

CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD.

Registration No.190/87

Bishram Singh applicant.

Vs.

Union of India and others. Respondents.

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

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

(Delivered by Hon'ble D.S. Misra)

This is an application under Section 19 of the A.T.Act XIII of 1985 against the order dated 22.12.86 passed by the Divisional Railway Manager,N.E.R.,Izatnagar,Bareilly confirming the order of termination of the services of the applicant passed by Asstt. Engineer,N.E.Railway,Fatehgarh.

2. The applicant's case is that he was working as Senior Trolleyman under PWI Special at Fatehgarh Railway Station; that on 23.6.85 a complaint was made by Sri R.C.Jain, PWI (respondent no.6) and the applicant was suspended on 22.7.85; that on his representation to the higher authorities, the suspension order was withdrawn on 22.8.85; that a disciplinary inquiry was held and several witnesses were examined but no final report was submitted; that respondent no.6 lodged a first information report on 3.10.1986 under Section 324 IPC at Police Station Kanauj on the malafide intention as he had failed to take any action against the applicant on the earlier complaint filed by him; that the aforesaid case is still under investigation and the applicant has obtained bail from the court of Judicial Magistrate Kanauj on 16.10.1986; that on

6.10.1986 a show cause notice was issued by respondent no.5 to the applicant for submitting his reply within 7 days of the receipt of the notice or by 14.10.1986 indicating the occurrence of 3.10.1986 as mentioned in the F.I.R.; that the said notice was received by the applicant on 17.10.1986(copy annexure 1); that on the same day a notice of termination of the services of the applicant was served on him by the Assistant Engineer N.E.Railway Fatehgarh(copy annexure 5); that the applicant preferred an appeal on 5.11.86 to the Divisional Engineer N.E.R. Izatnagar, respondent no.4, ~~who~~ informed him on 25.11.1986 that the applicant should appear through his defence counsel on 16.12.86 at 10 A.M.; that on 16.12.86 the applicant was present through out before the respondent no.4, but he was not heard by respondent no.4 and the applicant submitted a written reply indicating the legal grounds taken in the memo of appeal(copy annexure 3); that without considering the aforesaid reply, and legal grounds taken in the appeal, respondent no.4 dismissed the appeal on 22.12.86 with the approval of Divisional Railway Manager,N.E.R.,Izatnagar (respondent no.2) and confirmed the malafide and illegal order dated 17.10.1986. The applicant has prayed that the orders dated 22.12.86 and 17.10.1986 may be set aside and the applicant may be continued in service, given salary, and all benefits of service from the date of termination order.

3. In the reply filed on behalf of the respondents, it is stated that the applicant has rude behaviour and often commits misconduct by behaving in the manner most unbecoming of a government servant; that fact of suspension of the applicant on 22.7.85 is an incident of the behaviour of the applicant; that it is not correct that the applicant was put under suspension on any complaint made by Sri R.C.Jain  
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PWI; that on 3.10.1986, the applicant entered the office of P.W.I. Kanauj in drunken state and started beating Sri R.C.Jain P.W.I. with Gaiti and its handle using abusive language and threatening Sri R.C.Jain with dire consequences to other persons also who rushed at the spot to save Sri R.C.Jain; that Sri Jain did lodge an F.I.R. with the police about this incident and he also reported the matter to higher authorities of the railway administration vide his report dated 3.10.1986 (copy C.A. 1); that on 6.10.1986 a show cause notice was issued to the applicant under Rule 14(2) of the Railway Servants discipline and appeal )Rules 1968 and the applicant was required to submit his reply within 7 days from the receipt of the notice; that the notice was issued for his serious misconduct and misbehaviour with Sri R.C.Jain P.W.I. inasmuch as the applicant was found responsible for contravening para 22 of the Railway Service Conduct Rules 1966; that the applicant evaded to take delivery of the notice and consequently the same was displayed on the notice board as well as pasted at the railway quarter occupied by the applicant at Bilhore on 8.10.86; that the applicant did not submit any explanation to the show cause notice and the disciplinary authority passed an order dated 17.10.1986 imposing penalty of removing the applicant from service w.e.f. 17.10.1986; that the disciplinary authority, before awarding punishment fully satisfied himself that in the circumstances of the case, it is not reasonably practicable to hold inquiry as the accused employee, i.e., applicant was intimidating the eyewitness<sup>es</sup> of the incident; that the eye witnesses<sup>es</sup> of the incident, namely, Sri M.K.Raizada P.W.I-2 Kanauj, Iqbal Hussain, Time Keeper, Sudama Pandit Trolleyman, Ramesh Chandra and Ram Bilas Gangmen gave in writing that under the terror of applicant they will not appear as witnesses in presence

