

RESERVED

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD

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Allahabad : Dated this 5 th day of January, 1993.

Original Application No. 320 of 1993

District : Sonebhadra

CORAM :

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

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

Mahmood Ali
S/o Shri Sadayat Ali,
R/o Village & Post Kharahi,
Distt Sonebhadra.

(Sri RK Saxena/Sri PK Kashyap, Advocates)

... .Applicant

versus

1. Union of India
Through Divisional Railway Manager,
Northern Railway,
Allahabad.
2. Assistant Engineer,
Northern Railway,
Chunar.
3. Senior Divisional Engineer,
Northern Railway, Allahabad.

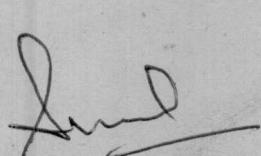
(Sri AV Srivastava, Advocate)

... . Respondents

O R D E R

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

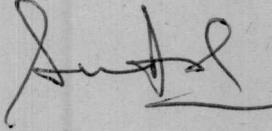
In this OA filed under Section 19 of the Administrative Tribunals Act, 1985, the prayer of the applicant is to quash the order of dismissal dated 22-5-1992 and the appellate order dated 27-1-1993 and to direct the respondents to reinstate the applicant on the post of Gangman with all back-wages and consequential benefits.


2. In brief the facts of the case as stated by the applicant are that the applicant was working as a Gangman at Chunar in P.W.I. Churk, who was prejudiced against the applicant as the applicant was pressing the demand of C.P.C. scale for Gangmen and for regularisation.

It is stated that the respondents implicated the applicant in a false criminal case by listing a F.I.R. under Sections 332, 323, 353 and 506 I.P.C. and the charge sheet was filed against the applicant, ~~for~~ the act of alleged assault on Madhav Rao, P.W.I. It is stated that the respondent no.2 wrongly stated to have sent charge sheet to the applicant by registered post whereas no registered letter was sent to his home address. The applicant was sick from 16-4-1992 to 19-5-1992 and when he reported on duty after medical fitness, respondent no.3 removed the applicant from service vide order dated 22-5-1992 on the basis of concocted story. The applicant filed an appeal which was also dismissed vide order dated 27-1-1993.

It is stated that without issuing charge sheet and without holding inquiry against the applicant, the applicant was removed illegally from the service. There was no reason to dispense with the inquiry and to invoke the provisions under Rule 14(ii) of Railway Servants(Discipline & Appeal) Rules, 1968 as during the pendency of the criminal case, no departmental inquiry can be held. Therefore, the respondents have violated Rule 9 of Railway Servants (Discipline & Appeal) Rules, 1968 and Articles 14, 16 and 311 of the Constitution of India. In this way by this OA the applicant has sought the relief as mentioned above.

3. A counter affidavit was filed. The respondents have denied that they were prejudiced with the applicant because of his Trade Union activities. The applicant was C.P.C. scale holder before termination and he was not implicated in any false case whereas it is stated that on 14-4-1992, the applicant assaulted Sri Madhav Rao, P.W.I., Chunab. Sri Madhav Rao lodged a FIR and FIR No.194/1992 under Section 332, 323, 353 and 506 I.P.C. was registered against the applicant. It is stated that a major penalty



charge sheet was sent to the applicant by registered post at his home address, which was returned by the postal authorities as the applicant refused to receive the delivery. On 8-5-1992 when the applicant went in the office of R.W.I Churk, Sri G.R. Singh, R.W.I, tried to hand over the suspension order and major penalty charge sheet to the applicant but the applicant refused. Thereafter the entire matter was put before the disciplinary authority who by a reasoned order dated 22-5-1992 dismissed the applicant from service by invoking the provisions of Rule 14(ii) of Railway Servants (Discipline & Appeal), Rules, 1968. It is stated that the action of the respondents was perfectly justified in the facts and circumstances and the disciplinary authority had no other option. It is also stated that there is no violation of Rules of natural justice and the provisions of Articles 14, 16 and 311 of the Constitution of India.

