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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH.

ORIGINAL APPLICATION NO. 532/88,
Dated: the . . . 28th day of July, 1995.

Hon'ble Mr. S. Das Gupta, A.M.
Hon'ble Mr. T.L. Verma, J.M.

Faujdar son of Sri Navrang, resident of village
Chaurawan, Post Office Durlabhpur, District
Ghaziipur, at present working as Gangman-3, Janghal,
district Jaunpur.

.... Applicant.

By Advocate Mr. D.P. Singh.

Versus

1. Union of India, through General Manager,
Northern Railway, New Delhi.
2. The Divisional Railway Manager,
Northern Railway, Lucknow.
3. The Mandal Adhikshak Abhiyanta-I,
Northern Railway, Lucknow.
4. The Assistant Engineer, Northern Railway,
Pratapgarh.
5. Sri Rameshwar Prasad Verma, A.P.W.I., Marlehan,
District Jaunpur.

..... Respondents.

By Advocate Mr. A.V. Srivastava.

O R D E R.

By Hon'ble Mr. S. Das Gupta.

This original application was initially filed under
Section 19 of the Administrative Tribunal Act, 1985, challenging
the order dated 23.5.1989 placing the applicant under suspension
and seeking revocation of the order of suspension with full
pay and allowances for the entire period of suspension.
However, during the pendency of this application an order dated
9.9.1991 was passed by the respondent no. 4 by which the

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applicant was dismissed from service. The O.A. was accordingly amended and the said order dated 9.9.1991 was also challenged and the relief clause was expanded to include a prayer for setting aside the ~~said~~ order.

2. The applicant stated that he was appointed as a Gangman in 1965 and promoted as Trolleyman in 1978. It is alleged that although he was medically examined prior his appointment as Trolleyman in 1978, he was again medically examined in 1982 on account of the malice attitude on the part of respondent no. 5. It is further alleged that despite the fact that the applicant cleared the medical test, respondent no. 5 demanded a bribe of Rs.1000/- from the applicant to post him as Trolleyman and when this was refused, the latter made a frivolous complaint stating that the applicant being a previous convict was not entitled for appointment as Trolleyman. The applicant made a representation which, it is alleged, infuriated the respondent no. 5, who served a frivolous charge sheet alleging that the work of the applicant was not found satisfactory as a Gangman. This charge sheet is stated to bear no name of the witnesses and without any disciplinary enquiry an order of penalty of stoppage of increment was passed on 1.3.1984. This was challenged by the applicant in the Tribunal, but the same was dismissed as having become time barred. Thereafter, it is alleged that the applicant was arbitrarily suspended on 6.3.1984 and thereafter by an order dated 7.11.1985 the penalty of withdrawing the facilities of free passes and P.T.Os. was imposed on him. This order was appealed against but the appeal was rejected by the respondent no. 4 by an order

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dated 15.7.1985.

3. The applicant went on to allege that on 23.3.1987 respondent no. 5 and 2 other P.W.s, namely Sri Verma and Sri Mishra called the applicant, hurled abuses on him and when he remonstrated they manhandled him and deprived him of Rs.1300/- which he had received as salary and Holi advance. The applicant says that he lodged an First Information Report to the police about this incident. He also represented to higher authorities through letter dated 23.7.1987. Thereafter, it is stated, that two ante-dated orders purported to be of 23.3.1987, one in English and the other in Hindi, were found by the applicant pasted on his residence. This stated that he was being suspended by the respondent no. 3 with immediate effect. Copies of these orders are at Annexure A-2 and A-3. The applicant appealed against the said order and as no action was taken on the same, he approached this Tribunal, ~~through~~ this original application seeking the relief of quashing the order of suspension. However, during the pendency of the application, a charge sheet dated 25.4.88 levelling the same charge as in the earlier charge sheet dated 13/20.7.1984 was served on him. Copy of this charge sheet is at Annexure - 1. Copy of the earlier charge sheet dated 13/20.7.1984 is at Annexure - 3. The applicant submitted his reply to the charge sheet denying the charges levelled against him. A copy of the applicant's explanation dated 11.6.1988 is at Annexure- 4. In his explanation he has inter alia stated that the allegation about his conviction is false and an enquiry on the same charge had already been completed on the basis of the earlier charge sheet, which also contained a similar charge and which was closed withdrawing

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applicant's facility of free passes etc. However, another letter dated 8.7.1991 was issued to the applicant stating that it had been ascertained that the applicant had undergone one year's rigorous imprisonment on his conviction under Section 3 of R.P.U.P. Act and asking him to make submissions, if any, in this regard within a period of 30 days. The applicant accordingly submitted his reply reiterating that the charge of conviction and rigorous imprisonment was false. Respondent No. 4, however, passed the order dated 9.9.1991 by which the applicant was dismissed from service. This order, a copy of which is Annexure A-6, has been challenged by filing an amendment application.

