

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD

Allahabad this the 21st day of Nov. 1996

Coram - Hon'ble Dr. R.K. Saxena, J.M.
Hon'ble Mr. D.S. Baweja, A.M.

O.A. NO. 1139 of 1992

Gyan Singh, S/o Sri Ram Sagar, Khalasi under I.O.W., N.Rly.
Fatehpur, r/o Quarter No. 89-B, Fatehpur.

Applicant.

Vs.

1. Union of India through General Manager, Northern Railway, Baroda House, New Delhi.
2. Divisional Railway Manager, Northern Railway, Allahabad.
3. Divisional Superintending Engineer (II), Northern Railway, Allahabad.
4. Assistant Engineer, Northern Railway, Fatehpur.

Respondents.

Counsel -

Sri Anand Kumar, Advocate - For Applicant

Sri P. Mathur, Advocate - For Respondents

Judgment

By Hon'ble Dr. R.K. Saxena, Judicial Member

This is the application moved under section 19 of the Administrative Tribunals Act, 1985 by Gyan Singh, challenging the impugned order of his dismissal from service.

2. The facts as are set out in the O.A. are that the applicant was working as Khalasi under the respondents. Since @he took part in the activities of the Trade Union and was elected as Vice-President of the Northern Railway Men's Union, Fatehpur Branch, the respondents did not like the same. One Sri Nagendra Singh, S.O.M. (Engineering Deptt.) made a complaint dated 8.7.91 to the respondent no.4 levelling the charge of his intimidation by the applicant. The s Nagendra Singh was a rival of the applicant in the e

:: 2 ::

of Fatehpur Club; and was annoyed for a complaint having been made by the applicant against him for selling the engineering departmental goods in the market. The news of illegal sale of departmental goods in the market was published in the local newspaper. It further annoyed him. Instead of taking any action against Nagendra Singh, the respondent no.4 called for the explanation of the applicant who demanded copies of the documents which were relied upon. Neither the charge-sheet was served on the applicant nor were given the copies of the documents.

3. It is alleged that in the meantime a murderous assault was made by some unknown persons on Dr. Jagdish Chandra, Divisional Medical Officer, Northern Railway, Fatehpur. Taking advantage of this incident, the officials of Engineering Deptt., Fatehpur of Northern Railway got the applicant implicated through Dr. Jagdish Chandra in the said case of assault. The applicant was bailed out and was granted five days leave w.e.f. 5.12.91 but at the same ^{the} order of suspension of the applicant was passed on 24.12.91 giving retrospective effect from 6.12.91.

4. It is averred that the disciplinary authority, without serving any charge-sheet and invoking the rule 14(ii) of Railway Servants (Discipline and Appeal) Rules, 1968, passed the order of dismissal on 24.12.91. The orders of suspension and dismissal which were passed on one and the same date, were served on the applicant on 26.12.91 when he was confined in jail. The applicant preferred an appeal but the same was dismissed on 4.5.92 without applying mind. Hence this O.A. with the relief as is already disclosed.

:: 3 ::

5. The respondent no.4 has filed counter-reply on behalf of all the respondents. It is averred that the applicant had created terror amongst the co-workers by holding out threats and creating hooliganism. It is furthered that his activities were considered prejudicial to the interest of Railway Administration; and was creating unhealthy situation. It is also contended that the employees were so much intimidated by the applicant that they were afraid of giving evidence in the inquiry against him. It is pointed out that the applicant is a criminal because he is involved in several criminal cases. Those cases are listed in para 3 (B) of the counter-reply and are given as below:-

- (i) Crime No.90 of 1986 u/s 396/412 I.P.C., P.S. Jagatpur of Distt.- Raibareilly.
- (ii) Crime No. 92/86 u/s 25 Arms Act, P.S. Jagatpur of Distt, Raibareilly
- (iii) Crime No. 143/86 u/s 3(7) of GRIHABAND EVAM SAMAJ VIRODHI NIVARAN ADHINIYAM, 1986,
- (iv) Crime No.2/86 u/s 302, 307, 404, 120B, 412 of P.S. Laloli, Distt.-Fatehpur.
- (v) Crime No.1189/91 u/s 147, 148, 149, 452, 307 I.P.C. and u/s 7 Criminal Law Amendment Act of P.S. Kotwali, Fatehpur.

6. The respondents further pointed out that the applicant threatened and assaulted Sri Nagendra Singh, S.O.M. Sri J.P. Arya, Asstt.I.O.W. Grade III and Dr. Jagdish Chandra, Divisional Medical Officer, Fatehpur. The applicant is also alleged to have stopped the track-work near Malwan station on 4.12.91. It is stated that these grounds compelled the Disciplinary Authority to take action under rule 14(ii) of the Rules. The order of dismissal has been justified. Similarly is justified the order passed by the appellate authority.

