

CENTRAL ADMINISTRATIVE TRIBUNAL,
ALLAHABAD BENCH,
ALLAHABAD.

D.A. No.742/87 and 743/87.

1. M.L. Vishwakarma & Another Applicants
(D.A. No.742/87)

vs.

Union of India & Others. Respondents.

2. N.N. Mishra Applicant
(D.A. No.743/87) *file*

vs.

Union of India & Others. Respondents.

Hon. Mr. Justice U.C. Srivastava, V.C.

Hon. Mr. K. Obayya, A.M.

(By Hon. Mr. Justice U.C. Srivastava, V.C.)

As common question of law and facts arises in these two cases and incidents being same these two applications are disposed of together. In the first case (D.A. No.742/87) there are two applicants and in the second case (D.A. No.743/87) there is one applicant and all these three persons have been punished because of their participation in the same incidents. It appears that in D.A. No.742 the applicant No.1 was Engine Cleaner and the applicant No.2 was also Engine Cleaner and the applicant in D.A. No.743 was Fireman-B, in loco-shed, Gorakhpur. An incident of fowdyism and hooliganism took place in the month of August, 1990. It appears that there were cross-complaints between the staff and others. But according to these applicants the Engine-Drivers were man-handled by public and this happened in subsequent days also and they were physically dragged by public to the office of Assistant Station Master and the Asstt. Station Master was stabbed and injured in his chamber. It was protested by the entire staff of loco-shed. The authorities agreed for genuine demand and a note was sent for armed-police, but no

security-staff was provided. Again some such incidents were repeated, but it is said that the running staff were not ready to work without security and the situation continued and the passengers were stranded. The annoyed mob entered the loco-shed and started damaging engines and assaulting workers. A report and complaint was also lodged in this respect. Senior Officers ~~discussed~~
~~and~~
~~in~~ the matter ~~invited~~ these applicants also for talk~~s~~. It appears that no settlement took place and these applicants were arrested and placed under suspension. Show cause notices were sent to various persons for setting fire and cutting wires etc. According to the applicants they proceeded on leave but when they went to join duties they were not allowed to do so. Proceedings under Rule 14 (ii) of Railway Servants (Discipline & Appeal) Rules, 1968 were taken without holding enquiry the applicants were dismissed from service. They filed appeal against the same and the appeals were dismissed. According to the applicants, these appeals were decided not by competent authority but by subordinate authority who has no jurisdiction in the matter. It appears that thereafter they did not take any action and that is why a plea has been taken by the respondents that this application is barred by time. In the mean-time the case which was pending with the Criminal Court against the applicants has ended in their acquittal by order dated 22-8-1984. After their acquittal the applicants moved applications for re-in-stating them, which were rejected.

2. The applicants placed reliance on the decision of Supreme Court in the case of Satyavir Singh Vs. Union of India decided on 12-9-1985 and also on the observations made by the Supreme Court in the decision in the case of

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Tulsi Ram Patel's case reported in AIR 1985, page 1476 that even in appeal or revision an enquiry can be ordered if the enquiry has not taken place earlier.

The respondents have contended that the appeal has been decided earlier and mainly because after the acquittal ^{were it} the representations filed does not par-take the nature of appeal. May it be so, but the representations filed by the applicants were dismissed and that is why the applicants approached this Tribunal praying that the powers which were exercisable by the respondents under Rules 22 and 25 of R.S.(D & R) Rules, 1968 were not exercised and the directives given by the General Manager vide letter dated 22-10-1986 in the light of of the Supreme Court decision has not been followed.

From the order which on records it appears that in the light of the directions given by the Supreme Court the representations filed by the applicant were considered, and the applications were dismissed in the month of December, 1986. The Division Railway Manager, in the opening sentence itself observed that the appeals against the dismissal from service were considered at this late stage in the light of the directives received vide G.M.(P)G.K.P's letter No. E~~7~~ 74/B/LJN/448(III) dt. 22-10-86 that the appeal should be considered on merit and not rejected on technical grounds. Since the rejection on technical grounds are not to be considered the appeals of all the three applicants are ~~being~~ considered strictly on merits. When the appeals are entertained on ~~merit~~ ^{case} merits, in the appellate authorities would have come to the conclusion that the ~~case~~ call for an enquiry, the enquiry could have been ordered at that stage also, ^{enquiry has} if nol taken place earlier. But the appellate authority, i.e. Divisional Manager, observed that he has gone

through the records and that he was convinced of the reasoning recorded by the disciplinary authorities that under the circumstances prevailing at the material time it was not practicable to hold an enquiry under rules 9 to 13 of the discipline and appeal rule 1968 and there was nothing to rebut the facts and that they have not expressed any regrets and that there was gross misconduct and indisciplined behaviour causing disruption in train movement and also in view of the fact that there is no technical flaw in the processing of matter and there was no reason to reverse the order passed by the disciplinary authorities which has passed an order dismissing the applicants from service.

3. The provisions of Rule 14(ii) will be resorted to, only when it is practically impossible to hold an enquiry. Even if there was mob violence, rowdyism and hooliganism and it was practically impossible to hold enquiry, the enquiry could have been held thereafter. Even if enquiry could not have been held after one day, two days or after one month, the enquiry could have been conducted subsequently. The enquiry could have been dispensed with only under the circumstances in which enquiry was impracticable. In this connection reference was made to the case of Anand Behari Vs. Rajasthan Road Transport and others 1991 (S.C. page 731) where it was held that an expedition of insult or humiliation would not be ground for dispensing with the enquiry. In yet another case, which was under the same rule the Chief Security Officer Vs. S.Bavi Das. 1991 (1 S.C. page 7219) similar view was taken wherein it was held that even if there is risk of future of witness, they will have to face the risk and in case there is no witness, that is not a ground for dispensing with the enquiry. In the instant case because of rowdyism and hooliganism at that particular point of time, which later on subsided and normal working was started, was not a ground for dispensing with the enquiry and

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the enquiry could have been held subsequently. Accordingly this application deserves to be allowed and both the orders are quashed. However, it is made clear that the respondents are at liberty to go ahead with the enquiry after giving reasonable opportunity of hearing to the applicants. But, during this period whether the applicants be taken back to service or not, this we leave to the respondents. In case they decide to hold enquiry they may do so within the period of two months from the date of receipt of the copy of this judgment, otherwise they may re-in-state the applicants to service. As the applicants themselves are greatly responsible for the happenings they are not entitled to salary or back-wages on the principles 'no work no pay', but the applicants are deemed to be continuing in service. In case the enquiry results in applicants' favour they will be re-in-stated to service. With these observations both applications stand disposed of finally. No order as to the cost.

sd/-
Member (A)

sd/-
Vice-Chairman

Dated: 31st August, 1992, Allahabad.

(tgk)

*prepared
on
7/9/92*