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CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD.

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Original Application No.669 of 1986

R.N. Mehrotra ..... Applicant

Versus

Union of India & others ..... Respondents.

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Hon'ble D.S. Misra, A.M.

Hon'ble G.S. Sharma, J.M.

(Delivered by Hon. D.S. Misra, A.M.)

This is an application under Section 19 of the Administrative Tribunals Act XIII of 1985 challenging the order dated 2.5.1985 removing the applicant from service and the order dated 1.5.1986 dismissing the appeal of the applicant filed against the order of removal from service.

2. The admitted facts of the case are that the applicant was appointed as Ticket Collector on 14.2.1957 and promoted as Travelling Ticket Examiner in 1972; that he received a memorandum dated 2.5.1985 issued by the Senior Divisional Commercial Superintendent, Central Railways, Jhansi, removing the applicant from service under Rule 14(ii) of the Railway Servants (Discipline & Appeal) Rules,1968; that the applicant filed an appeal against the order of removal on 3.6.1985 mentioning therein that unless the charges on which the order of removal is based are known, he could not exercise his right of appeal effectively; that the applicant received a communication dated 17.12.1985 in which the reasons for which his service were terminated were indicated; that the applicant filed his appeal on 8.1.1986 followed by another representation dated 28.1.1986 and reminder dated 8.4.1986 and received a

communication dated 1.5.1985 mentioning therein that his appeal has been rejected by D.R.M., Jhansi, respondent no.4. The applicant has challenged the appellate order dated 1.5.1986 as well as the order of removal dated 2.5.1985 and has sought the cancellation of two orders, mentioned above, and reinstatement to his post with benefits of all back wages as admissible under the rules.

3. In the reply filed on behalf of the respondents it is stated that there was a complaint against the applicant for charging extra money from passengers (copy Annexure '1') and a secret watch was kept on him vide Railway Board's letter dated 6.4.1985 (copy Annexure '2'). In one such incident on 28.3.1985, the applicant denied berth to two passengers travelling in 8 UP Toofan Express between New Delhi and Agra Cant and these two passengers were carried by this T.T.E. unauthorisedly in a reserved coach till it was detected by the Vigilance Inspectors. This conduct of the applicant was with clear motive to extract money from these passengers at a later stage in the form of illegal gratification; that the Senior Divisional Commercial Superintendent, Central Railway, Jhansi (respondent no.3) is the competent punishing authority of the applicant and he has recorded reasons in writing for being satisfied that it is not reasonably practicable to hold an enquiry in the manner provided in these rules (copy Annexure '3'); that the order of the applicant's removal from service and the rejection of his appeal are perfectly all right and not as alleged by the applicant; that it was not practicable to give details of the two passengers to the applicant and that is why they were not given; that this was a case in which no

enquiry was practicable under the Railway Servants (Discipline & Appeal) Rules (hereinafter referred to as the D.A. Rules) on account of their being no likelihood of independent witnesses turning up and the charge being on the basis of secret watch on the applicant. This is in accordance with the guide lines contained in the Railway Board's letter dated 24.1.1979 (copy Annexure '4'); that there was no question of following normal procedure and giving the applicant an opportunity to cross examine the witnesses, as stated; that the imposition of punishment was not in disregard of any case law or in violation of the principles of natural justice; that the applicant was censored for unhelpful attitude towards the passengers while working as T.T.E. on 9.4.1967 and then on a complaint against his integrity on 4.3.1985 a close watch was kept on his work; that the applicant was not entitled to the reliefs sought.

4. The applicant filed a rejoinder affidavit in which the allegations made in the original application were reiterated.

5. We have heard the arguments of learned counsel for the parties. The learned counsel for the applicant challenged the order of removal on the following grounds :

(a) That the decision to initiate disciplinary action against the deponent under Rule 14(ii) was forced upon respondent no.3 by the directions of the Railway Board contained in the letter at Annexure '2' to the reply of the respondents.

(b) That the order of removal passed by respondent no.3 without informing the applicant

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of the nature of charges against him was wholly illegal and void as no opportunity was allowed to him to state his case orally or in writing before the order of removal was passed.

(c) That the intimation of the charges was given to the ~~xxx~~ applicant after he had filed an appeal against the illegal order of removal passed by respondent no.3 but this order could not validate the earlier order of removal which was ab initio illegal and void.

(d) That there was no legal evidence to support the alleged charges against the applicant and the extreme penalty of removal from service was passed merely on suspicion.

