

Registration O.A. No. 766 of 1986

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Applicant

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Hon'ble K.J. Raman, A.M.

(By Hon'ble K.J. Raman, A.M.)

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appellate order dated 19.6.86 mentioning at two places the date of appeal as 12.3.86, whereas the appeal is dated 15.5.86. According to the applicant this shows the bias of the authorities concerned. The applicant has sought relief by way of setting aside the order of removal dated 15.3.86 as well as the appellate order, and also has prayed for consequential benefits.

2. In the " preliminary objection" filed on behalf of the opposite parties, it is stated that the applicant along with one Shri D.K. Goswami was involved in assaulting some railway servants while on duty. The names of three railway servants have been given. It is stated further that an " inquiry" was conducted by the disciplinary authority wherein all the involved persons and witnesses were called and that the applicant was not available for the inquiry. It is further stated that statements of all the witnesses were recorded and they were also asked whether they will be willing to appear for an open enquiry if ordered. It is alleged that everyone had stated "that since the applicant is a bad character and they are afraid of the consequences from the applicant, they are not interested to come forward and give evidence in an open inquiry." The disciplinary authority further avers that he was convinced that the incident took place wherein the applicant was involved and that he was further convinced that " it will not be expedient for holding a proper open inquiry." It is claimed by him that all the norms of disciplinary and appeal rules were observed before taking action under Section 14(ii). It is further stated that there are still channels available in the administration for making further appeals and therefore, the

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present case is premature. Finally it is stated that it was not reasonably practicable to hold an open inquiry against the applicant as he "is a man of bad character, so every witness was afraid of the consequences from the applicant and danger of life, hence the proceedings were taken under Rule 14(ii)."

3. In the rejoinder filed by the applicant, the preliminary objections referred to above are contested. It is denied that the applicant was involved in assaulting any railway servant and that, on the contrary, the applicant was himself beaten by the three railway servants along with their friends. It is denied that any inquiry was conducted. It is stated that it was wrong to say that the applicant was called for the inquiry. The applicant had no information at all of the aforesaid investigation/enquiry and that there was no question of the applicant not being available. It is stated that no details have been given by the respondents as to whose statements were recorded and it has ^{not} been indicated why those statements have not been placed before this Tribunal. It is further stated that the police case is going on and evidence is going to be recorded in the said case and that it is not understood as to why the evidence cannot be recorded in an open enquiry to be held by the Department, when the statements can be recorded in the police case. It is further stated that it has not been disclosed by the respondents as to what was the reason that the disciplinary authority was convinced that it would not be expedient for holding a proper enquiry. It is denied that there are still channels available for making further appeals and it is pointed out that it has not been disclosed under which

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provision of law further appeal could be filed.

4. During the oral hearing, the learned counsel for both the sides reiterated the foregoing contentions. The learned counsel for the respondents submitted the departmental file for the perusal of this Tribunal.

5. In the impugned order dated 15.3.86, the disciplinary authority states that in terms of the powers vested in the disciplinary authority under Rule 14(ii) of the Railway Servants (Discipline & Appeal) Rules, 1968, he has decided to remove the applicant from service with immediate effect, for the following charges :-

" (i) You entered the parcel office at Gwalior unauthorisedly at about 19.15 hours on 12.3.86, and

(ii) You assaulted and man-handled Shri B.N. Hotwani, Chief Parcel Supervisor, Gwalior, Sri R.D. Vishwakarma, Chief Commercial Inspector, Gwalior and Shri L.P. Sharma, Senior Commercial Inspector, Gwalior(NG) while they were on duty between 19.15 hrs. to 19.30 hrs. in the parcel office at Gwalior on 12.3.86. "

There are further four paragraphs in the said order, relating to appeal and acknowledgement. Under Rule 14(ii) of the Railway Servants (Discipline & Appeal) Rules, 1968, where the disciplinary authority is satisfied, for reasons to be recorded by it in writing, that it is not reasonably practicable to hold an enquiry in the manner provided in these rules, the disciplinary authority may consider the circumstances of the case and make such orders thereon as it deems fit. Before invoking this provision, the disciplinary

authority should be satisfied that it is not reasonably practicable to hold an enquiry, and further, the reasons for such satisfaction should be recorded by it in writing. The applicant's case is that there were no reasons for dispensing with an enquiry under the rules in this case and that it could not be said that it was not reasonably practicable to hold such an enquiry. This provision to dispense with the enquiry is an exception to the general rule of having an enquiry and is analogous to Sub clause (b) of the Second proviso to Clause (2) of Article 311 of the Constitution of India.

