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RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH

ALLAHABAD

Dated: This the 28th day of November 1996

CORAM : Hon'ble Mr. T. L. Verma JM
Hon'ble Mr. D.S. Baweja AM

ORIGINAL APPLICATION NO. 1135 Of 1993

Nagendra Bahadur S/O Sada Brij,
R/O 108/C 10th Avenue, Loco Colony,
Allahabad. ----- Applicant

C/A Sri Sudhir Agrawal

VERSUS

1. Union of India through Secretary,
Ministry of Railways,
New Delhi.
2. Divisional Electrical Engineer,
Rolling Stock Operation,
Northern Railway, Allahabad
----- Respondents

C/R Sri Prashant Mahatur

ORDER

By Hon'ble Mr. T. L. Verma JM

This application was filed under section 19 of the Administrative Tribunals Act, 1985 for quashing the order dated 21.7.1993, whereby the applicant had been removed from service and for

issuing direction to the respondents to reinstate the applicant in service and treat him to be in continuous service for all practical purposes with all consequential benefits.

2. The applicant at the relevant time was posted as Asstt:Electrical Driver under C.T.F.O/R.S.O. Allahabad. He is alleged to have stopped train movement at Allahabad including the trains carrying essential commodities and passengers on 17.7.1993. He is ^{also} alleged to have mobilised his co-workers for the disruptive work so as to paralyse running of trains and thereby indulged in activities prejudicial to the interest of railway administration and to the general public.

3. The services of the applicant were ^{terminated} ~~discontinued~~ without holding inquiry on the above allegations. It is stated that due to fear of harassment and physical intimidation of the witnesses, holding of disciplinary proceedings was not reasonably practicable.

4. The applicant moved this application without filing departmental appeal challenging the punishment on him. For the reasons stated in our order dated 18.8.1994, application was admitted notwithstanding the fact that alternative departmental remedy was not exhausted. The applicant, however, filed a departmental appeal during the pendency of this case and the appeal so filed had been rejected by the Appellate authority.

5. The impugned order has been assailed on the ground that the same is illegal, arbitrary, without jurisdiction and against the principles of natural justice. It is stated that in identical circumstances,

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19-27

RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH

ALLAHABAD

Dated: This the 25th day of November 1996

CORAM : Hon'ble Mr. T. L. Verma JM
Hon'ble Mr. D.S. Baweja AM

ORIGINAL APPLICATION NO. 1135 Of 1993

Nagendra Bahadur S/O Sada Brij,
R/O 108/C 10th Avenue, Loco Colony,
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VERSUS

1. Union of India through Secretary,
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Rolling Stock Operation,
Northern Railway, Allahabad
----- Respondents

C/R Sri Prashant Mahatur

ORDER

By Hon'ble Mr. T. L. Verma JM

This application was filed under section 19 of the Administrative Tribunals Act, 1985 for quashing the order dated 21.7.1993, whereby the applicant had been removed from service and for

the disciplinary authority passed removal order dated 21.7.1993 on identical allegation against Gyanji Pandey, Assistant Electircal driver, Northern Railway, Allahabad. He had also filed an application before this Tribunal on 28.7.1993. He also filed appeal before the authority concerned on identical grounds ^{as} taken by the applicant in his appeal. The appellate authority had issued order on 21.7.1994 re-appointing the said Gyanji Pandey, the Asstt:Electrical driver. The applicant, who is similarly situated has been denied the similar benefits and has thus been arbitrarily discriminated.

6. The respondents have appeared and resisted the claim of the applicant. In the written statement filed on behalf of the respondents, it has been stated that the departmental authority after examining the relevant report submitted by the concerned authority came to the conclusion that it was not reasonably practicable to hold enquiry in the case and accordingly passed the impugned order of removal of the applicant from service under Rule 14(2) of D. A. & R. rules as in the opinion of the disciplinary authority, retention of the applicant in the railway service was not considered desirable in public interest.

7. We have heard the learned counsel for both the parties and perused the records.

8. The general rule is that no employee shall be punished without issuing memorandum of charges and without giving an opportunity ~~of~~ 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 ^{initiated} ~~held~~. There is, however, an exception to the general rule as contained in Rule 14

of the D.A. & R rules. Sub rule 2 of Rule 14 provides 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; or

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.