(e) That the charges laid against the applicant did not bring the case within the purview of Rule 14(ii) of the D.A. Rules, 1968 and that the imposition of penalty of removal amounted to abuse of power on the part of respondent no.3.

(f) That the order rejecting the appeal was not in conformity with the statutory rules contained in Rule 22(2) of the D.A. Rules.

(g) That the respondent no.4 did not allow a personal hearing to the applicant before rejecting his appeal in utter disregard of the considerations of fair play and justice.

(h) That the respondent no.4 miserably failed to appreciate that the charges laid against the applicant did not bring the case within the purview of Rule 14(ii) of the D.A. Rules.

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(i) That the respondent no.4 failed to see that there was absolutely no situation created by the applicant wherein it was not reasonably practicable to hold an enquiry.

(j) That the disciplinary action under Rule 14(ii) of the D.A. Rules was premeditated and the said provision was applied against the applicant on extraneous grounds having no relation with the situation envisaged in Rule 14(ii).

(k) That in the order rejecting the appeal of the applicant no reasons were recorded for dispensing with the enquiry and the order was illegal and liable to be quashed.

We have considered the matter and we find that in the communication dated 6.4.1987 of the Railway Board (Annexure '2') addressed to the General Manager, Central Railway, Bombay, there is no direction to implicate the applicant and terminate his services under Rule 14(ii) of the D.A. Rules. In this letter there is a reference to the complaint received against the applicant and the need for taking suitable action against the applicant. Two specific cases have been mentioned in this letter. There is a complaint dated 4.3.1985 from one N. Chandra, Indira Nagar, Lucknow alleging that the applicant was openly charging Rs.5/- to Rs.10/- per berth extra from passengers between Agra and Delhi. It is on the basis of this complaint that a close watch was kept on the functioning of the applicant for a couple of days. It is during such a watch by the Vigilance Organisation of the Railway Administration on 28.3.1985, the applicant was found responsible for not allotting berths to two passengers and was unauthorisedly carrying

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them without collecting Railway dues. These two passengers were illiterate and were not prepared to give anything in writing. It is also stated that though the original complaint, (complaint dated 4.3.1985 of N.Chandra) appeared to be factually correct, the complainant could not be contacted as he has not given his full address. The letter further states that this appears to be a clear case of T.T.E. indulging in serious corrupt practices and in the absence of the clear addresses of the two passengers, who were party to the transaction, it may not be practicable to hold an enquiry into the charges and in view of these circumstances Board desire that the Railway may consider taking action against R.N. Mehrotra, T.T.E./AGC under Rule 14(ii) of the D.A. Rules and report compliance within a week on receipt of this communication. The Senior Divisional Personnel Officer called the applicant on 29.4.1985 and asked him about these complaints against him of charging extra money from the passengers but he completely denied that he charged extra money from the passengers. The respondent no.3 in his capacity as punishing authority observed that in this case holding of a regular enquiry provided in the rules is not reasonably practical due to the following circumstances :-

"(i) The complainant Shri N. Chandra has not mentioned his complete address in the original complaint.

(ii) The passengers, whom reservation was denied on 28-3.1985 are illiterate. They were not in a position to give it in writing against Sri R.N. Mehrotra.

(iii) There is no likelihood of turning up of any independant witness in this case. Even if any

person would have come as a witness this H.T.T.E. would have denied the charges of extra money. In fact he has already denied it, when he was called by me."

The main point for consideration is whether the facts stated in the letter dated 6.4.1987 of the Railway Board and the order dated 2.5.1985 of the Disciplinary Authority giving reasons for not holding an enquiry before imposing the penalty of removal is in accordance with the D.A. Rules. The complaint dated 4.3.1985 of N. Chandra of Indira Nagar, Lucknow received in the Railway Board, makes definite allegation against the applicant. It appears that he forgot to give his complete address and the concerned officers of the Railway Board could not persue the matter to its logical conclusion. Similarly the observation of the Railway Board that the two passengers travelling without ticket on 28.3.1985 were not willing to cooperate in the enquiry against the applicant also appears to be plausible as the two passengers besides being illiterate were also travelling without reservation and the statement of this fact could implicate them for committing an offence under the Railway Act.

