

RESERVED.

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD.

Registration (T.A.) No. 212 of 1987
(Writ Petition No. 9754 of 1982)

S.C. Nigam Petitioner.

Versus

Senior Divisional Electrical
Engineer, N.Rly. & another Respondents.

Connected with

Registration (T.A.) No. 961 of 1987
(Writ Petition No. 9751 of 1982)

B.K. Singh Petitioner.

Versus

Senior Divisional Electrical
Engineer, N. Rly. & another Respondents.

Hon'ble Justice K. Nath, V.C.
Hon'ble K.J. Raman, A.M.

(Delivered by Hon. K.J. Raman, A.M.)

This judgment covers both the cases, viz. TA No. 212 of 1987 (Writ Petition No. 9754 of 1982) and TA No. 961 of 1987 (Writ Petition No. 9751 of 1982), referred to above, since both these writ petitions involve common questions of facts and issues. Both these writ petitions were originally filed in the High Court of Judicature at Allahabad and have been received by this Tribunal under the provisions of Section 29 of the Administrative Tribunals Act, 1985.

2. Writ Petition No. 9754 of 1982 has been filed in the High Court of Judicature at Allahabad on 30.8.1982 by the petitioner, Sri S.C. Nigam, a H.S. Fitter, working with the Northern Railway, Kanpur against his dismissal from service. Writ Petition No. 9751 of 1982 has been filed in the High Court of Judicature at Allahabad on 30.8.1982 by the petitioner, Sri B.K. Singh, who is also a H.S. Fitter, working with the Northern Railway, Kanpur against ~~the~~ similar

dismissal from service. In both the cases the Senior Divisional Electrical Engineer (Sr.DEE) and the Divisional Railway Manager (DRM), Northern Railway, Kanpur are the respondents. The prayer in the writ petition in both the cases is for quashing the order of dismissal and the appellate order thereon rejecting the appeal of the writ petitioners. Consequential benefits have also been prayed for.

3. In Writ Petition No. 9754 of 1982, the petitioner, Sri S.C. Nigam, has averred that he was working with the Northern Railway at Kanpur and that he was a Trade Union worker being actively associated with the Trade Union movement amongst the Railway employees. He alleges that this displeased the officers of the Northern Railway and the impugned order of dismissal dated 25.7.1981 (Annexure '2') was passed by respondent no.1 in purported exercise of powers under Rule 14(ii) of the Railway Servants (Discipline & Appeal) Rules,1968 (in short referred to as the DA Rules). The petitioner submitted a memorandum of appeal (Annexure '3') which was dismissed by respondent no.2 by the second impugned order dated 21.6.1982 (Annexure '4').

4. The other petitioner in Writ Petition No.9751 of 1982 has similarly stated that he was also a Trade Union worker and that he was also dismissed from service by the impugned order dated 25.7.1981 (Annexure '2') under the same Rule. He had also submitted / appeal (Annexure '3') which has been rejected by respondent no.2 by a similar order dated 21.6.1982. Both the petitioners have contended that the impugned order dated 25.7.1981 alleged that they did not devote attention to their assigned job and that they were of quarrelsome and / "instigating nature". It is also alleged that they neighbouring collected workers from their /neighbouring sections and instigated them to remain away from work and arranged ~~the~~ "spontaneous demonstration" outside the P.P.O. office gheraoing the officers/Supervisors. It is argued that for any one of the above acts, mentioned above, the petitioners should have been charge-sheeted and should have

been afforded an opportunity of being heard under the DA Rules and Article 311 of the Constitution. They both aver that ~~that~~ there were no circumstances on the basis of which the respondents could have come to the conclusion that it was not reasonably practicable to hold an enquiry in the manner provided in Rules 9 to 13 of the DA Rules. There is also a contention that Rule 14(ii) of the DA Rules is too wide, uncontrolled by any guiding principle and ^{the case} is likely to be used "discriminatorily" as has been/in respect of the petitioners. There is a reference to certain writ petitions filed in the High Court and the Supreme Court and the interim orders passed therein in support of their plea. In both the cases an interim order was passed on 8.11.1982 providing for payment of salary to the petitioners, but in both the cases the interim orders were discharged by an order dated 21.10.1986, by the Hon'ble High Court.