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of the applicant(copies of statements as C.A.2,3,4,5, and 6); that it is wrong to allege that the notice dated 6.10.1986 was served on the applicant on 17.,10.1986; that the order dated 17.10.1986 terminating the service of the applicant was passed by the competent authority as the applicant failed to submit any reply to the show cause notice dated 6.10.1986; that on 16.12.86 although the applicant was present in the office of respondent no.4 along with his counsel, but he did not avail the opportunity of personal hearing to avoid any question,which may have been asked by respondent no.4; that the respondent no.4 made an office note dated 19.12.86 of this fact (copy annexure 7); that respondent no.4 before dismissing the appeal has taken into consideration the entire circumstances of the case and the evidence available on the record; that the order dated 22.12.86 rejecting the appeal of the applicant is valid order and there is no merit in the application and the same is liable to be dismissed.

4.In his rejoinder-affidavit, the applicant has reiterated the allegations made in the claim petition and stated that Sri R.C.Jain was ~~un~~<sup>be</sup> malicous towards him becuase he had raised a grievance against him on 5.10.1985 and 22.6.85(copies R.A. 1 and 2); that the inquiry made against the applicant did not disclose any fault on the part of the applicant and the report dated 3.10.1986 of Sri R.C.Jain was false and malicious.

5.We have heard learned counsel for the parties and perused the documents on record. The main ground taken by the learned counsel for the applicant is that the order dated 17.10.1986 terminating the services of the plaintiff without holding any inquiry was violative of Article 311(2) of the Constitution of India. He has cited case law **Union of India Vs. Tulasi Ram Patel,reported in A.I.R.1985,S.C.,page 1416** in which the Hon'ble Supreme Court had observed as

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follows:

" That the disciplinary authority should record in writing its reason for its satisfaction that it is not reasonably practicable to hold inquiry contemplated by Article 311(2) of the Constitution (para 133 of the Judgment)

It is obvious that recording in writing of the reasons for dispensing with the inquiry must precede the order imposing the penalty (para 134 of the judgment).

The learned counsel for respondents contended that the impugned order was passed under Rule 14 of the Railway Servants(Discipline and Appeal) Rules 1968. Rule 14 reads as follows:

**Rule 14: Notwithstanding ,contained in R.9 to 13:-**

(i) Where any penalty is imposed on a Railway servant on the ground of conduct which has led to his conviction on a criminal charge; or

(ii) where the disciplinary authority is satisfied for reasons to be record by it is writing that it in not reasonably practicable to hold an inquiry is the manner provided in these rules;

(iii) where the President is satisfied that in the interest of the security of the State, it is not expedient to hold an inquiry 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:"

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The principle laid down by the Hon'ble Suprme Court in the above mentioned case is that the disciplinary authority should record in writing its satisfaction that it is not reasonably practicable to hold inquiry before imposing the penalty.

6. We may now examine whether in the instant case the disciplinary authority has complied with this requirement. On going through therecord, we find that it is to the credit of the disciplinary authority that even though a show cause notice and the reasons for doing away with the holding of inquiry was not required to be intimated to the delinquent officials, this was done in the instant case and when the applicant failed to submit his reply, the order of termination was passed. The order of termination also states that ~~the reasons have not been recorded in writing~~ that it is not reasonably practicable to hold inquiry in the prescribed manner. In support of this statement, copies of statements of eye witnesses of the incident dated 3.10.1986 have been filed, which disclose that the applicant had resorted to causing grave physical injury to the respondent no.6 and worst could have happened, if others had not intervened. While the alleged criminal acts of the applicant can be examined by the competent criminal court, the disciplinary authorities were quite justified in taking departmental action against the applicant. We are satisfied that the impugned order passed by the disciplinary authority does not violate the principles of Article 311(2) of the Constitution and is fully in accordance with Rule 14(2) of the Railway Servants (Discipline and Appeal) Rules 1968.

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7. We have also examined the appellate order and we have no reasons to disbelieve the observations of the appellate authority that inspite of opportunity being given to the applicant to be heard in person, he failed to make any oral representation in his defence. The wording of the appellate order is fully in accordance with the Railway Servants(Discipline and Appeal) Rules.

For the reasons mentioned above, we are of the opinion that there is no merit in the case of the applicant and the same is dismissed without any order as to costs.

A.M.  
8.11.87

J.M.

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