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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. It has also been held that reasons for such satisfaction should be communicated to the employee, but the same should be made available for the perusal of the court as and when satisfaction of the authority is questioned in the court of law. In order to ascertain whether the reasons for adopting procedure prescribed in rule 14(2) under D.A. & R have been recorded or not, the relevant file was called for for our perusal. We have perused the relevant file and we

find that the competent authority has not recorded ~~no~~ reasons separately in addition to the reasons given in the impugned order. There are, however, reports, which indicate that on 17.7.1993 as many as eight trains were detained on account of Electrical Loco^{Staff} agitation, which started ^{at} about 9.00 hours due to the dispute between Assistant Driver and Ticket Collectors. In the report submitted by CEFO, it has been stated that while making report against the applicant and others for their participation in the agitation, he asked for the names of the witnesses from the staff available, but every body refused to be ~~the~~ witness against the applicant stating that he is a notorious man and can assault any of them. There is also another report submitted by Sri G.S. Chauhan, Asstt. Electrical Engineer. In this report also, it has been stated that the persons examined by him declined to give evidence due to fear of the applicant. The competent authority has not recorded separate order, giving his reasons for not holding inquiry after considering the above reports. There is nothing in the file also that ^{to show} the decision not to hold enquiry was based on the above ^{material other than} reports.

9. A similar question came up for consideration before the Hon'ble Supreme court in Jaswant Singh Versus State of Punjab and others, reported in A.I.R. (1991) (SC) page 385. In ^{the} case before the Hon'ble Supreme court appellant was dismissed from service

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without holding inquiry under Article 311 (2) of the Constitution of India. The dismissal order was passed on the allegation that the appellant was instigating his fellow Police Officials to cause indiscipline, show insubordination and exhibit dis-loyalty ; that he was meeting other police officials and inducing them to stand against their senior Officers and was thus spreading discontentment, hatred and dis-satisfaction among his fellow police officials and that he betrayed lack of sense of discipline, which was highly unbecoming of a Member of police force expected to maintain law and order. The Hon'ble Supreme court, while allowing the appeal held that :

" The decision to dispense with the departmental inquiry cannot ipse be rested solely on the/dixit of

Contd. page 7

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. In the instant case it was alleged that the delinquent police officer instead of replying to the show cause notices, instigated his fellow police officials to disobey the superiors. It was also alleged that he threw threats to beat up the witnesses and the Enquiry Officer. If any departmental enquiry was held against him, no particulars were given. It was not shown on what material the concerned authority came to the conclusion that the the delinquent had thrown threats. The satisfaction of the concerned authority was found to be based on the ground that the delinquent was instigating his colleagues and was holding meetings with other police officials with a view to spreading hatred and dissatisfaction towards his superiors. It was not shown that the concerned authority had verified the correctness of the information leading to the said allegation. Therefore, it could not be said that the subjective satisfaction of departmental enquiry against the delinquent was fortified by independent material. Thus the order of dismissal passed against the delinquent would not be sustainable. *

JK

A plain reading of the observation of the Hon'ble Supreme Court extracted above make it absolutely clear that the decision of dispensing with the disciplinary inquiry should not be based on whims and caprice of the concerned Officer. It should be based on objective material. Reasons for dispensing with the departmental enquiry as given in the impugned order is (a) fear of harassment and (b) possible physical intimidation of the witnesses.

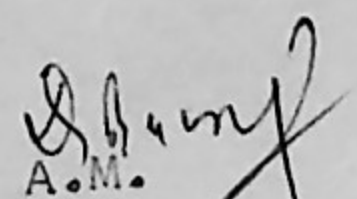
10. We have perused the reports, which possibly are the basis of the above conclusion of the competent authority and we find that neither the C.E.F.O. nor the Assistant Electrical Engineer has given the names of the persons, who are alleged to have been examined by them. The reports ^{also did not give any instance} of the applicants having indulged in activities as may have caused fear or apprehension of assault on the witnesses or Officers of the railways, ^{case} in an enquiry was held. The reports which are the basis of the decision are absolutely vague and general. Our attention was not drawn to any other material existing on the date of impugned order in support of the allegations that the applicant had held out threats that he or his companion will not allow the disciplinary proceedings to be held or that they would not hesitate to cause physical injury to the witnesses as well as to the Enquiry Officer, if any attempt is made to hold the departmental enquiry. It was obligatory on the part of the respondents to disclose material in existence on the date the impugned order was passed in support of the satisfaction of the concerned authority. As has been held by the Hon'ble court in /

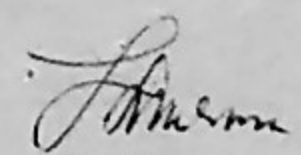
Jaswant Singh's case

Supra Clause B of 2nd proviso of Article 311(2) can be invoked only when the authority is satisfied from the materials placed before him that it is not reasonably practicable to hold the departmental enquiry.

11. On the basis of the materials before us, we are satisfied that dispensing with the enquiry is not justified. ~~by the materials on record~~. This application, therefore, deserves to be allowed on this short ground alone.

12. In the result, we allow this application, set aside the order dated 21.7.1993 removing the applicant from service and direct the respondents that the applicant should be reinstated in service with all monetary benefits as to pay and allowances available to him from the date of removal from service. It would, however, be open to the department, if it is so advised notwithstanding the lapse of time to proceed with the disciplinary proceedings initiated against the applicant.


A.M.


J.M.