

RESERVED

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD

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Allahabad : Dated this 5th day of January, 1999.

Original Application No. 1373 of 1992

District : AllahabadCORAM:-

Hon'ble Mr. S. Dayal, A.M.

Hon'ble Mr. S.K. Agrawal, J.M.

Shiv Rao
 Son of Bholu Ram
 R/o Gawalbigha
 P.S. Rampur,
 District-Gaya

(Sri S.K. Dey, Advocate)

. Applicant

Versus

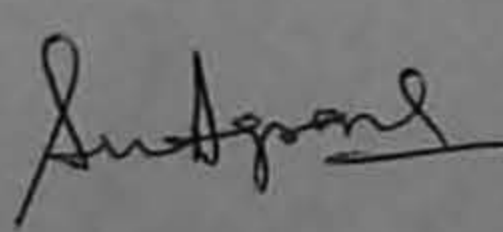
1. Union of India
Through the General Manager,
E. Rly, Calcutta-1
2. Divisional Railway Manager,
E. Rly, Moghalsarai.
3. The Divisional Mechanical Engineer (P),
E. Rly, Moghalsarai.

(Sri A.K. Gaur, Advocate)

. Respondents

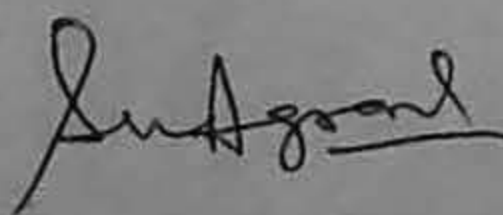
O R D E RHon'ble Mr. S.K. Agrawal, J.M.

In this OA filed under Section 19 of the Administrative Tribunals Act, 1985, the applicant makes a prayer to quash the impugned order of removal from service dated 14-7-1996 (Annexure-2) and appellate orders dated 21-6-1989 and 8-5-1990 (Annexures-5 & 7) and he may be continued in service with all consequential benefits.



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2. In brief the facts of the case as stated by the applicant are that the applicant was appointed in Railway Service on 12-2-1980 on compassionate ground. He was promoted coal checker on 11-11-1983. On 12-11-1985 the Loco Foreman was murdered and the applicant was falsely implicated in this case registered under Section 302 I.P.C. He was arrested on 12-12-1985 and he was released on bail on 19-5-1986. It is stated that the applicant was suspended vide order dated 25-1-1986 and later on he was removed from service vide order dated 14-7-1986. It is stated that neither he was charge-sheeted nor any inquiry was held against the applicant. No reasons were told to the applicant for dispensing with the inquiry under Rule 14(ii) of the Railway Servants (Discipline and Appeal), Rules, 1968. The applicant faced a trial and he was acquitted vide order and judgement dated 12-6-1987. After the judgement, the applicant filed O.A. No.317/1988 before the Patna Bench and the O.A. was allowed and respondents were directed to consider his application dated 12-1-1988 for duty within four months. It is further stated that vide the judgement dated 5-9-1988 the applicant made an application but his application was rejected without any justification vide order dated 21-6-1989 (Annexure-A-5). The applicant filed OA No.200/1989 again before the Patna Bench and the Patna Bench directed the respondents to consider his representation vide the judgement dated 19-1-1990. The applicant made a representation but again the it was rejected vide order dated 8-5-199. It is stated that the order of removal was recalled as it was issued without holding any inquiry against the applicant. The order of removal was not issued



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by a competent authority and when the applicant was acquitted, there was no reason or circumstances to warrant his removal. The applicant, therefore, sought the relief as mentioned above.

3. The counter affidavit was filed. It is admitted that Sri Mehdi, the then Loco Foreman Gaya was murdered and the applicant was involved in that case. He was suspended and later on removed from service vide order dated 14-7-1986. It is also admitted that the applicant was removed from service without charge sheet and without holding any inquiry on the ground that witness will not come forward to depose against the applicant. Before issuing the order of punishment, the disciplinary authority gave notice to the applicant and inquiry could not be held as the circumstances did not warrant. The case of the applicant was thoroughly considered by the Divisional Railway Manager and thereafter a speaking order was passed. It is stated that the applicant was correctly removed removed from service by invoking the provisions as contained in Rule 14(ii) Railway Servants (Discipline & Appeal) Rules, 1968. Removal order was issued by the Divisional Mechanical Engineer, who was competent and it was just and proper in the circumstances.