4. That the main ground for challenging the impugned order of dismissal is that the order is violative of the provisions contained in Article 311 of the Constitution. It is also stated that the order has been passed without complying with the procedure outlined in the Railway Servant (Discipline and Appeal Rules, 1968 (in short, DAR) Rules. It has been further alleged that the charge no. 3 being in the charge sheet dated 25.4.1988 was also levelled against the applicant in the previous charge sheet dated 13/20.7.1984 on which an order was already passed withdrawing the facility of free passes and P.T.Os. by an order dated 7.11.1987.

5. The main counter affidavit has been filed on behalf of all the respondents, although there are allegations of mala fide against respondents no. 5 and 6, who have been impleaded in person, they have chosen not to file separate affidavit refuting the allegations levelled against them in the original application. This counter affidavit was filed to the

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original application before the same was amended to bring forth the subsequent facts of the dismissal of the applicant from service. In this affidavit a preliminary objection to the maintainability of the unamended application was taken on the ground that a similar application was filed by the applicant before the Tribunal in which in addition to other reliefs, quashing of the suspension order dated 23.3.1967 was also prayed for. It was further stated therein that subsequent to the issue of an order of suspension, and the applicant was served with the charge memo after considering his reply to the charge sheet an enquiry had also been ordered. It was claimed that in view of these circumstances the D.A. was not maintainable.

6. After the applicant amended this original application in order to challenge subsequent order of dismissal from service, the respondents filed a supplementary counter affidavit. This also was an affidavit filed on behalf of all the respondents. In this affidavit, apart from disputing the applicant's contentions that he was confirmed as Gangman and later promoted as Trolleyman, it is stated that while the applicant was working as Gangman under PWI I Jhanghai in 1968, he was arrested by the R.P.F. on 13.7.1972 under Section 3 of the convicted R.P.U.P. Act. After the trial the applicant was convicted and was sentenced to undergo rigorous imprisonment for one year. The applicant had preferred an appeal against the same, but the same was rejected and thereafter the applicant served out the entire period of sentence. He thus remained unauthorisedly absent from 25.9.1970 till 2.4.1972. The fact of his conviction and undergoing imprisonment was never brought to the knowledge of the respondents by the applicant. However, after coming

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out of the jail, the applicant obtained reengagement as Gangman in 1972 stating that his absence was due to illness of his wife. The respondents have stated that it was only on 14.4.1981 that they came to know for the first time that the applicant had been prosecuted and convicted in a criminal court in 1968 and that he had also served out the sentence and, thus, he got reengagement by fraudulent means. Thereafter, a show cause notice was issued to the applicant, but despite reminders the applicant did not submit any explanation. An enquiry was made from R.P.F. and they informed by their letter dated 5.10.1991 that the applicant had been prosecuted and convicted under Section 3 of the R.P.U.P. Act. It is alleged that on 29.1.1984 respondent no. 3 along with respondent no. 5 went on a routine inspection and having found the work of the applicant as unsatisfactory advised him to improve his performance, whereupon the applicant became enraged and used abusive language to the respondent no. 5. A charge memo for minor penalty was served on him and after considering the explanation the competent authority issued an order dated 1.3.1984 imposing penalty. It is stated that thereafter again on 16.3.1984 the applicant misbehaved with his Controlling Officer and was placed under suspension with immediate effect. Thereafter a charge sheet for major penalty was served on him on 16.4.1984. Subsequently again on 23.9.1985 on a routine inspection the respondent no. 4 found the working of the applicant unsatisfactory and when the latter failed to give any satisfactory explanation, a charge memo for minor penalty was issued to him on 1.10.1985. This charge memo resulted in withdrawing the facility of free passes and P.T.Os.

