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RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD

Registration O.A.No.737 of 1987

Gajadhar

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Applicant

Versus

Union of India & Others Respondents.

Hon.D.S.Misra, A.M.
Hon.G.S.Sharma, J.M.

(By Hon.D.S.Misra, A.M.)

In this application under Section 19 of the Administrative Tribunals Act XIII of 1985 the applicant has sought quashing of the order dated 13.6.1986 passed by the Senior Divisional Engineer (Mechanical), Mughalsarai removing the applicant from service of the Railway Administration and order dated 23.7.87 passed by the appellate authority rejecting the appeal of the applicant.

2. The case of the applicant is that he entered the service of the Railway Administration in the year 1966 as a Casual Labour(Khalasi) and was promoted as Bridge Mistry grade II w.e.f. 20.2.84 at Mughalsarai; that he has been performing his duties with full devotion and sincerity and his work has always been fully appreciated by his superior officers and no

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complaint of any nature has ever been made against him; that the applicant had made certain complaints against his Bridge Inspector Shri K.C. Biswas due to which Shri Biswas was greatly annoyed with him and he devised wholly illegal means in order to see that the applicant was terminated from his permanent employment; that on the basis of a false report of Shri K.C. Biswas who is respondent No.2 an order of termination of service of the applicant was passed on 13.6.86 without giving any opportunity to the applicant and in complete violation of the principles of natural justice; that his appeal to the Divisional Railway Manager has also been dismissed by the Divisional Railway Manager by a non speaking order; that the order of termination is violative of Article 311(2) of the Constitution of India and it also suffers from the principles of natural justice, as no opportunity was given to the applicant.

3. In the reply filed on behalf of the respondents it is stated that the applicant was chargesheeted for unauthorised absence from his duty and for his misbehaviour vide order dated 24.8.85 (copy Annexure CA-I); that the allegations made against Shri Biswas, Bridge Inspector were incorrect and that the applicant did not obey the orders given to him;

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that on 6.6.86 Shri K.C. Biswas, Bridge Inspector gave instructions in writing to Shri Gajadhar, applicant to proceed to Gaya to work under BRI Special Gaya; that after about 15/20 minutes the applicant wanted back the acknowledgement receipt of the memo of transfer which was not agreed to by Shri Biswas; that Shri Biswas advised the applicant to see Sr.DEN/ Spl/MGS if he had any personal problem in carrying out those orders; that on hearing this, Shri Gajadhar jumped on Shri Biswas and tore the original letter into pieces and started assaulting him in his chamber; that one F.I.R. was lodged with O.C./Local Thana, MGS alongwith medical report (copy Annexure CA-II); that an enquiry was conducted by the Assistant Engineer(2)/ MGS and the report of the enquiry is at Annexure-CA.III; that after receiving the enquiry report the Senior Divisional Engineer issued the termination order of Shri Gajadhar under Rule 14(ii) of the Railway Servants (Discipline & Appeal) Rules, 1968; that the applicant's appeal was considered by the appellate authority, the Divisional Railway Manager who found that the case was fit to be dealt with under para 14(ii) of the Railway Servants (Discipline & Appeal) Rules, 1968 and rejected it on merit.

4. We have heard the arguments of the learned counsel for the parties. The applicant's contention

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is that the order of termination of his services without holding an enquiry is violative of the principles of natural justice and Article 311(2) of the Constitution of India. The contention of the respondents is that the order of removal has been passed under Rule 14(ii) of the Discipline & Appeal Rules by the competent authority after having gone through the entire actions of the applicant and also the spot position. It was not reasonably practicable to hold a departmental enquiry as the applicant is a local man and having lot of connection with unsocial elements; that the applicant took the law and order in his own hands and he forcibly snatched the office papers, tore them and inflicted injuries on his immediate boss Shri Biswas. If no such action had been taken the administration would have come to stand still. The learned counsel invited our attention to the enquiry report dated 8.6.86 of Assistant Engineer regarding assault on Shri K.C.Biswas by his Bridge Mistry Shri Gajadhar on 6.6.86. This report repeats allegations made in the reply and mentions the name of Shri Kamta Prasad Singh, Clerk of B.R.I./MGS who was working in the office which is just by the side of Shri Biswas's chamber and who came running hearing the unusual sound and rescued Shri Biswas. The report also mentions one other instance of misbehaviour of Shri Gajadhar with Shri Biswas and disobedience of his order in August, 1985. The report further mentions that

