Reserved

Central Administrative Tribunal, Allahabad.

Registration T.A.No.245 of 1987 (C.M.Writ Petition No.10073 of 1982)

P.Balan ... Petitioner

Vs.

Union of India &
2 others ... Respondents.

Hon.Ajay Johri, AM
Hon.G.S.Sharma, JM

(By Hon.G.S.Sharma, JM)

This writ petition filed by the petitioner under Article 226 of the Constitution challenging the validity of the order dated 19.12.1978 passed by the Divisional Mechanical Engineer (L) Izatnagar-respondent no.2 dismissing the petitioner from service by way of punishment and the order dated 31.7.1980 passed by the Divisional Railway Manager Izatnagar respondent no.3 allowing his appeal in part and the order dated 17.9.1981 passed by the respondent no.3 treating the petitioner dismissed has been received u/s.29 of the Administrative Tribunals Act XIII of 1985 from the High Court of Judicature at Allahabad.

2. Shortly stated, the material facts of this case are that the petitioner while posted as Fireman II at Mathura Cant. Station of the N.E.Railway on 4.12.1978 was served with a notice calling for his explanation within 3 days in respect of the reported assault made by him on S.S.Pachauri, Production Engineer Izatnagar Shops of the N.E.Railway. The petioner in his short explanation, copy annexure R-1 filed by the petitioner with his rejoinder affidavit, neither admitted nor denied his guilt and simply stated that on 4.12.1976 he was on duty from 8 a.m. to 4 p.m. which can be verified from the record. After considering the explanation of the

petitioner, the respondent no.2 vide impugned order dated 19.12.1978 observed that he was satisfied for the reasons recorded in writing that it was not reasonably practicable to hold an inquiry in the manner provided under the rules and in exercise of the powers vested on him as disciplinary authority under rule 14(ii) of the Railway Servants (Discipline and Appeal) Rules (hereinafter referred to as the DA Rules) read with proviso (b) to the second proviso of Art.311 (2) of the Constitution of India and considering the circumstances of the case, he had decided to dismiss him from service from the post of Fireman II w.e.f. 20.12.1978.

3. The petitioner preferred an appeal against the aforesaid order of dismissal and the respondent no.3 vide his order dated 31.7.1980 modified the order of punishment and instead of dismissing the petitioner reverted him for a period of 3 years to the post of Engine Cleaner without loss of seniority and the intervening period from the date of dismissal was ordered to be treated as Dies-Non. The petitioner did not resume the duty on the reverted post and by his subsequent order dated 17.9.1981, copy annexure 5, the respondent no.3 ordered that the petitioner refused in writing on 31.7.1980 to join the duty on lower post, his case stood finally closed and he stood dismissed from service. The petitioner has challenged the validity of the aforesaid 3 orders on the ground that there was no material before the disiciplinary authority for its satisfaction as to

why the normal enquiry was not reasonably practicable. No opportunity was given to the petitioner before awarding the penalty of dismissal or reversion and the orders passed by the respondent nos. 2 and 3 were against the principles of natural justice and arbirary and they were passed out of malice and prejudice on account of the trade union activities of the petitioner. No notice was given to the petitioner before dispensing with the inquiry and there was no justification for the disciplinary authority to exercise powers under rule 14(ii) of the DA Rules.

4. The petition has been contested on behalf of the respondents and in the reply filed on their behalf by the Asstt. Personnel Officer N.E.Railway Izatnagar, it has been stated that the petitioner was an employee of ill temparament and he always created disturbances adversely affecting the working of the railways and on a number of occasions he had apologised in writing for his disruptive and undesirable activities and he was also guilty of insubordination which was projected by an assault on Production Engineer S.S.Pachauri on 4.12.1978 which created a very serious situation and the railway administration was left with no choice but to take action against the petitioner under rule 14(ii) of DA Rules. The petitioner is not concerned with any recognised Railwaymen Union and his contention that the impugned orderes were passed on account of malice for his trade union activities is baseless and incorrect. The petitioner was given several opportunities to show cause against his misdeed of beating his superior officer in the workshop and the situation

demanded an action u/r.14(ii) in order to restore normalcy in the workshop. The fact that the punishment of dismissal awarded to the petitioner by the disciplinary authority was set aside by the appellate authority is an indication of the fact that the authorities were not working with biased mind but when the petitioner himself did not avail the opportunity of joining on the lower post after his reversion, the appellate authority had to restore the original dismissal order of punishment. Considering the attending circumstances of the case the action taken against the petitioner was fully justified and there is no ground for interference in this case.

5. In the rejoinder affidavit filed by the petitioner he reiterted that the action taken against him is not justified under the law and the circumstances did not justify the action under rule 14(ii) of the DA Rules and the orders passed by the appellate authority are also arbitrary and after the disposal of the appeal by order dated 31.7.1980, the appellate authority could not pass the subsequent order dated 17.9.1981.