4. A rejoinder affidavit was also filed reiterating the facts stated in the O.A.

5. Heard learned lawyer for the applicant and learned lawyer for the respondents and perused the whole record carefully.



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6. Learned counsel for the applicant has submitted that the order of removal of the applicant from service and subsequent orders of removal rejecting his appeal etc. are illegal as after his acquittal in the criminal case, no such, circumstances existed to remove the applicant from service without charge-sheeting and without holding inquiry. In support of his contention, he referred to the judgement dated 31-5-1995 delivered in O.A. No.815/89.

7. On the other hand, learned lawyer for the respondents supported the action of the respondents and argued that in the circumstances prevailing at that time, it was not reasonable practically to hold inquiry against the applicant. Therefore, before the impugned order of removal, no inquiry could be done and the impugned order of removal was issued by invoking the provisions given in Rule 14(ii) of Railway Servants (Discipline and Appeal) Rules, 1968.

8. We gave thoughtful considerations to the rival contentions of both the parties and perused the whole record.

9. The services of a Government servant can only be terminated after an inquiry in accordance with Rules but the inquiry can also be dispensed with when it is reasonable and practically not possible to hold the same as per the provisions given in the Rules. In Satyabir Singh Vs. Union of India, A.I.R. 1986 S.C. p-555, it was held that

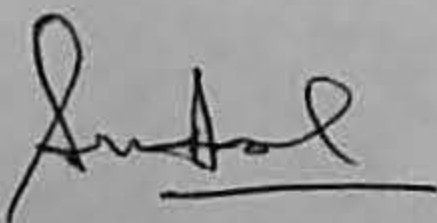
Satyabir Singh

the finality given by Clause (3) of Article 311 to 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 (sic) had been properly applied or not.

10. In Salim Sardar Sheikha Vs. Central Railway Workshop (1987) 5 ATC R-417 (Bombay), it was held that legality and propriety of the decision can be examined by way of judicial review.

11. On the basis of the above legal propositions in examining the relevancy, the reason for dispensing with the inquiry, the court will consider the circumstances which according to the disciplinary authority made it to come to the conclusion that it was not reasonably practicable to hold inquiry. 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.

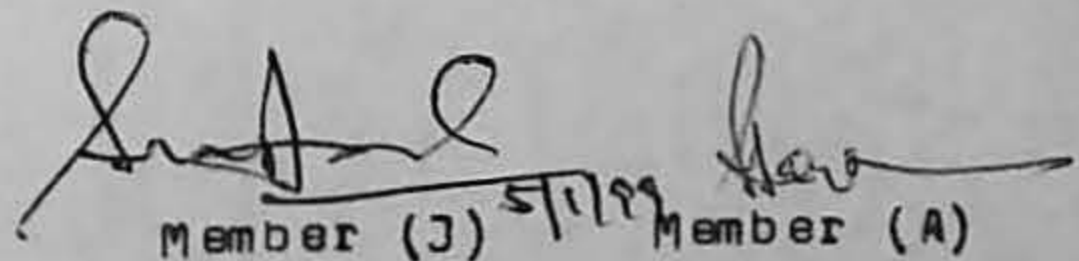
12. In the instant case the averments in the counter affidavit do not justify the grounds/circumstances under which the disciplinary authority came to the conclusion that it was not reasonably practicable to hold an inquiry in the manner provided under the Rules. In such circumstances, we reached to the conclusion that the decision of the respondents to dispense with the inquiry did not rest on the ~~ipse~~ ~~dixit~~ concerned authority and it was only an outcome of the whims or caprices of the concerned authority.



Therefore, the order of the disciplinary authority removing the applicant on such basis cannot be sustained in law and is liable to be quashed.

13. In the result this application is allowed and the order dated 14-7-1986 (Annexure-A-2), 21-6-1989 (Annexure-A-5) and 8-5-1989 (Annexure-A-7) are quashed, and the applicant shall be reinstated in service within a period of one month from the date of receipt of this order. In the facts and circumstances of this case, the applicant is not entitled to any back-wages on the basis of 'no work no pay'. The period during which he was under suspension and the remaining intervening period shall be treated on duty for all purposes except back-wages. Since more than 15 years have lapsed after the incident, we do not consider it appropriate to give opportunity to the respondents to proceed further against the applicant in departmental inquiry.

14. There shall be no order as to costs.


Member (J) 5/1/89 Member (A)

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