5. In the counter affidavit filed on behalf of the respondents, it is denied that the officers were displeased with the petitioners on account of their Trade Union activity. In fact it is stated that there was nothing on record to show that the petitioners were active Trade Union workers. It is averred that "the impugned order was passed because the Disciplinary Authority after preliminary enquiry came to the conclusion that the charges against the petitioner were correct and it was not reasonably practicable to hold a departmental enquiry under the normal rules and invoked the provision of Rule 14(ii) of the Discipline and Appeal Rules, 1968." It is further stated that from the facts and circumstances of the present case it would be clear that it was not reasonably practicable to hold an enquiry. ^{submitted}
It is further ~~stated~~ ^(RA) that the cases referred to by the petitioners in their writ petitions were entirely different and had no application to the facts of the present writ petitions. There is no averment in the counter affidavit as to the reasons leading to the conclusion by the disciplinary authority that it was not reasonably practicable to hold an enquiry according to rules. The counter affidavit does

not also contain any statement of facts as to the circumstances prevailing at the crucial time just before the issue of the dismissal orders. The petitioners have filed their rejoinder affidavits merely reiterating their contentions in the writ petitions.

6. The case was heard when Sri Arvind Kumar, learned counsel for the petitioner in Writ Petition No. 9754 of 1982, and Sri V.K. Goel, learned counsel for the respondents in both the cases, advanced their arguments. The learned counsel for the petitioner reiterated the contentions contained in the writ petition. He emphasised that there were absolutely no circumstances justifying the dispensing with the enquiry. The respondents could have put the petitioners under suspension, if there was a serious ground for it and there was no justification at all for dispensing with the enquiry under Rule 14(ii). The learned counsel for the petitioner relied on the judgment of the Hon'ble Supreme Court in Union of India & another v. Tulsiram Patel (1985 SCC (L&S) 672). He relied particularly on paras 130, 133, 134, 135 and 136 of the above judgment.

7. The learned counsel for the respondents submitted that the dismissal orders in both the cases were properly issued in terms of Rule 14(ii) of the DA Rules, keeping in view the circumstances prevailing at that time to justify the issue of such an order. He fervently pleaded that one has to place oneself in the position of in the and the disciplinary authority /and place/in those circumstances, and then see whether the decision dispensing with the enquiry was justified or not in keeping with the requirement of Rule 14(ii) of the DA Rules. He also stated that the disciplinary authority had recorded the reasons in the departmental file, which was produced before us at the time of hearing. He stated that the disciplinary authority was not required to give all details and particulars of the circumstances leading to the conclusion of the disciplinary authority that it was not reasonably practicable to conduct an enquiry in accordance with the rules. He also stated that the petitioners were entitled

to claim for an open enquiry under the rules in their appeal, which they did not do. The learned counsel for the respondents based his contention above on the judgment of the Hon'ble Supreme Court reiterated in Tulsiram Patel's case, referred to above, as ~~reported~~ in Satyavir Singh v. Union of India (AIR 1986 SC 555), particularly paras 6(58), (59) and (71) thereof.

8. We have perused the departmental records in which the impugned orders of dismissal and appeal were issued.

9. As stated above, both the learned counsel relied on the same case law as propounded by the Hon'ble Supreme Court in Tulsiram Patel's case, as recounted in Satyavir Singh's case, referred to above. We may, therefore, briefly note the various conclusions made in the above judgments as to the circumstances and sine qua non, which could justify the invoking of the drastic provision of Rule 14(ii) of the DA Rules and the second proviso - clause (b) of clause (2) of Article 311 of the Constitution. In this connection, the following extracts from the judgment in Satyavir Singh's case is quite relevant:-

"6(55) There are two conditions precedent which must be satisfied before Cl.(b) of the second proviso to Art.311 (2) can be applied. These conditions are :

(i) there must exist a situation which makes the holding of an inquiry contemplated by Art.311(2) not reasonably practicable, and

(ii) the disciplinary authority should record in writing its reason for its satisfaction that it is not reasonably practicable to hold such inquiry.

(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.

(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 Cl.(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."

10. As regards the scope for judicial review of the decisions in such cases, the following extracts from Satyavir Singh's case are relevant :-

"6. (106) In the case of a civil servant who has been dismissed or removed from service or reduced in rank by applying Cl.(b) of the second proviso to Art.311(2) or an analogous service rule, the High Court under Art.226 or this Court under Art.32 will interfere on grounds well-established in law for the exercise of its power

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of judicial review in matters where administrative discretion is exercised.