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the explanation of Gajadhar was called vide letter dated 24.3.85 and the service of a chargesheet on 14.5.86 regarding applicant's slack supervision and absconding from duty. This report further states " It is a fact that Shri Gajadhar, Bridge Mistry, MGS assaulted Shri Biswas who is still undergoing treatment in Railway Hospital. Shri Gajadhar is a local man and having lot of connection with unsocial elements. It is apprehended that staff may not come forward to give evidence at the time of enquiry. As such it does not appear that an impartial enquiry can be completed against Shri Gajadhar, Bridge Mistry. At the same time his presence in the service will not only adversely affect the morale of supervisory staff as well as the workers-but also encourage indiscipline among all categories of the staff. Hence it is recommended that stern disciplinary action against him should be taken at an earliest." The enquiry report has two enclosures containing the statement of Kamta Prasad Singh, Clerk grade 'B' and Subrata Adhikary, Apprentice Bridge Inspector Grade III. Kamta Prasad Singh is an eye witness to the assault on Shri Biswas by the applicant in the chamber of Bridge Inspector and the injury to the left eye of Shri Biswas and blood coming out of the mouth of Shri Biswas. Shri Subrata Adhikary in his statement

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stated that the applicant Gajadhar was given a letter with instructions to proceed to Gaya which was received and acknowledged by Gajadhar. The statement further says that Shri Gajadhar categorically told the Bridge Inspector Shri Biswas that he would not go to and Gaya ~~Station~~ became furious and on the refusal of Shri Biswas to return the paper Shri Gajadhar jumped on Shri Biswas and snatched the letter and tore down the original and its copy. Shri Gajadhar started boxing Shri Biswas very heavily. The statement also mentions that Shri Kamta Prasad Singh also arrived at that time and both of them saw Shri Biswas bleeding profusely. Shri Biswas was taken to Railway Hospital and he got admitted there.

5. We have considered the facts and circumstances of the case and we find that the disciplinary authority has not given any reason how he has come to the conclusion that it is not practicable to hold an enquiry. None of the witnesses has expressed that any apprehension/in case an enquiry is held into the matter, they will not be able to support their statement made to the Assistant Engineer on 6.6.86 in the preliminary enquiry. While Rule 14(ii) of the Discipline & Appeal Rules does give power to the disciplinary authority to pass an order of removal subject to his satisfaction that it is not reasonably

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practicable to hold the enquiry, it does not mean that such satisfaction is not subject to judicial scrutiny. In this case the disciplinary authority appears to have been influenced by such observation of the Assistant Engineer which is not based on any reliable evidence. No chargesheet was served on the applicant and he was not given any opportunity to explain the alleged misconduct on his part. The impugned order of removal was passed ex parte.

6. We have considered the contention of the parties. The contention of the applicant's counsel that the impugned order is violative of Article 311 (2) of the Constitution of India has been examined by us. In this connection it would be useful to refer to a very comprehensive judgement of the Hon'ble Supreme Court in Union of India Vs. Tulsi Ram Patel and other connected matters 1985 SCC(L&S)672 which remains the most authoritative judicial pronouncement on this subject. The conclusions reached by the majority in Tulsi Ram Patel's case were summarized in the case of Satyabir Singh & Others Vs. Union of India & Others 1986 SCC(L&S)1. The provisions of Sub clause (ii) of Rule 14 of the Railway Servants (Discipline & Appeal) Rules, 1968 are in accordance with sub clause (b) of the second proviso to Article 311(2) of the

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Constitution of India. The summary from para 55 reads as follows :-

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

(i) there must exist a situation which makes the holding of an inquiry contemplated by Article 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 clause (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 clause (3) of Article 311 makes the decision of the disciplinary authority on this question final.

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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 members 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.

61. The word 'inquiry' in clause (b) of the second proviso includes a part of an inquiry.

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It is, therefore, not necessary that the situation which makes the holding of an inquiry not reasonably practicable should exist before the inquiry is instituted against the civil servant. Such a situation can also come into existence subsequently during the course of the inquiry, for instance, after the service of a charge-sheet upon the civil servant or after he has filed his written statement thereto or even after evidence has been led in part.

62. It will also not be reasonably practicable to afford to the civil servant an opportunity of a hearing or further hearing, as the case may be, when at the commencement of the inquiry or pending it, the civil servant absconds and cannot be served or will not participate in the inquiry. In such cases, the matter must proceed *ex parte* and on the materials before the disciplinary authority.