4. A rejoinder affidavit has been filed reiterating the facts stated in the O.A.

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

6. It is admitted fact that the services of the applicant were terminated because a criminal case was registered against him which was still pending on the date of passing the impugned order of dismissal. It is also an admitted fact that the applicant was dismissed from service as he is alleged to have refused the major penalty charge sheet and the order of suspension sent to him by registered post. It is stated by the learned lawyer for the applicant that the applicant never refused the charge sheet and the whole story against the applicant is concocted. It is also stated that even if it is presumed that the applicant had refused the charge sheet, the appropriate course was

to proceed *ex parte* against the applicant and not to invoke the provisions of Rule 14(ii), Railway Servants (Discipline & Appeal) Rules, 1968. The general rule is that no employee shall be punished without issuing memorandum of charges and without giving an opportunity to defend himself. In cases, where major punishment is proposed to be imposed, disciplinary proceedings, as provided under Rule 9 of D.A. & R Rules, is to be withheld. There is, however, an exception to the general rule as contained in Rule 14 of the D.A. & R Rules. Sube Rule 2 of Rule 14 that :-

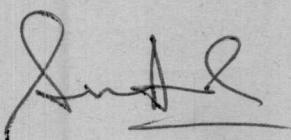
**notwithstanding anything contained in Rules 9 to 13:-*

where the disciplinary authority is satisfied, for reasons to be recorded by it in writing, that it is not reasonably practicable to hold an inquiry in the manner provided in these rules; o

The disciplinary authority may consider the circumstances of the case and make such orders thereon as it deems fit that disciplinary proceeding should not be dispensed with lightly or arbitrarily. It has been observed by the Hon'ble Supreme Court in *Tulsi Ram Patel's case reported in AIR 1985 (SC) Page 141.*

provision
The said decision further provides that the satisfaction of the disciplinary authority, that holding of disciplinary proceedings was not reasonably practicable, should be based on certain objective facts. It has also been held that reasons for such satisfaction should be based on certain objective facts.

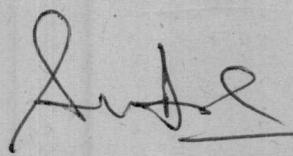
7. In the case of Jaswant Singh vs. State of Punjab and others reported in A.I.R. 1991 SC 385, the Hon'ble Supreme Court held that the decision to dispense with the departmental inquiry cannot be rested solely on the *ipse dixit* of concerned authority. When the satisfaction of the concerned authority is questioned in a court of law, it is incumbent on those who support the order to show that the satisfaction is based on certain objective facts and is not the outcome of the whim or caprice of the concerned officer.



8. In the case of UOI Vs. Tulsiram Patel, the Hon'ble Supreme Court held that ;-

- "(i) The decision to do so (dispensing with enquiry) cannot rest solely on the *ipse dixit* of the concerned authority. It is incumbent on those who support the order to show that the satisfaction is based on certain objective facts and is not the outcome of whim or caprice. There must be independent material to justify the dispensing with the inquiry envisaged by Article 311(2).
- (ii) The satisfaction must be that of the authority who is empowered to dismiss, remove or reduce the officer in rank and he must apply his mind to it. As Clause (3) clearly says, there must be ~~weak~~ decision of the authority empowered to dismiss etc., and then the reasonableness of the decision will be immuned from being challenged in a Court of law.
- (iii) The authority empowere to dismiss, etc., must record his reasons in writing for denying the opportunity under Clause (2), before making the order of dismissal. etc.
- (iv) The power must be exercised bona fide, having regard to relevant considerations".

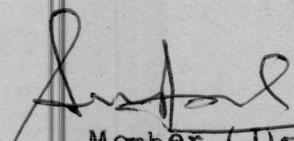
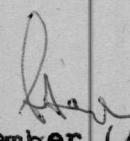
9. In the instant case the only basis for invoking the provisions of Rul 14(2) of Railway Servants Discipline & Appeal), Rules, 1968 is that the applicant refused to accept the letter containing major penalty charge sheet which was sent to him by registered post. It is not a sufficient ground objectively to hold that it was not reasonable and proacticable to hold inquiry in the manner provided in this Rule. It is not the case of the respondents that the whereabouts of the applicant were not know. The applican has denied this fact even in his OA on oath. We, therefore, are of the considered opinion that it is not a fit case in which the respondents could have invoked the provisions of Rule 14(2) of Railway Servants (Discipline & Appeal) Rules, 1968 and to pass the impugned order.



10. We, therefore, allow this OA and quash the impugned orders dated 22-5-1992 & 27-1-1993 and direct the respondents

to reinstate the applicant in service without any backwages within one month from the date of receipt of the copy of this order. It would, however, be open to the department if so advised to proceed with the disciplinary proceedings initiated against the applicant.

11. There shall be no order as to costs.


Member (J) 5/1/91 
Member (A)

Dube/