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Thereafter, it is alleged that on 23.3.1987 the applicant misbehaved with his Controlling Officer as a result of which the applicant was placed under suspension. Thereafter, a minor penalty charge sheet dated 25.4.1988 was issued. On receipt of the reply to the charge sheet an enquiry was ordered. Earlier one D.P. Srivastava, PWI Special was appointed as Inquiry Officer. However, due to administrative exigencies he could not finalise the enquiry. Thereafter one H.S. Gupta PWI was appointed for enquiry into the matter. The Inquiry Officer advised the applicant by several letters to nominate his Defence Assistant, but the applicant failed to do so. Inquiry Officer adjourned the proceedings and fixed another date for the enquiry. On that date the applicant submitted a representation instead of giving reply to the charges or nominating his Defence Assistant. It is alleged that he also misbehaved with the Inquiry Officer and thereafter the Inquiry Officer closed the enquiry and submitted no report to the disciplinary authority.

7. It has been further stated in the supplementary counter affidavit that the disciplinary authority after taking entire matter on record agreed with the Inquiry Officer and issued a show cause notice on 8.7.1991 to the applicant. Thereafter, after taking into account the reply of the applicant to the show cause notice the disciplinary authority imposed a penalty of dismissal by order dated 9.9.1991. The applicant, it is stated, has not filed an appeal against the said order of dismissal and, therefore, the present application is not maintainable.

8. The applicant has filed two rejoinder affidavits. In the original R.A. he has sought to refute the contention of

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the respondents in the original counter affidavit. The contentions in the supplementary rejoinder affidavit are basically re-affirmation of the contentions in the amended application.

9. We have heard the learned counsel for both the parties and went through the records. As the facts stated in the counter affidavit did not give a complete picture of the disciplinary proceedings against the applicant, we requisitioned the relevant records containing disciplinary proceedings and perused the same carefully. The main controversy which falls for our consideration and determination is whether the impugned order dated 9.9.1991 by which the applicant was dismissed from service is sustainable in law. We do not propose to consider whether the order of suspension was valid or not as in any case it was an inter-locutory order and it is not the case of the applicant that the same was issued by an authority not competent to do so. The main challenge to the impugned order dated 9.9.1991 is on the ground of its being violative of Article 311 of the Constitution and the provisions contained in the DAR procedure for major penalty. We have considered the validity of this ground by making a reference to record of the disciplinary proceedings which was produced before us by the respondents.

10. It appears from the perusal of the record that a charge sheet dated 13/20.7.1984 was served on the applicant for imposing of a major penalty. ^{to} The reference ^{the article of charges} - the charge sheet indicates that ^{the} same relates to the alleged conviction of the applicant under Section 3 of the B.P.U.P. Act. After the applicant submitted reply to the same, the respondents appointed one G.P. Singh PWI Special as Inquiry Officer by an

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order dated 16.10.1984. The Inquiry Officer in his report dated 1.3.1986 came to the conclusion that none of the charges levelled against the applicant was established. With regard to specific charge relating to the applicant's previous conviction, the Inquiry Officer inter alia observed as follows:-

"Sri Munni Lal RPF/JNH prosecution witness No. 1 has produced a photostat copy of "Register No. 9 1969 S.No. 32/1929 of the court of Sri P.P. Mathur Spl. Rly. Magistrate N. Railway, Varanasi P.S. Cantt Dhara 3 R.P. U.P. Act Govt. V.S. Faujdar date 8.2.70 in which the entries show that one Sri Faujdar S/o Kunwar Vill. Gobedha P.S. Birno Distt. Ghazipur was convicted for one year R.I. in crime case No. 32/1629. Besides this not being a copy of judgement of the Court it does not tally in the crime case no. (Given by R.P.F./JNH as 14 U/S 3 RP UP Act of 17.6.68) or with other particulars of the accused of this enquiry who is Faujdar S/o Naurang of Vill. Churmanpur of District Ghazipur and not Faujdar S/o Kunwar Vill. Gobedha of Ghazipur Distt. It is also not clear whether this case of any Faujdar was sponsored by RPF/JNH or P.S. Cantt Varanasi. So how can this documents be taken to be a proof for the allegations against the accused of this enquiry. 2ndly there is no record that what happened to the appeal of that Faujdar of Gobedha who was bailed out on 8.1.70 for appealing against the judgement of 8.1.70 as stated in the 2nd para of letter No. RPF/RPF/13 RP(U.P.) Act. BSB/84 dated 3.6.1984 from Coy. Commander 35th Coy. N.R. BSB (photostat copy at 38 in the file)."

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11. That It appears from the record that the respondent no. 5 through a letter dated 2.4.1986 sought to debunk the report of the Inquiry Officer ascribing bias on his part in favour of the present applicant. It appears that thereafter penalty was imposed on the applicant by an order dated 7.11.1985 by which free passes and PTOs were stopped.