63. The recording of the reason for dispensing with the inquiry is a condition precedent to the application of clause (b) of the second proviso. This is a constitutional obligation and if such reason is not recorded in writing, the order dispensing with the inquiry and the order of penalty following thereupon would both be void and unconstitutional. It is, however, not necessary that the reason should find a place in the final order but it would be advisable to record it in the final order in order to avoid an allegation that the reason was not recorded in writing before passing the final order but was subsequently fabricated.

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64. The reason for dispensing with the inquiry need not contain detailed particulars but it cannot be vague or just a repetition of the language of clause (b) of the second proviso.

65. It is also not necessary to communicate the reason for dispensing with the inquiry to the concerned civil servant but it would be better to do so in order to eliminate the possibility of an allegation being made that the reason was subsequently fabricated.

66. The obligation to record the reason in writing is provided in clause (b) of the second proviso so that the superiors of the disciplinary authority may be able to judge whether such authority had exercised its power under clause (b) properly or not with a view to judge the performance and capacity of that officer for the purposes of promotion etc.

67. It is, however, better for the disciplinary authority to communicate to the concerned civil servant its reason for dispensing with the inquiry because such communication would eliminate the possibility of an allegation being made that the reason had been subsequently fabricated. It would also enable the civil servant to approach the High Court under Article 226 or, in a fit case, the Supreme Court under Article 32.

68. The submission that where a delinquent government servant so terrorizes the disciplinary authority that neither that officer nor any other officer stationed at that place is willing to hold the inquiry, some senior officer can be

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sent from outside to hold the inquiry cannot be accepted. This submission itself shows that in such a case the holding of an inquiry is not reasonably practicable. It would be illogical to hold that administrative work carried out by senior officers should be paralysed just because a delinquent civil servant either by himself or alongwith or through others makes the holding of an inquiry by the designated disciplinary authority or inquiry officer not reasonably practicable.

106. In the case of a civil servant who has been dismissed or removed from service or reduced in rank by applying clause (b) of the second proviso to Article 311(2) or an analogous service rule, the High Court under Article 226 or this Court under Article 32 will interfere on grounds well-established in law for the exercise of its power of judicial review in matters where administrative discretion is exercised.

107. The finality given by clause (3) of Article 311 of 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 clause (b) of the second proviso or an analogous service rule had been properly applied or not.

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.

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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 judgement 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 a court room, removed in time from the situation in question. Where two views are possible, the court will decline to interfere."

By applying the ratio of the above pronouncement of the Hon'ble Supreme Court we find that the case of the respondents suffers from several shortcoming. In the first instance no memo of chargesheet containing the substance of the allegations and the intention to hold an enquiry was ever communicated to the applicant nor was any enquiry held before passing the impugned order. Secondly the disciplinary authority has failed to record circumstances which enabled him to come to the conclusion that it was not reasonably practicable to hold an enquiry. Thirdly, no evidence has been brought

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on record to enable us to judge the circumstances which prevented the holding of an enquiry. According to the report dated 8.6.86 of the Assistant Engineer, besides Shri K.C. Biswas, two other persons witnessed the alleged misconduct of the applicant. In the statement of second witness Subrata Adhikary, Apprentice BRI Grade III there is a mention that he witnessed the misconduct of the applicant and that Shri Kamta Prasad Singh, Clerk was also present there. However, in the statement of Shri Kamta Prasad Singh there is no mention of Shri Adhikary being present in the office room of Shri K.C. Biswas when the incident took place. Fourthly, there is no evidence on record to presume that the eye witnesses of the alleged misconduct of the applicant had any apprehension from the applicant or his agents regarding their personal safety in case they gave evidence against the applicant. In these circumstances we are of the opinion that the respondents have failed to substantiate ~~case~~ the satisfaction of the disciplinary authority that it was not reasonably practicable to hold enquiry was based on sufficient ground. Accordingly, we hold that the impugned order is violative ~~and~~ of the provisions of Article 311 (2) of the Constitution of India and must be declared illegal and void. Similarly, the order passed by the appellate authority, Divisional Railway Manager, Mughalsarai rejecting the appeal of the applicant dated 23.7.87

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does not disclose proper application of mind as required under the rules. The respondents have stated that the review petition filed by the applicant has also been rejected by the Chief Engineer, Calcutta vide his order dated 14.10.1987. A copy of this order is not available on record. In any case, as the order of removal passed by the disciplinary authority itself has been found to be illegal and void, the appellate order as well as the order passed in review petition also become void.

7. For the reasons mentioned above, the order dated 13.6.86 of removal of the applicant is quashed. The respondents are free to initiate fresh disciplinary action against the applicant. Parties shall bear their own cost.

Subarao
J.M.

Bhima
A.M.

Dated the 29th Aug., 1988.

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