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CENTRAL ADMINISTRATIVE TRIBUNAL

ALLAHABAD

Registration no. 57 of 1986.

Abdul Rahman

.... Applicant.

Versus

Union of India and three

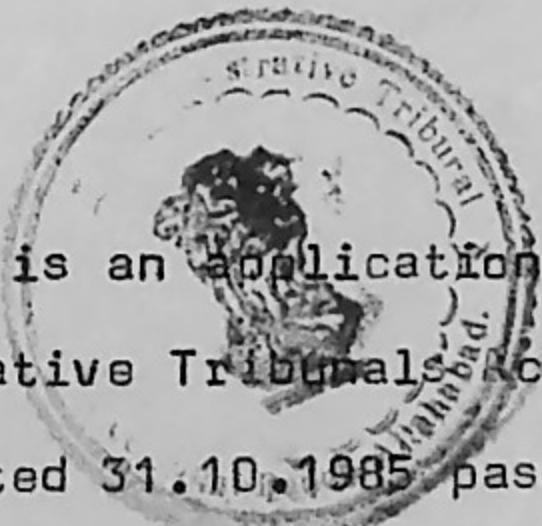
others

.... Respondents.

Hon'ble D.S.Misra- Member(A)

Hon'ble G.S.Sharma-Member(J)

(Delivered by Hon'ble D.S.Misra-Member)



This is an application under Section 19 of the Administrative Tribunals Act 13 of 1985 against the order dated 31.10.1985 passed by the Divisional Railway Manager, Northern, Railway Allahabad rejecting the appeal of the applicant against the order dated 23.4.1985 of Superintendent Kanpur area dismissing the applicant from service.

The applicant was working as Waterman cum Chaukidar at the Kanpur Central Railway Station. On 19.4.1985 when the applicant was on duty from 8 A.M. to 6 P.M. at the railway Rest House, three railway employees brought a lady passenger with them in an unauthorised manner and occupied the Rest House at about 4 P.M.. The three railway employees administered intoxicating drugs, gang raped the lady and murdered

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her. The applicant was placed under suspension on 29.4.1985 in connection with that episode and without a formal disciplinary proceeding he was dismissed from service on 23.4.1985 by the Superintendent Kanpur Ara under rule 14(ii) of the Railway Servants (Disciplinary and Appeal) Rules, 1968. The appeal filed against the dismissal order was rejected by the Divisional Railway Manager vide his order dated 31.10.1985.

In his application the applicant has contended that no chargesheet was given to him and the order of dismissal was passed without giving him any opportunity to explain his conduct; that the order of dismissal was passed against the provisions laid down in Article 311 of the Constitution of India as no disciplinary inquiry was held against him and no show cause notice was given before dismissing him from service. It was further contended that the provisions of Rule 14(ii) of the Railway Servants (Discipline and Appeal) Rules were not applicable to his case and the order of dismissal is wholly illegal and without jurisdiction. It was also contended that the appellate authority had not applied its mind while deciding the appeal. It was prayed that the order of dismissal may be set aside and the authorities be directed to pay the applicant's salary for the period of service upto the date of retirement.

In reply, it is stated that the applicant was dismissed from service under Rule 14(ii) of the Railway Servants (Discipline and Appeal) Rules, 1968 and hence there was no question of affording any opportunity of hearing to him. It is further stated that since the lady passenger had died and all the three accused-persons (railway employees) have been

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dismissed and lodged in jail, no evidence was available to prove the crime and as such it was not reasonable and practicable to hold the inquiry in the manner provided in the Railway Servants (Discipline and Appeal) Rules, 1968. It is further stated that the applicant did not stop the entry of the lady passenger along with the accused railway employees in the Rest House and also did not inform the Assistant Station Master on duty immediately after their entry. It is added that the applicant had informed the authorities only after coming to know that the lady passenger had died and there was no alternative left for the applicant but to report the matter. The respondents further denied the contention of the applicant that the railway authorities had not taken quick action on the receipt of a report from the applicant and it has been contended that copy of the complaint filed, as Annexure-8 to the applicant, had been fabricated. It is further stated that the applicant was guilty of misconduct and dereliction of duty and had been rightly punished after considering the facts and circumstances of the case. They have also denied the allegation of the applicant that the appellate authority had not applied its mind in deciding the appeal. It was further contended that the applicant was not entitled to any relief.

A rejoinder affidavit was filed by the applicant in which amongst other things, it was stated that the applicant being an old man, it was impossible for him to check the entry of the lady passenger along with the ticket collectors in the Rest House. It was further stated that prior to the date of the incident, he had made several efforts to prevent unauthorised persons from entering into the Rest House and creating

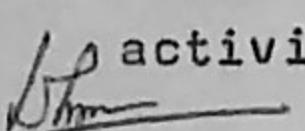
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nuisance, but he was abused and assaulted. It was reiterated that he had informed the Station Superintendent immediately and obtained a slip to lodge the first information report to the G.R.P. Station, who refused to lodge the report saying that the case was beyond their jurisdiction and thereafter the applicant lodged the first information report at police station Faithfulganj Kanpur. It was further contended that the applicant had caught hold of one co-accused along with the deceased-lady passenger with the help of Head Cook and shut him the room till the police had come. The matter had come in the news -papers which would also clarify the position of the applicant proving that there was no fault on the part of the applicant and he was not guilty of any misconduct. Regarding applicability of Rule 14(ii) of the said Rules, the decision of Hon'ble the Supreme Court in Case (Union of India Vs. Tulsi Ram Patel) was cited.