6. Learned counsel for the applicant contended that he was not given an opportunity to explain his conduct is belied from the fact that the Disciplinary Authority had called the applicant on 29.4.1985 and asked him about the complaints against him of charging extra money from the passengers. The applicant denied this charge and did not put anything in writing to indicate the circumstances, which prevented him from checking the two passengers travelling in a reserved compartment without obtaining a reservation.

7. Learned counsel for the applicant contended that the order of removal dated 2.5.1985 did not contain a description of the charges for which the applicant was being punished. Rule 14 reads as follows :-

> "14. Not-withstanding anything contained in Rules 9 to 13 :-
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> (i) .....
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> (ii) where the disciplinary authority is satisfied, for reasons to be recorded by it is writing, that it is not reasonably practicable to hold an inquiry in the manner provided in these rules; or
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> (iii) .....
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> The disciplinary authority may consider the circumstances of the case and make such orders thereon as it deems fit;"

A plain reading would show that this rule does not prescribe that the substance of the misconduct of the delinquent official leading to the imposition of penalty must be communicated to the delinquent official. What is important is that the Disciplinary Authority should state the reasons for not holding the enquiry and his satisfaction to this effect as also the nature of misconduct justifying imposition of the penalty. In the instant case the Disciplinary Authority in his order dated 2.5.1985 (Sc A-3) has given a gist of misconduct and has further stated that the delinquent official was called by him in his office on 29.4.1985 and informed about his misconduct and given an opportunity to explain his conduct. In these circumstances it is established that the applicant was fully aware of the charge of misconduct for which the penalty was being imposed on him. However, at the request of the applicant the gist of the mis-

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conduct was communicated to him vide letter dated 17.12.1985. In our opinion this delay in itself does not make the order of removal dated 2.5.1985 illegal.

8. Before passing an order under Rule 14(ii) of the D.A. Rules it is necessary that the Disciplinary Authority is satisfied for reasons to be recorded by it in writing that it is not reasonably practical to hold an enquiry in the manner provided in these rules. Such satisfaction vests in the Disciplinary Authority. In the present case the Disciplinary Authority had stated in writing the reasons as to why it was not practicable to hold an enquiry. This is available as Annexure '3' to the reply filed by the respondents.

9. It is relevant to quote the observations of the Hon'ble Supreme Court in the case of Satyavir Singh and others v. Union of India and others (1986 Labour & Industrial Cases 1 at page 10) :

> "(55) There are two conditions precedent which must be satisfied before clause (b) of the second proviso to Article 311(2) can be applied. These conditions are -
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> (i) there must exist a situation which makes the holding of an inquiry contemplated by Art. 311(2) not reasonably practicable, and
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> (ii) the disciplinary authority should record in writing its reason for its satisfaction that it is not reasonably practicable to hold such inquiry.
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> (56) Whether it was practicable to hold the inquiry or not must be judged in the context of whether it was reasonably practicable to do so.

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(57) It is not a total or absolute impracticability which is required by Cl. (b) of the second proviso. What is requisite is that the holding of the inquiry is not practicable in the opinion of a reasonable man taking a reasonable view of the prevailing situation.

(58) The reasonable practicability of holding an inquiry is a matter of assessment to be made by the disciplinary authority and must be judged in the light of the circumstances then prevailing. The disciplinary authority is generally on the spot and knows what is happening. It is because the disciplinary authority is the best judge of the prevailing situation that clause (3) of Art. 311 makes the decision of the disciplinary authority on this question final.

(59) It is not possible to enumerate the cases in which it would not be reasonably practicable to hold the inquiry.Illustrative cases would be -

(a) where a civil servant, particularly through or together with his associates, so terrorizes, threatens or intimidates witnesses who are going to give evidence against him with fear of reprisal as to prevent them from doing so, or

(b) where the civil servant by himself or together with or through others threatens, intimidates and terrorizes the officer who is the disciplinary authority or members of his family so that he is afraid to hold the inquiry or direct it to be held, or

(c) where an atmosphere of violence or of general indiscipline and insubordination prevails it being immaterial whether the concerned civil servant is or is not a party to bringing about such a situation. In all these cases, it must be remembered that numbers coerce and terrify while an individual may not.

(60) The disciplinary authority is not expected to dispense with a disciplinary inquiry lightly or arbitrarily or out of ulterior motives or merely in order to avoid the holding of an inquiry or because the Department's case against the civil servant is weak and must fail.