(107) The finality given by Cl.(3) of Art.311 to the disciplinary authority's decision that it was not reasonably practicable to hold the inquiry is not binding upon the Court and the Court would consider whether Cl.(b) of the second proviso or an analogous service rule had been properly applied or not.~~1188~~

(108) In examining the relevancy of the 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 and the Court will strike them down. In considering the relevancy of the reasons given by the disciplinary authority, the Court will not, 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 Cl.(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 a Court-room, removed in time from the situation in question. Where two views are possible, the Court will decline to interfere."

11. In the light of the above, the cases of the petitioners have to be examined, particularly as to the prevailing situation at the time when the dismissal orders were issued and it will have to be seen whether a reasonable man acting in a reasonable manner would have arrived at the same decision as the disciplinary authority did in both the cases before us. For this purpose, it is necessary to read carefully the relevant orders passed by the disciplinary

authority. The dismissal orders (Annexure '2' in both the petitions) are reproduced below :-

"Sri S.C. Nigam s/o Sri R.P. Nigam, H.S. Fitter Gr. II working in E-5 section arrived in shed on 24.7.81 and disappeared from the section after hanging the token and submitted the IOH proforma. Sri Nigam who has the habit of not devoting attention to his assigned job and has a quarrelsome and instigating nature (as is clear from the report of his section Incharge) collected workers from his/neighbouring sections and instigated them to remain away from work and arranged spontaneous demonstration outside the PPO Office at 10.15 hrs gheraoing officers/supervisors.

The undersigned considers that the above action of Sri S.C. Nigam is such as it render his further retention in public service undesirable. The undersigned has, therefore come to the conclusion that Sri S.C. Nigam working under A.H.F.O/E-5 section is not a fit person to be retained in service.

WHEREAS it is considered that the circumstance of the case are such that it is not reasonably practicable to hold an enquiry in the manner provided under Railway Servants (Discipline and Appeal) Rules, 1968.

Now, therefore, in exercise of powers conferred by Rule 14(II) of the Discipline and Appeal Rules, 1968, the undersigned hereby dismiss the said Sri S.C. Nigam from service with effect from 25.7.1981 afternoon."

"Sri B.K. Singh S/o Sri S.B. Singh, Highly Skilled Fitter Gr.II working in Elec Loco Shed, Kanpur, was caught at 9.20 hours on 24.7.81 by Sr.DEE/RS,CNB, idling-away his time in the Canteen. It was ordered that he be treated absconding from duty as he had not taken prior permission from any of his supervisors.

Sri B.K. Singh collected workers from his/neighbouring sections instigated them to abstain from work and arranged a spontaneous demonstration outside the PPO Office gheraoing the officers/supervisors due to which the shed working got completely paralysed.

The undersigned considers that the above action of Sri B.K. Singh is such, as to render his further retention in public service undesirable. The undersigned has,

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therefore, come to the conclusion that Sri B.K. Singh working under SEFO/M-6 Spl is not a fit person to be retained in service.

Whereas, it is considered that the circumstances of the case are such that it is not reasonably practicable to hold an enquiry in the manner provided under Railway Servants (Discipline and Appeal) Rules,1968.

NOW, therefore, in exercise of powers conferred by Rule 14(ii) of the Discipline and Appeal Rules,1968 the undersigned hereby dismiss the said Sri B.K. Singh from service with effect from 25.7.1981 (A.N.)"

12. It will be seen from the above that both the orders are almost identical except for the fact that in the case of Sri B.K. Singh, there is an additional allegation that he was caught at 9.20 hours on 24.7.1981 by Sr.DEE/RS idling-away his time in the Canteen. In both the cases the impugned order contains the allegation of absence from the place of work at that time. In the case of Sri B.K. Singh it is alleged that he collected workers from his/neighbouring sections and instigated them to abstain from work. It is further alleged that he "arranged spontaneous demonstration" outside the PPO Office gheraoing officers/supervisors, due to which the shed working got completely paralysed. In the case of Sri S.C. Nigam it is alleged that he disappeared from the section and was in the habit of not devoting attention to his assigned job. It is alleged that he has a quarrelsome and "instigating nature". As in the other case, it is alleged in this case also that he collected workers and instigated them to remain away from work and "arranged spontaneous demonstration" gheraoing officers and Supervisors. In both the cases the charges are not very specific. It is not stated in what manner the two persons instigated other workers and where. The duration of either the demonstration or the gheraoing of officers is not indicated. From these allegations themselves, it is impossible to conclude that it was not reasonably practicable to hold a normal enquiry. The impugned orders do not contain the reason for holding that it was

W.C.R

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not practicable to hold an enquiry, as recommended in both the Supreme Court cases, referred to above.

