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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH

Registration O.A.No.603 of 1988

Hira Lal

....

Applicant

Vs.

Union of India & Others

Respondents

Hon'ble Mr. A.B. Gorthi, Member (A)

Hon'ble Mr. S.N. Prasad, Member (J)

(By Hon. Mr. A.B. Gorthi, A.M.)

This application has been filed by Shri Hira Lal challenging the order of dismissal dated 19.12.1985 passed under Rule 14(ii) of the Railway Servant (Disciplinary & Appeal) Rules, 1968. The relief sought by the applicant is that the order of dismissal as also the appellate order rejecting his appeal be set aside and that he be re-instated in service with all consequential benefits.

2. During 1985 the applicant was working as Electric Driver Grade-A in Allahabad Division, Northern Railway. On 18.11.85 the applicant ~~who~~ was the Driver of Prayagraj Express (91 Up) from Kanpur to New Delhi. Shri Jagdish Prasad was the Assistant Driver. The allegation against them ~~is~~ that they halted the train and allowed a woman named Sushila Gaur to enter the Locomotive and thereafter molested her. After committing ^{the} said crime, they were alleged to have stopped the train and allowed the woman to detrained. She ^{filed} ~~alleged~~ an A.I.R. on the basis of which the applicant was suspended with effect from 29.11.1985. The criminal case in the Court of Sessions Judge, Etawa ended in the conviction of both Hira Lal and Jagdish Prasad who were sentenced to 7 years rigorous imprisonment ^{each} under Section 376 of the Indian Penal Code. An appeal against the conviction is pending and learned counsel for the applicant states that the High Court stayed the operation of the judgment of the ^{Sessions} ~~the~~

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Court.

3. In the meantime, the Railway Authority¹ invoked Rule 14(ii) of the Railway Servant (Disciplinary & Appeal) Rules, 1968 and dismissed Hira Lal without holding any enquiry on the ground that an inquiry under the circumstances was not reasonably practicable. The applicant² made an appeal against the penalty or dismissal, but the appellate authority rejected the appeal.

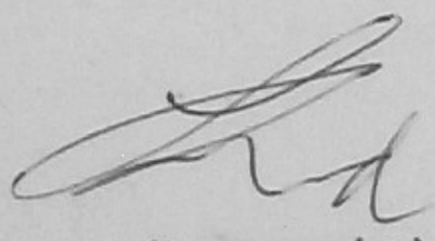
4. The respondents in their Counter Affidavit have brought ~~it~~^{out} that both Hira Lal and Jagdish Prasad committed a very serious crime of a degrading nature while on duty, and with a view to cover up the crime, they have also manipulated the relevant records. The respondents further stated that since the woman was raped by Hira Lal and Jagdish Prasad and there being no eye witnesses, it was considered that holding^{of} an enquiry would be impracticable. Accordingly they were justified in invoking Rule 14(ii) of the Railway Servant (Disciplinary & Appeal) Rules, 1968.

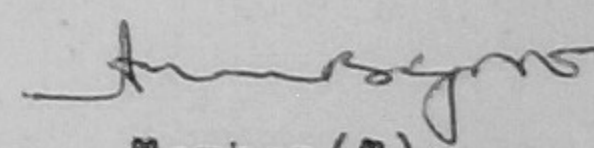
5. A careful examination of Counter Affidavit shows that there were no reasonable grounds in this case to dispensed with a departmental enquiry. The molested women could have been examined, giving an opportunity to the delinquent employees to cross-examine^d her^{and} and to lead evidence in their defence. The apprehension of the respondents appears to be that an enquiry would not bring out ^{any} worthwhile evidence. They have also contended that Smt. Sushila Gaur refused to come openly for a direct enquiry because of social ^{stigma} ~~restraint~~. This explanation of the respondents does not appear to be plausible in view of the fact that she did appear before the Sessions Court and gave evidence.

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6. In our ^{ed}considerable view, Rule 14(ii) of the Railway Servant (Disciplinary & Appeal) Rules, 1968 should not ^{be} ~~been~~ invoked ^{as} ~~is~~ ^{so} regularly or casually. It is not a provision meant to be invoked in cases where an enquiry may not bring out ^{any evidence, or} ~~any~~ on the ground that ^a ~~the~~ witness is unwilling to appear before the Inquiry Officer. In the case of Chief Security Officer W. Singasan Rabi Das, 1991 (1) SCC page 729 the Hon'ble Supreme Court, elaborating on the significance of ~~the~~ Article 311(2) Second Proviso(b) of the Constitution of India, observed that where there is total absence of sufficient material or good grounds for despatching with the enquiry before imposing the order of penalty, the said punishment cannot stand legal scrutiny. In view of the facts and law as aforesaid we are of the view that the impugned order of dismissal as also the appellate order rejecting the appeal of the applicant cannot be sustained. Accordingly we order that the order of dismissal as also the appellate orders be set aside.

7. We ^{an} ~~inform~~ ^{ed} that the applicant ^{already} ~~became~~ ^{due} ~~otherwise~~ ² eligible for superannuation. In view of this, the applicant shall be deemed to be continued in service from the date of his dismissal to the date of his superannuation. There shall however be no order as to back wages for the period for that he did not work. The application is disposed of in the above terms. No order as to costs.


Member (J)


Member (A)

20th May, 1992, Alld.

(sph)