(61) The word "inquiry" in clause (b) of the second proviso includes a part of an inquiry. It is, therefore, not necessary that the situation which makes the holding of an inquiry not reasonably practicable should exist before the inquiry is instituted against the civil servant. Such a situation can also come into existence subsequently during the course of the inquiry, for instance, after the service of a charge-sheet upon the civil servant or after he has filed his written statement thereto or even after evidence has been led in part.

(62) It will also not be reasonably practicable to afford to the civil servant an opportunity of a hearing or further hearing, as the case may be, when at the commencement of the inquiry or pending it, the civil servant absconds and cannot be served or will not participate in the inquiry. In such cases, the matter must proceed ex parte and on the materials before the disciplinary authority.

(63) The recording of the reason for dispensing with the inquiry is a condition precedent to the application of Cl. (b) of the second proviso. This is a constitutional obligation and if such reason is not recorded in writing the order dispensing with the inquiry and the order of penalty following thereupon would both be void and unconstitutional. It is, however, not necessary that the reason should find a place in the final order but it would be advisable to record it in the final order in order to avoid an allegation that the reason was not recorded in writing before passing the final order but was subsequently fabricated.

(64) The reason for dispensing with the

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inquiry need not contain detailed particulars but it cannot be vague or just a repetition of the language of clause (b) of the second proviso."

In the present case the Railway Board had itself indicated in its letter dated 6.4.1985 that in the circumstances of the case it would be advisable for the Disciplinary Authority to take action under Section 14(ii) of the D.A. Rules. The guide lines of the Railway Boards contained in their circular (copy Annexure '4' to the reply) also lays down examples which can easily come in the category when it can be assumed that it is not reasonably practicable to hold an enquiry under the D.A. Rules. These are as follows :-

"(i) Delinquent's whereabouts are not known.

(ii) Delinquent is consistently avoiding service of notice.

(iii) Delinquent is behaving in a non-cooperative manner so as to paralyse the proceedings.

(iv) There is no likelihood of independent witnesses turning up.

(v) The charges being on the basis of secret watch etc., the normal procedure of enquiry would entail revealing of the identity of the officer doing the secret enquiry and thus adversely affect the administration."

Examples (iv) and (v) appears to be particularly applicable to the present case.

10. We are of the opinion that the reasons given by the Disciplinary Authority for not holding a regular enquiry under the D.A. Rules before imposing the penalty is neither arbitrary nor illegal as alleged by the applicant.

11. The learned counsel for the applicant also

contended that the order passed in appeal is a cryptic order without giving reasons for not accepting the appeal preferred by the applicant. It is also contended that the applicant was not given any opportunity of being heard in person. On going through the appeal dated 6.1.1986 of the applicant, it is found that there is no request in the appeal for being given a personal hearing. Even in subsequent communications no such prayer was made by the applicant. On this subject it is relevant to quote the observations of the Hon'ble Supreme Court in the case of Ram Chander v. Union of India and others (1986 Labour and Industrial Cases 885 at page 894). A majority in Tulsiram Patel's case (A.I.R. 1985 S.C. 1416) unequivocally lays down that -

> "The only stage on which a Government servant gets 'a reasonable opportunity of showing cause against the action proposed to be taken in regard to him' i.e. an opportunity to exonerate himself from the charge by showing that the evidence adduced at the inquiry is not worthy of credence or consideration or that the charges proved against him are not of such a character as to merit the extreme penalty of dismissal or removal or reduction in rank and that any of the lesser punishments ought to have been sufficient in his case, is at the stage of hearing of a departmental appeal. Such being the legal position, it is of utmost importance after the Forty-Second Amendment as interpreted by the majority in Tulsiram Patel's case that the Appellate Authority must not only give a hearing to the Government servant concerned but also pass a reasoned order dealing with the contentions raised by him in the appeal. We wish to emphasize that reasoned decisions by tribunals, such as the Railway Board in the present case, will promote public confidence in the administrative process. An objective consideration is possible only if the delinquent servant is heard and given a chance to satisfy the Authority regarding the final orders that may be passed on his appeal. Considerations of fair play and justice also require that such a personal hearing should be given."

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From the above it is evident that it was necessary for the appellate authority to give a personal hearing to the delinquent official even though he had not made such a request in his appeal.