12. It appears that thereafter certain enquiries were conducted into the allegation that the applicant was previously ^{ly} ^{-ed} convicted and sentenced to R.I. and on the basis of enquiry fresh charge sheet dated 25.4.1988 for imposition of major penalty was issued. One of the charges levelled was that he was previously convicted and sentenced to undergo rigorous imprisonment. After receipt of reply of the applicant to the charge sheet an order dated 12.5.1988 was issued appointing one Sri G.P. Srivastava, PWI Special as an Inquiry Officer. This Inquiry Officer in a letter dated 12.12.1989 raised certain points which, to our mind, are very relevant and should have occurred to the respondents themselves. The points he made indicate ^{-ted} that enquiry into the charges ^{would} suffer from lacunae. Firstly, ~~that~~ the reasons for non-acceptance of the finding given by Sri G.P. Singh in the previous enquiry has not been recorded anywhere and, therefore, a fresh enquiry in the matter shall be in contravention of the relevant rules and liable to be quashed by a court of law. The other point raised by him was that the controversy between the opinion of Sri G.P. Singh and the respondent no. 5 shall be sorted out only when the case is enquired into by some police officials, who could verify the

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correct name, the father's name and residential address of the person, who was convicted under Section 3 of the R.P. U.P. Act. It is not clear what action was taken on this letter of the Inquiry Officer, but it seems that enquiry was thereafter entrusted to one Sri H.S. Gupta, This Inquiry Officer in his report dated 7.9.86 stated that the applicant did not cooperate ^{in writing} in the enquiry and, therefore, no further enquiry was being conducted by him. He did not record any finding as to whether the charges against the applicant were established or not. Thereupon a notice dated 8.7.1991 was issued to the applicant and after receipt of reply of the applicant to the notice, the impugned order dated 9.9.1991 dismissing the applicant from service was issued.

13. The preliminary objection ~~has been~~ taken by the respondents in the original application initially filed viz. that a similar application was pending before the Tribunal in which the same relief i.e. quashing of suspension order was prayed for and that after the suspension was ordered a charge sheet had already been issued and enquiry ordered, does not merit serious consideration in view of subsequent development in the case involving the dismissal of the applicant. The real challenge in the application as amended is, ~~there are~~ to the order of dismissal and we shall now proceed to examine the validity of the grounds taken by the applicant to challenge the same order.

14. The doctrine of pleasure in respect of the civil servants is tempered by the provisions contained

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in Article 311 of the Constitution, which provides certain safeguards to the civil servants against arbitrary use of authority by the administration in dismissing, removing or reducing ^{them} in rank. This Article provides that (1) No person who is a member of a civil service of the Union or an All-India service or a civil service of a State or holds a civil post Under the Union or a State shall be dismissed or removed by an authority subordinate to that by which he was appointed or reduced in rank except after an inquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges.

15. The above safeguards are, however, subject to certain exceptions, ~~these~~ ^{the} safeguards ~~would~~ not be available inter alia where a person is dismissed or removed or reduced in rank on the ground of conduct, which has led to his conviction on a criminal charge.

16. The provisions of Article 311 are enshrined in various Discipline and Appeal Rules enacted by different departments of the Union of India. In respect of the Railway employees these provisions are contained in the DAR. The procedure of imposition of any ^{major} penalty is contained in Rules 9 to 13 ^{ibid}. The exceptional ^{safeguards} circumstances in which the ~~same~~ contained in Article 311 can be circumvented ~~is~~ find a place in Rule 14 of the DAR. Sub-rule (i) thereof reads as follows:-

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14. Special procedure in certain cases --

Notwithstanding anything contained in Rules 9 to 13:-

(1) where any penalty is imposed on a Railway servant on the ground of conduct which has led to his conviction on a criminal charge:-

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The disciplinary authority may consider the circumstances of the case and make such orders thereon as it deems fit;

provided that the Commission shall be consulted where such consultation is necessary before any orders are made in any case under this rule."

17. It would, thus, appear from the provisions of the rules quoted above that when Railway servant is convicted on a criminal charge, the disciplinary authority may either proceed ^{under} Rules 9 to 13 of the OARs and impose a major penalty after following the procedure outlined in these Rules or it may dispense with such procedure and in terms of Rule 14(1), consider the circumstances of the case and impose any penalty on the ground of conduct, which has led to his conviction on a criminal charge.

