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(Reserved) (Bench No.1)

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD.

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Registration No. 363 of 1986 (T)

Sri Kant Misra . . vs. . Union of India through the General Manager, North-Eastern Railway, Gorakhpur.

Hon'ble Justice Mr. S.Zaheer Hasan, Vice Chairman.

Hon'ble Mr. Ajay Johri, Member(A).

(Delivered by Hon. S.Zaheer Hasan, V.C.)

This Suit No. 940 of 1984 Shri Kant Mishra vs. Union of India, filed in the court of Munsif, Deoria, was transferred to this Tribunal under Section 29 of the Administrative Tribunals Act (No. 13 of 1986).

The Assistant Loco Foreman filed a report against Shri Kant Misra, to be described as the plaintiff, who was working as Fitter-Khalasi, that on 20.12.1983 at 3.20 p.m. the plaintiff assaulted him. A show cause notice was issued on 23.12.1983 to which the plaintiff replied on 30.1.1984. The inquiry was concluded on 3.2.1984 and the report was submitted on 4.2.1984. By the order dated 6.2.1984 the plaintiff was removed from service with a finding that the plaintiff was a man of criminal type who had created terror in the shed and no-one was prepared either to give anything in writing or to give evidence against him in the enquiry. It was further observed, " no witness will come forward to give evidence against Sri S.K.Mishra and as such, it is not possible to initiate disciplinary proceedings against Sri S.K.Mishra under Rule 9 of the D.A.R. 1968 in this case." In short,

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the plaintiff was dismissed from x railway service with effect from 8.2.1984 without holding a departmental inquiry on the ground that it was not possible to initiate disciplinary proceedings because due to fear the witnesses would not come to depose against the plaintiff. The matter went up in appeal, and the following order was passed by the appellate authority;-

> "I have carefully gone through the facts of the case and Sri Mishra's appeal. Sri Mishra also saw me in my office on 12.3.1984. He met me with the knowledge that this case has been put up to me. This itself is surprising how he became aware of the movement of a confidential file.
>
> Keeping in view his nuisance value, the demoralising effect such incidences have on supervisors and the erosion of discipline that his reinstatement would cause, his appeal is rejected. Punishment awarded stands."

Aggrieved thereby the plaintiff filed the suit which has been transferred to this Tribunal as stated above.

Plaintiff's case is that he never assaulted the Loco Foreman as alleged, and he was falsely implicated due to enmity.

The case of the Department is that it was not possible to hold departmental inquiry. So, the plaintiff was dismissed without holding a regular inquiry. According to the rule 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 the rule, the disciplinary authority may consider the circumstances of the case and make such

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whether or not it was reasonably practicable to hold a regular inquiry in this case. The only reason assigned by the disciplinary authority was that no witness would be willing to come forward to give evidence during departmental inquiry because the Government servant concerned (the plaintiff) was a man of criminal nature and had created a terror in the Shed. The law on this point was discussed in details by the Hon'ble Supreme Court in the case of Union of India vs. Tulsi Ram Patel 1985(2) All India Service Law Journal page 145. The matter was again discussed in details by the Supreme Court in the case of Satyavir Singh vs. Union of India A.I.R. 1986(I) All India Service Law Journal page 1. The Hon'ble Judge has laid down that 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. It is not a total or absolute impracability which is required by the second proviso to Clause (b) of Art. 311(2) of the Constitution. 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. 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. The disciplinary authority is not expected to dispense with 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

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The recording of reasons is a must and the resons recorded should not be vague or just a repetition of the language of the second proviso to clause (b) of Art. 311(2) of the Constitution. The fianality given by Clause (3) of Art. 311 of the Constitution or an analogous service rule to the disciplinary authority's decision that it was not reasonably practicable to hold inquiry is not binding upon the court and the court ~~x~~ will consider whether Clause (b) or analogous service rule had been properly applied or not. In examining the relevancy of reasons given for dispensing with the inquiry, the court will consider the circumstances, which according to the disciplinary authority, made it come to the conclusion that it was not reasonably practicable to hold the inquiry. If the court finds that the reasons are irrelevant, the order dispensing with the inquiry and the order of penalty following upon it would be void. In considering the relevancy of the reasons given by the disciplinary authority, the court will not, ~~xix~~ however, sit in judgment over the reasons like a court of first appeal in order to decide whether or not the reasons are germane to Clause(b) of the second proviso or an analogous service Rule. The court must put itself in the place of the disciplinary authority and consider what in the then prevailing situation a reasonable man acting in a reasonable manner would have done. It will judge the matter in the light of the then prevailing situation and not as if the disciplinary authority was deciding the question whether the inquiry should be dispensed with or not in the cool and detached atmosphere of court room, removed in time from situation in question.

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In a Full Bench case of Allahabad High Court reported in 1981 (2) S.L.R. page 451 (Maksudan Pathak vs. The Security Officer) it was observed by the learned Judges that mere inability or inefficiency of the investigating authority to obtain evidence to prove the charge cannot be a reason for dispensing with the inquiry. In the last four lines of the note containing the reasons for not holding inquiry the following words have been used:-

> "From this report of Loco Inspector/MUJ, while on one hand it has been confirmed that the incidence of assault was a fact, on the other hand it has also become clear that in this case no witness will come forward to give evidence against Shri S.K.Misra and as such, it is not possible to initiate disciplinary proceedings against Shri S.K.Misra under rule 9 of the D.A.R. 1968 in this case."

No effort was made by Sri M.K.Agarwal, Sr. Divisional Mechanical Engineer, Varanasi, who passed the impugned order to ~~ascertain~~ make enquiry from the witnesses of fact. He could have summoned those witnesses and noted that either they refused to come, or they refused to give evidence, or they denied their presence or they stated that due to fear they were not willing to give evidence. Nothing like that was done. At least the person who was assaulted and who made a report and who can be described as complainant of the case could be examined and on the basis of the solitary statement of the complainant a finding could be arrived at irrespective of the fact that his statement was not corroborated. ~~xxxxxxxxxxxx~~

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When there is corroborative evidence and it is snatched away by the persons against whom it is sought to be led, they cannot be permitted to argue that the solitary statement of the complainant should not be believed for want of corroboration. There is nothing to suggest that the complainant of this case was called and examined and he stated that he was not willing to support his own case due to fear.

In view of all the above, we hold that the departmental inquiry has been arbitrarily and wrongly dispensed with under Rule 14(2) of the Railway Servants (Discipline and Appeal) Rules, 1968.

This application (O.S.No. 940 of 1984) is allowed and the order of dismissal dated 6.2.1984 and the appellate order dated 13.3.1984 are set aside. The applicant is ordered to be reinstated and in the circumstances of the case the intervening period of his absence consequent to his dismissal and reinstatement may be regularised as leave of any kind including extraordinary leave as may be admissible. However, it is open to the competent authority to order a departmental inquiry de novo against the applicant if they think that the facts and the circumstances of the case so justify. In the circumstances of the case, parties are directed to bear their own costs.

October 30, 1986. Vice-Chairman.

Member(A).

R.Pr./