6. The crucial issue in this case is whether Rule 14(ii) of the Railway Servants (Discipline & Appeal) Rules, 1968 was justifiably resorted to and whether ^{it} was not reasonably practicable to hold an inquiry in the ^{the} manner provided in the said rules, in the circumstances of this case. As stated earlier, the provisions of Rule 14 (ii) are almost identical with those of clause (b) of the second proviso of Article 311(2) of the Constitution. The scope and content of the above provisions ^(a) of the ~~Constitution~~ Constitution, as well as ^{the} the conditions precedent which must be satisfied before invoking the said provisions of the Constitution, have been set out authoritatively by the Hon'ble Supreme Court in Union of India and ^{another} others Vs. Tulsiram Patel and others, ⁽²⁾ 1985 ⁽²⁾ SLR 576 and again reviewed and reiterated in Satyavir Singh and others vs. Union of India and others 1986(1) SLR 255. It has been laid-down that ^{it} what is requisite is that the holding

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of ^{on the} ~~the~~ inquiry is not practicable in the opinion of a reasonable man taking a reasonable view of the prevailing situation." We have considered the facts and circumstances and pleadings in this case in the light of the above judgment.

7. In the reply or preliminary objection filed on behalf of the respondent by Shri N.C. Sharma, Divisional Commercial Superintendent, Central Railway, Jhansi who also passed the impugned order of removal under Rule 14 (ii) D.A.R., it is stated that the disciplinary authority["] was convinced that it would not be expedient for holding a proper open inquiry["], as all the witnesses examined by him during the inquiry conducted by him in the absence of the applicant, stated that["] since the applicant is a bad character and they are afraid of the consequences from the applicant they are not interested to come forward and give evidence in an open inquiry.["] In para 4 of the said reply, it is again stated that["] every witness was afraid of the consequences from the applicant and danger of life, hence the proceedings were taken under Rule 14 (ii).["] On^a perusal of the records of the relevant file submitted by the learned counsel of the opposite parties, it is seen that not all the witnesses have stated that they were afraid of the applicant and that they would not be attending an open inquiry. Shri R.B. Srivastava, CCI, Jhansi was not even asked, unlike other witnesses, whether he would attend an open inquiry against the applicant. In answer to one question, this witness has stated that he was not aware of the character of Shri Jharkharia or any incident of a violent type involving the applicant.

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Another witness Shri L.P. Sharma, S.C.I. Gwalior when asked whether ~~if~~ he would be prepared to attend a "confronted" inquiry with Shri Goswami and Shri Jharkharia, if ordered by the Administration, has replied that he apprehend some trouble from Shri Goswami and would request that he might not be put before the "confronted" inquiry to avoid further mishaps. This witness has not apprehend^{ed} any trouble from the applicant and has not refused to attend any open inquiry against the applicant. Similarly, Shri R.D. Vishwakarma has also stated that he ~~has~~ apprehend^{ed} some trouble from Shri Goswami and he has not said anything about any threat from the applicant nor any reservation about attending an open inquiry against the applicant. It is thus found that at least ^{the above} there were three witnesses who did not express any fear from the applicant in respect of any open inquiry that might be held. Thus, the basic assumption of the disciplinary authority that no witness will be willing to attend an open inquiry, is found to be wrong on facts, as some witnesses were apparently willing to attend such an inquiry against the applicant.

8. It is also observed from the relevant file that the witnesses were specifically asked by the disciplinary authority firstly about the character of the applicant and then whether they would attend a "confronted" inquiry against the applicant. The disciplinary authority in its report dated 15.3.86 of the "inquiry" held by him, has not stated why this unusual question was being put to each of the witnesses without giving any background for putting the question. Normally ~~a~~ in a preliminary inquiry,

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witnesses are not asked such questions without any background being stated. It is not recorded anywhere that these witnesses had expressed any reservation voluntarily about any threat or fear from the applicant.