7. The allegation of rivalry and bias against

Sri Nagendra Singh is denied. On the other hand, it is pointed out that Sri Nagendra Singh had reported the entire incident to the respondents. According to the counter-affidavit, Sri Nagendra Singh was so much disturbed that he wanted to tender his resignation to avoid any untoward happening either to himself or to any member of his family. It is indicated that the applicant should have impleaded the person or persons as respondent(s) against whom the allegation of malafides were levelled. The O.A. is, therefore, opposed.

8. The applicant has filed rejoinder reply restressing and reaffirming the facts which were disclosed in the O.A.

9. We have heard the counsel for the parties and have gone through the file.

10. There is no dispute on the point that no charge sheet was served on the applicant nor was any inquiry held. It is, however, admitted to both the parties that one Nagendra Singh had complained against the applicant on 8.7.91 and the explanation of the applicant was called for. The copy of the complaint of Nagendra Singh has been filed by both the parties. The facts which were mentioned in the complaint were that the applicant approached Nagendra Singh who was busy in taking attendance of the employees on 8.7.91 and demanded that Jagraj Meena be shown present on 7.7.91 although neither he was present nor had he performed duties. Sri Nagendra Singh declined to oblige, and thereupon the threats were held out by the applicant.

11. Sri Nagendra Singh had given instances of similar treatment meted out to other persons, such as assistant

:: 5 ::

engineer, S.N. Tripathi, Awasthi P.W.I., Goswami Thekedar and Ganeshi Lal Carpenter. Sri Nagendra Singh was threatened to be involved in any case, his son being kidnapped and he himself (Nagendra Singh) being killed. Sri Nagendra Singh, therefore, offered resignation from the post.

12. Dr. Jagdish Chandra had lodged report annexure A-9 about the assault on him. He also made a statement annexure C.A.-V in which the applicant was indicated. Dr. Jagdish Chandra clearly wrote that the applicant had created so much terror that no witness dared to depose against him.

13. The respondents have also filed annexure C, A-1 which is the report of Kotwali police of Fatehpur. Several cases of murder, murder with dacoity, attempt to murder, forming unlawful assembly and of keeping unlicensed arms are pending against the applicant. According to his own admission in the O.A., he remained confined in jail when the copy of the order of dismissal was served on him.

14. This is the material which was taken into consideration by the disciplinary authority to reach the conclusion that it was not reasonably practicable to hold an enquiry against the applicant. He, therefore, passed the order of dismissal after exercising the power under rule 14(ii) of Railway Servants (Discipline and Appeal) Rules. What has been urged in the decision of Union of India Vs. Tulsi Ram Patel (1985) 3 SCC 398 is that the reasons should be given clearly by the disciplinary authority as to why holding of an inquiry is not reasonably practicable. The subjective satisfaction is also needed. Looking to the facts as are disclosed

above and which have been detailed in the counter-affidavit, one is bound to reach the same conclusion which was taken by the disciplinary authority. No person is likely to come forward to depose against a person like the applicant who is involved in more than one case of murder and who could assault a medical officer and could threaten his superiors and colleagues alike with dire consequences. Even in judicial review of this satisfaction, no different view can be formed. We are, therefore, of the view that the disciplinary authority was right in reaching the conclusion that an inquiry was not reasonably practicable.

15. The disciplinary authority had expressed the view in the first part of the order by which the applicant was dismissed from service. The question arises whether this procedure is legal or not. The learned counsel for the applicant finds illegality in it. He has placed reliance on Jaswant Singh Vs. State of Punjab and Others 1991 SCC(L&S) 282 and Union of India and Others Vs. R. Reddappa and another (1994) 26 A.T.C. 117. In the case of Jaswant Singh, their Lordships of Supreme Court explain subjective satisfaction and hold that subjective satisfaction should base on objective facts. It is further held that subjective satisfaction is open to judicial review. Incidentally, in this case also, the grounds for not holding an enquiry were given in the same order of dismissal. Their Lordships did not find any illegality in it. The appeal was allowed because the subjective satisfaction was not found established on the scrutiny of facts. Thus the law as discussed in the case of Jaswant Singh, does not find fault with this procedure.

16. The ratio of the other case as cited above is that the jurisdiction to exercise the power under rule 14(ii) is dependent on existence of material primary fact. If there is no material on which any reasonable person may come to the conclusion as is envisaged in the rule then the action is vitiated due to erroneous assumption of jurisdictional fact. In this way, the controversy which is raised before us, is not in existence there. Thus none of the case-law supports the applicant. Consequently no illegality can be attached to the order which mentions the grounds for not holding the inquiry and dismissal from service as well.

17. On the scrutiny of the facts and legal position, we come to the conclusion that there is no merit in the O.A. which stands dismissed. No order as to cost.

(D.S. Baweja)
Administrative
Member

(Dr. R.K. Saxena)
Judicial Member

Typed and Compared. /M.M./