We have heard the arguments on both sides and have also examined the material on record. The applicant has not denied his being on duty at the Railway Rest House at the relevant time, his responsibility to prevent entry and use of the Rest House by unauthorised persons and his duty to inform the superior officer on duty about the breach of rules. While the applicant has contended that he informed the Assistant Station Master immediately after the entry of the three railway employees with the lady passenger, the respondents have stated that a report was made only after the lady passenger was found dead. A copy of the report dated 19.4.1985 filed by the applicant as Annexure-7 to the application merely states the

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fact of an unauthorised woman having been brought in the Class III Rest House and the consequent difficulty experienced by the employees in uniform in discharging their duties. This report is dated 19.4.1985 without mentioning the hour of the day/ night when the applicant, chaukidar of the Rest House, gave this information to the Assistant Station Master. However, a copy of the Hindi Newspaper' Dainik Jagran' dated April 26, 1985 filed by the applicant and relied upon by him gives a more detailed account of the incident. From this report, it appears that the lady passenger came to the Rest House at about 4 P.M. and she died at about 7 P.M.. The matter came to the notice when some other railway employees from Calcutta who wanted to stay in the Rest House arrived and peeped into the room through the window, where the glass was broken and saw three ticket checkers hiding along with the dead body of a lady passenger. It was only after the discovery of the dead body that the Chaukidar went to lodge a report with the Station Master and the Police Station. Yet another news paper filed by the applicant, available at page 36 of the Paper-book, reads that the railway employees were engaged in nefarious activities upto 9 P.M. in the Rest House and that a report was lodged only after the discovery of the dead body. The report sent to the Station House Officer did not state the fact of the death of the lady passenger and merely stated that an unauthorised lady passenger had come to the Rest House and was causing problem to the staff in uniform. A plain reading of these two news paper reports would clearly indicate the connivance of the applicant in the criminal activities of the three railway employees with the



lady passenger. He being the Chaukidar of the Rest House , it was his duty to see that no unauthorised person could enter the Rest House or it was not used for any unlawful activities or for perpetrating any crime by any body. The applicant has failed to substantiate that necessary steps were taken by him to inform the authorities promptly which could prevent the continuation of the heinous crime by the three railway employees and the death of the lady passenger. We are, therefore, of the opinion that due to the omission of the applicant Chaukidar in taking any steps to check the unlawful activities of the three railway ticket collectors / checkers and his sleeping over the highly serious and sensational matter till it was detected by the outside railway employees , his misconduct and dereliction of duty was fully prima facie established and he was also put under suspension on 20.4.1985. It is not a fact that one accused ticket checker was arrested by the applicant of his own accord with the help of the cook. In fact he was arrested when the railway employees from Calcutta saw the three ticket checkers with the dead body and surprised them as appears from the result of police investigation reported in the news paper Jagran dated 26.4.1985 filed by the applicant himself. Ordinarily news paper reports cannot be made the basis of any claim(except for defamation) or defence and we have referred to these reports simply to show that they do not help the applicant even if they are believed or accepted to ^{be} the true.

The contention of the applicant is that the order of dismissal passed by the disciplinary

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authority under Rule 14(ii) of the Railway Servants (Discipline and Appeal) Rules was bad in law as it did not specifically mention reasons in writing for dispensing with the inquiry before imposing the penalty of dismissal. A perusal of the impugned order dated 23.4.1985 would show that there is a separate para on this point which reads as follows:

" Since the lady passenger has died and all the three accused have been dismissed and lodged in jail, no evidence is available to prove the crime. As such it is not reasonable practicable to hold the inquiry in the manner provided in the Discipline and Appeal Rules, 1968".

It will also be convenient to quote below the relevant rule 14(ii):

14! Special procedure in certain cases-

Notwithstanding anything contained in Rule 9 to 13:-

(i)

(ii) Where the disciplinary authority is satisfied, for reasons to be recorded by it in writing, that it is not reasonably practicable to hold an inquiry in the manner provided in these rules; or

The disciplinary authority may consider the circumstances of the case and make such orders thereon as it deems fit; "

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 In our opinion in view of the facts and circumstances of the case as discussed above, we are of the opinion that the disciplinary authority was right to opine that it was not reasonably practicable to hold an inquiry in this case and we would not like to

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interfere with the discretion exercised by it. The order passed in appeal, though very brief, also calls for no interference on this ground.

The contention of the applicant that the impugned order violates article 311 of the Constitution is also not correct. The case law cited by the applicant in his rejoinder affidavit Union of India Vs. Tulsi Ram Patel (A.I.R.1985 S.C. 1416) does not help him. Considering the scope and provisions of Article 311 of the Constitution and Rule 14(ii) of the Railway Servants(Discipline and Appeal) Rules, their lordships had made the following observations in that case.

" The constitutional requirement in clause (b) is that the reason for dispensing with the inquiry should be recorded in writing. There is no obligation to communicate the reason to the government servant. As clause (3) of Article 311 makes the decision of the disciplinary authority on this point final, the question cannot be agitated in a departmental appeal revision or review."

" In the context of an all India strike where a very large number of railway servants had struck work, the railway services paralysed loyal workers and superior officers assaulted and intimidated, the country held to ransom, the economy of the country and public interest and public good prejudicially affected, prompt and immediate action was called for to bring the situation to normal. In these circumstances, it cannot be said that an inquiry was reasonably practicable."

We are of the opinion, that the order of dismissal is not violative of the principle enunciated in the above mentioned case law.

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For the reasons mentioned above, we are of the opinion that the impugned order is well within the powers and jurisdiction of the disciplinary authority and it was passed in accordance with law under the facts and circumstances of the case and there is no force in this petition. The petition is accordingly dismissed with no order as to costs.

(D.S.Misra)
Member- Administrative

(G.S. Sharma)
Member-Judicial

Dt. July 15, 1986.

J.Singh.