6. After two landmark judgments of the Hon'ble Supreme Court in **Union of India** Vs. **Tulsiram Patel** (A.I.R. 1985 S.C.-1416) and **Satya Vir Singh** Vs. **Union of India** (A.I.R. 1986 S.C.-555), there appears to be no need to make the search for the law applicable to the case$_s$ when regular disciplinary proceedings are dispensed with and the disciplinary authority decides to take the action under the proviso (b) to the second priviso to Art.311(2) of the Constitution and rule 14(ii) of DA Rules. Under these provisions, if the disciplinary

authority feels satisfied for reasons to be recorded by writing that it is not reasonably practicable to hold an inquiry in the manner provided under the rules, the regular procedure of disciplinary inquiry can be dispensed with and the delinquent can be punished without such inquiry.

6. Interpreting these provisions in the aforesaid two cases, the Hon'ble Supreme Court had observed that the two conditions precedent to be satisfied are: (i) there must exist a situation which makes the holding of any inquiry contemplated by Art.311(2) not reasonable and practicable and (ii) the disciplinary authority should record in writing its reasons for such satisfaction. It was further observed that it is not a total or absolute impracticability, which is required by clause (b). What is requisite is that the holding of the inquiry is not practicable in the opinion of a reasonable man taking reasonable view of the prevailing situation. The disciplinary authority is the best judge of the prevailing situation that is why clause (3) of Art.311 makes its decision final on this question.

7., Considering the scope of the aforesaid provisions, the Hon'ble Supreme Court further observed that recording of reasons is a condition precedent and in the absence of this, the order dispensing with the inquiry and the order imposing penalty would be void and unconstitutional. Reasons need not contain detailed particulars but should not be vague or just repetation of language of clause (b). It is also not necessary to communicate the reasons to the delinquent but it will be expedient to do so to eliminate the possibility

of fabricating them subsequently and to enable the civil servant to approach the Court. Reasons are required to be reduced in writing so that the superiors may be able to judge whether the powers were properly exercised. No preliminary inquiry before passing an order to dispense with the inquiry is necessary.

8. In this way, the Hon'ble Supreme Court laid much emphasis on the fact that it is necessary for the disciplinary authority to record the reasons in writing why the regular disciplinary inquiry is not reasonably practicable. Such reasons are stated to have been recorded in writing by the respondent no.2 as mentioned in the impugned order dated 19.12.1978, annexure 2. The said reasons were neither communicated to the petitioner nor have been brought to the notice of the Tribunal. The reply filed on behalf of the respondents throws some light on the contemplated reasons dispensing with the regular inquiry and it appears therefrom that on account of the assualt made by the petitioner on a senior officer in the workshop, the workers became panicky and in order to restore normalcy in the workshop and to avert the serious situation created by this incident, the administration was left with no choice but to take action against the petitioner u/r.14(ii) of the DA Rules. This shows that the respondent no.2 had taken the action under rule 14(ii) out of expediency and not because of the fact that it was not reasonably practicable to hold an inquiry under the DA Rules against the petitioner. In our opinion, such a course or option was not open to the respondent no.2 and in the absence of any material before us, we are of the view that the respondents have

failed to establish that it was reasonably not practicable to take disciplinary proceedings against the petitioner under the DA Rules for the serious misconduct committed by him and as such there appears to be no foundation for the action taken by the respondent no.2 and the subsequent orders passed against the petitioner, therefore, cannot be sustained.

9. The respondent no.3 initially took a lenient view against the petitioner and decided to impose a comparatively much minor penalty. The ground taken by him for restoring the original penalty can, however, not be justified. In case, the petitioner had failed to resume his duty on his reinstatement on the reverted post, the further disciplinary action could be taken against him and without taking such action, no other penalty could be imposed on him. In his first order dated 31.7.1980, copy annexure 3, the respondent no.3 does not seem to have directed himself to examine whether the situation and the circumstances called for an action under rule 14(ii) of the DA Rules against the petitioner and as such, though much leniency was shown by the respondent no.3 in passing this order, the same cannot be said to be in accordance with law. We are accordingly unable to sustain the three orders passed by the respondent nos. 2 and 3 against the petitioner. It will, however, be open to the respondents to initiate fresh proceedings against the petitioner for the alleged misconduct committed by him which was not even clearly denied by him in his explanation. The settled law is that no person can be condemned without giving him reasonable opportunity of defending himself and as the respondent nos. 2 and 3 did not follow the correct procedure

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in bringing ~~with~~ home the guilt or misconduct to the petitioner, the impugned orders are to be set aside.

10. The petition is accordingly allowed and the impugned orders dated 19.12.1978,31.7.1980 and 17.9.1981 passed by the respondent nos. 2 and 3 are hereby set aside with liberty to the respondents to initiate fresh disciplinary proceedings against the petitioner for the alleged misconduct committed by him in accordance with law. The parties are directed to bear their own costs.

MEMBER(J)

MEMBER(A)

Dated: 4th Oct. 1988
kkb