13. As prescribed in the judgments, referred to above, we called for the records of the case and perused the notings of the disciplinary authority leading to the issue of the impugned order. As stated earlier, the counter affidavit refers to a preliminary enquiry ~~report~~ as the basis for the conclusion of the disciplinary authority regarding holding of the enquiry. The learned counsel for the respondents referred to a report dated 24.7.1981 by a subordinate officer as the basis of conclusion of the disciplinary authority, in both the cases. The two preliminary reports are reproduced below:-

"Sri S.C. Nigam, highly Skilled Fitter Grade II of my section came in the morning and put the token in the Token-Board, but he thereafter disappeared from the section after getting IOH reports signed. While I was sitting in PPO on account of morning meeting, I saw Sri Nigam collecting the crowd of the staff and standing on a working table outside the PPO office, shouting loudly.

Sri Nigam never remains on the job or in the Section and is mostly found either in the Canteen or some-where else; and for this he has been warned several times also. He had been personally advised by me and my section Incharge but he did not mend his ways rather he is always engaged in leadership affairs.

Sri Nigam was also once caught by D.E.E./RS in the canteen while gambling for which a chargesheet has also been issued to him.

Sd/-
(R.C. Srivastava)
E.L.C. E-5 Sec.
24.7.1981."

"Shri B.K. Singh, highly skilled fitter Gr.II of my section having hung the token on the token board did not turn up to my section. Subsequently Sr.D.E.E.(RS) came to my section at about 9.25 hrs and told me that the above named staff was found in the canteen at about 9.20 hrs.

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Sr.D.E.E(RS) asked me to mark him absent and not to take on duty till further orders. After few minutes having come to know this incidence Shri B.K. Singh came to me and I informed him accordingly through my chargeman. Thereafter he starting shouting and collecting the other staff with the intention to organise demonstration which ultimately continued before the P.P.O till 12.00 hrs engaging most of the shed staff in it.

In past I had been steadily chasing him to work like other staff but he never worked and this practice of coming and hanging token continued till to-day. I also tried with my best of humility and nobility he should work but he did not concede to my advice and he was more busy in the leadership.

Sd/-
(O.P. Jayanant)
S.F.O.
24.7.81"

These reports referred to the petitioners disappearing from the sections and collecting crowd of staff and shouting loudly. It is stated that Sri Nigam is in the habit of remaining outside the section. Significantly, this refers to Sri Nigam being engaged "in leadership affairs". It is also stated that Sri Nigam was caught gambling earlier. Similarly, in the case of Sri B.K. Singh, it is stated that he was caught in the canteen at 9.20 hours without permission from the supervisory officer. It is stated that when he was told that he was to be marked absent and not taken on duty, he started shouting and collecting other staff. It is stated that this demonstration went on till 12-00 hours. Here also it is mentioned that Sri B.K. Singh was "busy in the leadership".

14. It will be noticed that these basic preliminary enquiry reports do not at all contain any reference to any "gheraoing". There is nothing in the preliminary report, of the kind which is referred to in para 6(59) of the judgment of the Hon'ble Supreme Court in Satyavir Singh's case. It is also clear that whatever demonstration was there, continued only upto 12-00 hours on 24.7.1981. There is no statement to the effect that there was any violence or threat

or coercion or general and continuing paralysis of work or general indiscipline, etc.

15. From the departmental file it is noticed that on the next day, viz. 25.7.1981 the file was put up by an intermediate official to the DEE(RS), who is the disciplinary authority. This intermediate official states in his note that Sri Nigam is generally in the habit of absconding from the work place and on 24.7.1981 he collected the shed staff and prevented them from doing the assigned work. He finally recommends "It is, therefore, suggested that he may be dismissed with immediate effect under Section 14(ii) of D & A Rules 1968 as it would not be desirable to conduct normal enquiries etc. (emphasis added).

16. In the case of Sri B.K. Singh also the same official has stated that Sri Singh was shouting and misguiding the staff. In his case also he has suggested the dismissal of Sri Singh under Rule 14(ii) as it would not be desirable to conduct normal enquiries.

17. Even the note of the intermediate official, referred to above, does not contain any reference to any gheraoing or any general violence or threat of violence or general indiscipline.