12. It would appear from the facts narrated in the foregoing paragraphs that allegation relating to his previous conviction formed a part of the charges levelled against the applicant vide charge sheet dated 13/20.7.84. As has already been observed (supra) we have seen from the records of the disciplinary proceedings that none of the charges against the applicant was established. Thereafter,

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the matter was closed by imposing a penalty of withdrawal of free passes and P.T.Os. The matter was raked up again and a fresh charge sheet was issued in which one of the charges related to his alleged previous conviction. This procedure of levelling a charge which was earlier enquired into and found to be not established and which finding was not disagreed by the disciplinary authority would normally vitiate in disciplinary proceeding based on the subsequent charge sheet. Moreover, even this subsequent charge sheet was not brought to a logical conclusion as we have already pointed out (supra), the Inquiry Officer Sri G.P. Srivastava did not conduct an enquiry but pointed out certain lacunae in the procedure being adopted by the disciplinary authority. The Inquiry Officer, who was subsequently appointed H.S. Gupta also did not hold any enquiry on the ground of non-cooperation by the applicant. In the DAR there are provisions under which enquiry could be completed even if delinquent Railway servant adopts dilatory tactics. The Inquiry Officer, however, chose a line of least resistance and simply submitted a report that the enquiry could not be completed. The disciplinary authority at that stage could have given a direction to the Inquiry Officer to complete the enquiry and thereafter would have taken further action against the applicant in terms of the rules. Instead of doing this, the disciplinary authority issued a show cause notice to the applicant communicating the fact of his alleged previous conviction and directing him to make his submissions. The applicant's submission that the allegation was false had no impact on the decision of the disciplinary authority and the applicant was dismissed from service.

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13. Although the respondents have not taken this plea, we could perhaps presume that the respondents were competent to dismiss the applicant from service in exercise of powers conferred on them by the Rule 14(1) of the DAR. This exercise of power can, however, ^{be made} ~~be made~~ only if it has been clearly established that the applicant was actually convicted in a criminal case and had undergone imprisonment. We have seen from the record of the disciplinary proceedings that a letter was written by the Assistant Engineer, Pratapgarh, addressed to Senior D.P.O. Lucknow seeking advice on the action to be taken against the applicant on the alleged conviction in a criminal case under Section 3 of the R.P. U.P. Act. In this letter, it has been stated that after making enquiries from the court and going through the true copy of the Register of the Court and service record of the applicant certain discrepancies were noted. Thus, the father's name of the person, who was convicted was shown as Kurwar in the copy of the register of the court, ^{while} the record of the service of the applicant indicated his father's name as Naurang. Also the name of the village of the person convicted was Gobadha as per the register of the court, ^{while} the name of the village of the applicant as per his service record was Churmanpur. It is, therefore, clear that it has not been established beyond all reasonable doubts that the person, who was convicted in the criminal case under Section 3 R.P.U.P. Act was the same as the applicant. There is nothing in the records to show that any efforts were made to reconcile these discrepancies and to identify the applicant as ^{the} a person who had been convicted and sentenced to imprisonment. In the absence of such an identification, the disciplinary authority would not have dismissed the applicant as it did by the

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impugned order dated 9.9.1991.

14. The respondents have taken a plea that as the applicant did not file an appeal against the order of dismissal, the application was not maintainable. We cannot accept this plea as at the time when the impugned dismissal order was passed, the applicant had already approached this Tribunal challenging the earlier order of suspension and it was during pendency of this application that the order of dismissal was passed. As the Tribunal had already taken cognizance of the case, the respondents ^{would} ~~should~~ ^{been} have restrained from disposing of any appeal even if the same was filed by the applicant.

15. In view of the foregoing the application is partly allowed. We hold that ~~that~~ the impugned order dated 9.9.1991 dismissing the applicant from service is wholly arbitrary and illegal and we set aside the same. The applicant shall be reinstated in service forthwith with all consequential benefits except that so far as back wages are concerned for the period from the date of dismissal from service till the date of reinstatement, only 50 percent of the wages shall be paid to the applicant. The respondents shall be at liberty to proceed afresh against the applicant on the ground of his alleged previous conviction in accordance with law but before doing so, we direct that a thorough enquiry shall be held at a senior level to be nominated by the ~~District~~ ^{Divisional} Railway Manager to conclusively establish the identity of the person, who was convicted and sentenced to imprisonment under Section 3 of R.P.U.P. Act. The parties shall bear their own cost.

J.M.

A.M.