge memo was issued to the applicant under Rule 9 of the Railway Servants (Discipline and Appeal) Rules, 1968. The charge-sheet could not be served on the applicant. Charge-sheet sent by registered post as well as by Special Messenger but, could not be served on the applicant. The disciplinary authority accordingly proceeded under Rule 14(ii) of the Rules and removed the applicant from service after dispensing with the inquiry under Rule 14(ii) of the Rules vide order dated 11.05.92 annexed as annexure A-1. Appeal against the said order was filed on 19.06.96 and it came to be rejected" being delayed and also not having any ground." The applicant then preferred a representation vide annexure A-6. The case of the respondents is that no such revision was preferred, however, the order passed by the disciplinary authority and the one passed by the appellate authority ~~and are~~ the subject matter of the impugnment in this O.A.

2. Learned counsel for the applicant has urged that the dispensation of the inquiry in the instant case was not at all justified. Learned counsel has placed reliance on a decision of the Hon'ble Supreme Court Union of India and Others Vs. R.Reddappa and another (1994)26A.T.C. 117. In this case about 800 railway employees were dismissed under Rule 14(ii) of Railway Servants(Discipline and Appeal)Rules, for participating in the Loco Running Staff Association Strike in January, 1981. The disciplinary authority in each of these cases had held that holding of inquiry was not reasonably practicable. The Hyderabad Bench of the Central Administrative Tribunal set aside the orders of dismissal on the ground of absence of any

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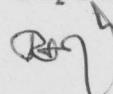
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material to support the said finding. Their Lordships of Hon'ble Supreme Court ~~had~~ held, that the jurisdiction to exercise the power under Rule 14(ii) was dependent on existence of this primary fact and if there was no material on which any reasonable person could have come to the conclusion as is envisaged in the rule then the ~~action would be~~ ^{action was} initiated due to erroneous assumption of jurisdictional fact. The view taken by the Tribunal was accordingly held to be well within its jurisdiction.

3. In the instant case, the disciplinary authority has recorded ~~dis~~-satisfaction as to the inquiry being not reasonably practicable" because the person is absconding since 1988 and all administrative efforts to serve article of charges have failed ~~and~~ the person could not be contacted and the article of charges could not be served by the registered post and Special Messenger sent to." The applicant has admitted in para-1(i) of the rejoinder-affidavit that after 17.04.88, the applicant fell seriously ill and due to long sickness, he was mentally disturbed and left the home for several years and his whereabouts was not known even to the family of the applicant.

4. In the circumstances, therefore, it cannot be said that the disciplinary authority was not justified in dispensing with the inquiry by invoking the power under sub rule (ii) of Rule 14 of the Rules. The decision relied on by the learned counsel is not applicable to the facts of the present case.

5. Learned counsel for the applicant then cited another decision of Supreme Court in Union of India Vs.



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This decision too is not applicable ^{to} ~~with~~ the facts of present case for the reasons that the charge-sheet sent to the delinquent in that case by post came back with the endorsement "not found". Inquiry was held ~~ex parte~~, and order of punishment was passed on the basis of ~~ex parte~~ inquiry report. In the present case, as pointed out hereinabove, inquiry has been dispensed with in exercise of statutory power under Rule 14(ii) of the Rules and in the facts and circumstances of the present case, no exception can be taken to the dispensation of the inquiry.

6. Learned counsel for the applicant then cited another decision of the Calcutta Bench in the case of ~~Mrs~~ ² ~~Chandrakala Pradhan~~ ³ ~~reported in~~ 2002(1) A.T.J.573. That decision too, in our opinion, has no application to the facts of the present case. There the inquiry was held ~~ex parte~~ and the Tribunal in that case held that ~~ex parte~~ inquiry in the facts and circumstances of the case, was not justifiable. In the present case, on the admitted facts, the whereabouts of the applicant were not known for several years and despite all the efforts made by the disciplinary authority the charge memo could not be served on the applicant. Therefore, there was no option left to disciplinary authority ^{but} ~~to~~ proceed under sub rule (iii) of Rule 14 of the Rules.

7. Learned counsel for the applicant then submits that under the rules no punishment can be awarded... pg.5/-

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except on the basis of an inquiry ex parte or otherwise. We are not impressed by the submission of learned counsel for the applicant in view of sub rule (ii) of Rule 14, which enables the disciplinary authority to dispense with the inquiry for the reasons to be recorded in writing. As pointed out hereinabove, it was not reasonably practicable to hold an inquiry in the manner provided under the rules and, therefore, no exception can be taken to the course adopted by the disciplinary authority.

8. On merit, it is admitted to the applicant that he has been on unauthorised absence for ~~two~~ years together and therefore, the order of removal from service cannot be said to be unjust or arbitrary.

9. Learned counsel for the applicant also submitted at this stage that the applicant was not afforded personal hearing by the appellate authority. In our opinion, it would not vitiate the merit of the case. Perusal of the order passed by the appellate authority would indicate that he has considered the submissions made on behalf of the applicant in the memo of appeal. We find no infirmity in the appellate order.

10. In view of the facts and circumstances, we find no merit in the O.A., which is dismissed. No order as to costs.

D. S. Rao
Member (A)

R. A. J.
Vice Chairman

/M.M./