IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

O.A. No. 34 to 43 of 1987
~~T.A. No.~~

DATE OF DECISION 06/03/1987

As per list attached Petitioner

As per list attached Advocate for the Petitioner(s)

Versus

As per list attached Respondent

As per list attached Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. P. H. TRIVEDI : VICE CHAIRMAN

The Hon'ble Mr. P. M. JOSHI : JUDICIAL MEMBER

COMMON JUDGMENT

(8)

Sr. No.		Name of the Party	Name of the advocates
1.	OA/34/87	J. A. Misqutta	P IN P
		V/s.	
		Union of India & Ors.	R P Bhatt
2.	OA/35/87	G. C. Desai	B B Oza & K K Shah
		V/s.	
		Union of India & Ors.	R P Bhatt
3.	OA/36/87	U K Pradhan	B B Oza & K K Shah
		V/s.	
		Union of India & Anr.	R P Bhatt
4.	OA/37/87	Yusuf Khan B	B B Oza & K K Shah
		V/s.	
		Union of India & Anr.	R P Bhatt
5.	OA/38/87	Thakor Lal M.	B B Oza & K K Shah
		V/s.	
		Union of India & Anr.	R P Bhatt
6.	OA/39/87	P G Goswami	B B Oza & K K Shah
		V/s.	
		Union of India & Anr.	R P Bhatt
7.	OA/40/87	Hasmukhlal J Pandya	B B Oza & K K Shah
		V/s.	
		Union of India & Anr.	R P Bhatt
8.	OA/41/87	Azamat Ali T.	B B Oza & K K Shah
		V/s.	
		Union of India & Anr.	R P Bhatt
9.	OA/42/87	R R Khan	B B Oza & K K Shah
		V/s.	
		Union of India & Anr.	R P Bhatt
10	OA/43/87	Kanna Poona	B B Oza & K K Shah
		V/s.	
		Union of India & Anr.	R P Bhatt

JUDGMENT

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OA/34/87, OA/35/87, OA/36/87, OA/37/87, OA/38/87,
OA/39/87, OA/40/87, OA/41/87, OA/42/87, OA/43/87.

Per : Hon'ble Mr P H Trivedi : Vice Chairman.

In this batch of cases filed by the Petitioners, we heard the learned advocates who made common submissions in them. The learned advocate for the respondents stated that his reply in OA/42/87 may be taken as applicable to all cases in the batch.

Although the petitioners say that there are distinguishing features we find that the petitioners and their annexures are almost identically worded. The petitioners were dismissed from service under rule 14(ii) of Railway Servants (Discipline & Appeal) Rules, 1968. The relevant orders dismissing them state that the petitioners absented themselves at the period of strike in February,1981 that this absence was unauthorised., that this absence was later sought to be justified by production of a medical certificate from a Doctor other than a Railway Doctor, that inspite of attempts to get the petitioner contacted from their residence, they were not found there and were therefore, treated as absconding. Subsequently the petitioners appealed against the order of dismisal and in appeal petitions stated that the appellate authority may order an enquiry if it feels necessary since the condition is normal for an enquiry at present. The petitioners moved the High Court. But they were directed to file appeals against the impugned order on or before 31st October, 1985 in view of the

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judgment in the case of Union of India V/s.Tulsiram Patel. The appeal petition was made in October, 1985. In disposing of the appeal the appellate authority in 30th May/2nd June, 1986 has given grounds for its order, It has stated that it was not practicable to hold enquiry at the time when the orders for punishment were passed by the disciplinary authority but has not touched the point on the question of holding an enquiry before disposal of the appeal. Subseqnently, in December 1986 the Supreme Court in similar matters in its order dated 3/12/1986 specifically referred to its judgment in Satyavirsingh V/s.Union of India 1985(4)(SSC)(252)(281) as not having been complied with by the appellate authority and directed that the appellate authority shall re-dispose of the appeal and keeping the directions as referred to above in view in the judgment of Satyavirsingh V/s.Union of India while dealing with the matters. Subsequently, this Writ Petition was withdrawn in the Supreme Court with the directions of the Supreme Court that they were so permitted to be withdrawn to enable the petitioner to file them in the Central Administrative Tribunal.

The short point before us is whether in disposing of the appeal the appellate authority should have ordered an enquiry or not and whether their orders rejecting the appeal without their doing so on that ground are valid.

It is unnecessary to go into the question whether the disciplinary authority was right or not in coming to the finding their conditions prevailing in February'81

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were such that disciplinary proceedings were not practicable. Even if it is held that the conditions then prevailing were such that disciplinary proceedings could not have been held, the question is whether in June, 1986 it was practicable to hold an enquiry. We are afraid that this question has not been examined in appeal. The appellants did not specifically ask for an enquiry or claim it as a matter of their right that the enquiry be held before disposing of the appeal as the orders dismissing them were passed the Disciplinary Authority were not based upon the findings of any enquiry or were passed without giving them an opportunity to be heard with reference to the specific charges against them. The appellants have asked the appellate authority to hold an enquiry as if it thought so necessary. This stipulation regarding the appellate authority considering whether the enquiry be held if it sought so necessary detracts to an extent from the appellants, making of their claim, there is no doubt that the question has been raised by the petitioners/appellants and it was therefore, necessary for the appellate authority to apply its mind to this question and to give its reasons why it did not considered an enquiry either necessary or practicable at the stage when the appeal was being disposed of. This has not been done. During the hearing it was suggested by us to the respondents whether they were ready to review the orders of the appellate authority suo motu. After the hearing but before the rendering of this judgment the respondents have filed affidavit allowed to be brought on record that they have

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decided to review these cases but the applicants who were present did not agree to have the result of the cases deferred for such outcome of the review, and have pressed for a decision of the cases.

The judgment of the Supreme Court in Satyavirsingh V/s. Union of India is applicable to the petitions. This judgment upholds the right of the petitioners to an enquiry even at the stage of the appeal. The orders of the Supreme Court of 03/12/1986 in other similar matters specifically referred to the orders of the appellate authority not having complied in terms with the directions in this judgment.

The petitioners have made out a case regarding its discrimination against them on the ground of several others similarly situated having been more leniently dealt with. During the hearing we were left with a distinct impression that while facts and circumstances of each case could be different, no logical basis for distinguishing the case of those who were leniently dealt with from those of the petitioners was discernible. We would refrain to go into this matter at this stage as the appellate authority would have opportunity to go into the facts and circumstances of the cases of the petitioners in the light of the directions we propose to give.

We consider that this is a fit case for the appellate authority (Respondent No.2) to either hold an enquiry or

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order an enquiry to be held as directed by the Supreme Court following its judgment in Satyavirsingh V/s. Union of India and come to relevant findings on the basis of which each the petitioner's case could be decided by them. We direct that this be done in a period of three months.

We, therefore, partly allow the petitions and quash the orders dated 30th May/2nd June, 1986 of the appellate authority (Respondent No.2) who may carry out the directions aforesaid. No order as to costs.

Sd/-
(P.H. TRIVEDI)
VICE CHAIRMAN.

Sd/-
(P.M. JOSHI)
JUDICIAL MEMBER