9. In his report dated 15.3.86 in the same file, the disciplinary authority has stated that he "tried to call Mr. Goswami and Jhakharia" for inquiry and that both these could not be contacted as they are not working (on duty)." It may be observed here that the incident happened on 12.3.86 and the inquiry was held on 14.3.86 and 15.3.86 and the order of termination was also passed on 15.3.86. No reasonable attempt was made to secure the applicant's presence in the inquiry and the enquiry seems to have been rushed through and the order of ^{removal} ~~remand~~ passed with unexplained hurry. The disciplinary authority in the said report says that 14 witnesses (who are all Railway servants) attended the inquiry. He significantly records, "other witnesses are not forthcoming for inquiry as they are afraid of consequences since both these people do not hold good reputation". From this it can be presumed that the 14 witnesses in question were not afraid of consequences in attending the "inquiry" conducted by the disciplinary authority. If these witnesses had been really afraid of the applicant, they would not have presumably attended the inquiry conducted by the disciplinary authority, as was the case in respect of other witnesses. Many of the witnesses (Shri Shukh Nandan, Shri B.N. Hotwani, Shri Ram Babu and Shri Irshad Ali) have stated that they apprehended some trouble from the applicant and made a request that they should not be called for an open inquiry. They have not refused to attend an open inquiry against the applicant. The disciplinary authority in his report dated 15-3-86 referred to above

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has stated that it is not possible to hold inquiry in this case as no witness will be forthcoming for giving evidence. The facts mentioned above do not support this presumption of the disciplinary authority, as the above witnesses have not refused to attend an open inquiry.

10. In para 59 of the judgment of Hon'ble Supreme Court in Satyabir Singh Vs. Union of India, illustrative cases in which it would not be reasonably practicable to hold the inquiry are stated. Illustrative cases would be —

- (a) where a civil servant, particularly though 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.

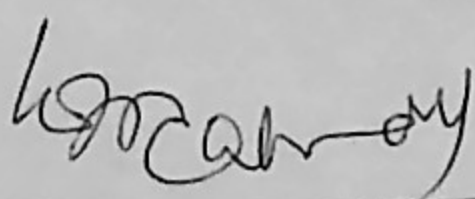
In this case there is absolutely no material or even ^{avermant} ~~statement~~ to the effect that the applicant through or together with his associates, terrorise^d, threat^{ened}, or intimidated witnesses who were going to give evidence against him, with fear of reprisal, so as to prevent them from doing so. Nor is there any allegation to the effect ^{that} ~~of~~ the applicant had

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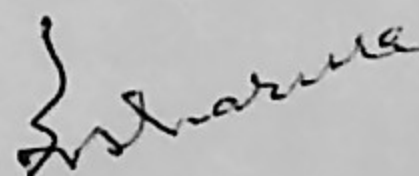
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created an atmosphere of violence or of general indiscipline. It is not sufficient for the disciplinary authority or the respondents to state generally that the applicant is a bad character and the witnesses were afraid of him, without giving at least some basic material leading to such a conclusion. It is not even alleged that there was any intimidation of witnesses by the applicant in this case, nor is there any averment that the applicant has a history of such behaviour.

11. In the circumstances we are unable to conclude that any reasonable person could have, in the circumstances of this case, come to the conclusion that it was not reasonably practicable to hold an open inquiry against the applicant. We also hold that the appellate authority was wrong in not giving due consideration to the various contentions raised by the applicant in his appeal. In the circumstances, we allow the application and set aside the impugned order of removal dated 15.3.86 and also the impugned appellate order dated 19.6.86. The respondents will have a right to initiate disciplinary proceedings against the applicant afresh in accordance with law. In case they decide to do so, the provisions of Rule 5(4) of the Railway Servants (Discipline and Appeal) Rules, 1968 will apply. There will be no order as to costs.



MEMBER (A)



MEMBER (J)

Dated: March 21, 1989

(sns)