18. The noting of the disciplinary authority ordering the dismissal in both the cases is as follows :-

"Sri S.C. Nigam has been reported to have the habit of absconding from duty and in the past, he has been found gambling in shed premises during duty hours. He instigated the workers on 24.7.81 to abstain from work and arranged for spontaneous demonstration and gheroeing of the officers/supervisors. The undersigned, therefore, considers that the above action of Sri S.C. Nigam is such, as to render his further retention in public service as undesirable. It would not be practicable to hold normal enquiries because there is an apprehension of grave disorder if he is given chance to explain position regarding his conduct. The above conclusion has been drawn keeping in view his past conduct and behaviour on 24.7.81.

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Therefore, in exercise of powers conferred by the rule 14(ii) of the DAR 1968, the undersigned hereby dismiss the said Sh. Nigam from service w.e.f. 25.7.1981 (A.N.)."

"Sh. B.K. Singh has been reported to have the habit of not devoting attention to his assigned job and has a quarrelsome and instigating nature. He instigated the workers on 24.7.81 to abstain from work and arranged spontaneous demonstration and gheroeing of the officers/ supervisors. The undersigned, therefore, considers that the above action of Sh B.K. Singh is such, as to render his further retention in public service as undesirable. It would not be practicable to hold normal enquiries because there is an apprehension of grave disorder if he is given chance to explain position regarding his conduct. The above conclusion has been drawn keeping in view his past conduct and behaviour on 24.7.1981.

Therefore, in exercise of powers conferred by the rule 14(ii) of the DAR 1968, the undersigned hereby dismiss the said Sh B.K. Singh from service w.e.f. 25.7.1981 (A.N.)."

19. In the case of Sri Nigam, the disciplinary authority refers to his habit of absconding from duty and is having been found gambling in the past. It is stated that Sri Nigam instigated the on 24.7.1981 to abstain from work. The duration of abstention is not given. It is further stated, somewhat self-contradictarily, ~~the~~ that Sri Nigam "arranged for spontaneous demonstration and gheraoing ^{how} of the officers/supervisors". It is not seen / such demonstration and gheraoing can be both "arranged" and "spontaneous" simultaneously. Something is spontaneous when it is / caused without any external incitement. If the demonstration and gheraoing were spontaneous, the petitioner can hardly be blamed. The disciplinary authority states that it would not be practicable to hold normal enquiries because there is an apprehension of grave disorder if he is given chance to explain position regarding his conduct and that the above conclusion / ~~had~~ been drawn keeping in view his past conduct and

behaviour on 24.7.1981. We have already noted the preliminary report indicating the conduct of the petitioner on 24.7.1981. The conduct essentially consisted of absenting himself, and at the most instigating the workers to come out from the office and hold a demonstration, apparently for a short duration, upto 12-00 hours. There is no whisper of any such conduct as is referred to in the judgments of the Hon'ble Supreme Court in both the cases alluded to above, in respect of the persons whose services were dispensed with in those cases. It is not even alleged that Sri Nigam had threatened any one. There is no allegation at all of any general indiscipline of a continuing nature. It is, therefore, not at all understood how any reasonable person would have felt an apprehension of any grave disorder if a normal enquiry was conducted in the case of Sri Nigam. There must be at least some hint of a basis for any such apprehension on the part of any reasonable person.

20. Similarly in the case of Sri B.K. Singh also it is not seen how the conduct of Sri Singh on 24.7.1981 had led to the apprehension of grave disorder. Unlike /the Supreme Court cases, referred to above, there is no affidavit of the respondents indicating, even briefly, the threatening circumstances of the type mentioned by the Hon'ble Supreme Court, which had led to the conclusion that it was not reasonably practicable to hold a normal enquiry in these two cases.

21. In the above circumstances, we are of the opinion that no reasonable person would have come to the conclusion, in both the cases, that it was not reasonably practicable to hold an enquiry against both the petitioners in accordance with the prescribed rules. There is hardly any material in support of the action taken by the disciplinary authority in dispensing with the enquiry.

22. In the circumstances, both the writ petitions are allowed. The /impugned orders dated 25.7.1981 and the /appellate orders dated 21.6.1982 are quashed. Both the petitioners shall be reinstated by

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the respondents in service within one month from the date of receipt of a certified copy of this judgment. They shall be deemed to have continued in service from the date of dismissal to the date of reinstatement and shall also be paid back wages for this period, less amounts already paid to them. These payments shall be made within two months from the date of receipt of a certified copy of this judgment. The respondents are, however, at liberty to proceed in accordance with law against the petitioners for any alleged misconduct, if they are so advised. There will be no order as to costs.

hmcawal

MEMBER (A).

Dated: *Aug 7*
1990.

PG.

ph

VICE-CHAIRMAN.