12. The other contention of the learned counsel for the applicant is that the appellate order has not discussed the various points raised in the appeal of the applicant. Rule 22 of the D.A. Rules lays down the procedure for consideration of an appeal. Clause (2) of Rule 22 reads as follows :

> "(2) In the case of an appeal against an order imposing any of the penalties specified in Rule 6 or enhancing any penalty imposed under the said rule appellate authority shall consider -
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> (a) whether the procedure laid down in these rules has been complied with, and if not, whether such non-compliance has resulted in the violation of any provisions of the Constitution of India or in the failure of justice;
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> (b) whether the findings of the disciplinary authority are warranted by the evidence on the record; and
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> (c) whether the penalty or the enhanced penalty imposed is adequate, inadequate or severe; and pass orders -
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> (i) confirming, enhancing, reducing or setting aside the penalty; or
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> (ii) remitting the case to the authority which imposed or enhanced the penalty or to any other authority with such directions as it may deem fit in the circumstances of the case;"

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The appellate order reads as follows :

> "Your above noted appeal has been considered by the DRM Jhansi and he has rejected the appeal."

13. It is relevant to reproduce the observations of the Hon'ble Supreme Court in the case of Ram Chander v. Union of India and others (1986 Labour & Industrial Cases 885 at page 887) :

> "4. The duty to give reasons is an incident of the judicial process. So, in R.P.Bhatt v. Union of India (C.A.No.3165/81 decided on Dec. 14, 1982) : (reported in 1986 Lab IC 790) this Court, in somewhat similar circumstances, interpreting R. 27(2) of the Central Civil Services (Classification, Control & Appeal) Rules, 1965 which provision is in pari materia with R.22(2) of the Railway Servants (Discipline & Appeal) Rules,1968, observed :
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> "It is clear upon the terms of R.27(2) that the appellate authority is required to consider : (1) whether the procedure laid down in the rules had been complied with; and if not, whether such non-compliance has resulted in violation of any of the provisions of the Constitution of India or in the failure of justice; (2) whether the findings of the disciplinary authority are warranted by the evidence on record; and (3) whether the penalty imposed is adequate, inadequate or severe, and pass orders confirming, enhancing, reducing or setting aside the panalty, or remit back the case to the authority which imposed or enhanced the penalty, etc."
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> It was held that the word 'consider' in R.27(2) of the Rules implied 'due application of mind'. The Court emphasized that the Appellate Authority discharging quasi-judicial functions in accordance with natural justice must give reasons for

its decision. There was in that case, as here, no indication in the impugned order that the Director-General, Border Road Organisation, New Delhi was satisfied as to the aforesaid requirements. The Court observed that he had not recorded any finding on the crucial question as to whether the findings of the disciplinary authority were warranted by the evidence on record. In the present case, the impugned order of the Railway Board is in these terms :

"(1) In terms of Rule 22(2) of the Railway Servants (Discipline and Appeal) Rules, 1968, the Railway Board have carefully considered your appeal against the orders of the General Manager, Northern Railway, New Delhi imposing on you the penalty of removal from service and have observed as under :

(a) by the evidence on record, the findings of the disciplinary authority are warranted; and

(b) the penalty of removal from service imposed on you is merited.

(2) The Railway Board have therefore rejected the appeal preferred by you."

"5. To say the least, this is just a mechanical reproduction of the phraseology of R.22(2) of the Railway Servants Rules without any attempt on the part of the Railway Board either to marshall the evidence on record with a view to decide whether the findings arrived at by the disciplinary authority could be sustained or not. There is also no indication that the Railway Board applied its mind as to whether the act of misconduct with which the appellant was charged together with the attendant circumstances and the past record of the appellant were such that he should have been visited with the extreme penalty of removal from service for a single lapse in a span of 24 years of service. Dismissal or removal from service is a matter of grave concern to a civil servant who after such a

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long period of service, may not deserve such a harsh punishment. There being non-compliance with the requirements of Rs.22(2) of the Railway Servants Rules, the impugned order passed by the Railway Board is liable to be set aside."

14. We are of the opinion that the appellate order does suffer from the defect that it has not specified the satisfaction of the appellate authority that the procedure followed by the Disciplinary Authority was in accordance with the rules; that the findings were warranted by the evidence on record and that the penalty was adequate. We accordingly quash the order dated 1.6.1986 passed by the Divisional Railway Manager rejecting the appeal of the applicant and direct him decide the appeal afresh after giving an opportunity of personal hearing to the applicant in accordance with law as discussed above. The application is disposed of accordingly. Parties shall bear their own costs.

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A.M.

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J.M.

Dated: May 18, 1987.

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