(9)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

O.A. Nos. As per attached sheet

DATE OF DECISION 21-06-1988

As per attached sheet — Petitioners

As per attached sheet — Advocate for the Petitioner(s)

Versus

As per attached sheet — Respondents

As per attached sheet — Advocate for the Respondent(s)

CORAM :

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

The Hon'ble Mr. P. M. Joshi : Judicial Member

(10)

BARODA DIVISION

Sr. No. 1.		Name of the Parties 2.	Name of the Advocates 3.
1.	MA/599/87 with OA/368/87	Shri J.A. Misquitta V/s. Union of India & Ors.	P in P Shri.R.P.Bhatt
2.	MA/600/87 with OA/369/87	Shri U.K. Pradhan & Ors. Union of India & Ors.	Shri. Kiran K.Shah & Shri B.B. Oza Shri R.P. Bhatt
3.	MA/601/87 with OA/370/87	Shri P.G.Goswami & Ors. Union of India & Ors.	Shri Kiran K. Shah & Shri B.B. Oza Shri R.P.Bhatt
4.	MA/598/87 with OA/416/87	Shri K. M. Rap Union of India & Ors.	Shri Kiran K.Shah & Shri B.B. Oza Shri R. P. Bhatt

GANDHIDHAM DIVISION

Sr.No. 1		Name of the ~~Petitioner~~ Parties 2	Name of the Advocates 3
1.	OA/556/87	Shri Hari Ram M. Vs. Union of India and Ors.	Shri Kiran K. Shah & Shri B.B.Oza Shri R.P.Bhatt
2.	OA/557/87	Shri Suraj Bal Singh Vs. Union of India and Ors.	Shri Kiran K. Shah Shri B.B.Oza Shri R.P.Bhatt
3.	OA/558/87	Shri L.S.Chisty Vs. Union of India and Ors.	ShriK.K.Shah & Shri B.B.Oza Shri R.P.Bhatt
4.	OA/559/87	Shri J.N.Patel Vs. Union of India and Ors.	Shri Kiran K.Shah & Shri B.B.Oza Shri R.P.Bhatt
5.	OA/560/87	Shri R.P.Tiwari Vs. Union of India and Ors.	Shri K.K.Shah & Shri B.B.Oza Shri R.P.Bhatt
6.	OA/561/87	Shri Madan Mohan Vs. Union of India and Ors.	Shri Kirak K.Shah & Shri B.B.Oza Shri R.P.Bhatt
7.	OA/562/87	Shri Gulab Rai Vs. Union of India and Ors.	Shri K.K.Shah & Shri B.B.Oza Shri R.P.Bhatt
8.	OA/563/87	Shri Gajanand Chauturvedi Vs. Union of India and Ors.	Shri K.K.Shah Shri B.B.Oza Shri R.P.Bhatt
9.	OA/564/87	Shri Ramesh Chandra Shukla Vs. Union of India and Ors.	Shri K.K.Shah Shri B.B.Oza Shri R.P.Bhatt
10.	OA/569/87	Shri Natu T. Vs. Union of India and Ors.	Shri K.K.Shah Shri B.B.Oza Shri R.P.Bhatt
11.	OA/570/87	Shri Parbat Singh Vs. Union of India and Ors.	Shri K.K.Shah Shri B.B.Oza Shri R.P.Bhatt
12.	OA/571/87	Shri R.K.Mishra Vs. Union of India and Ors.	Shri K.K.Shah Shri B.B.Oza Shri R.P.Bhatt
13.	OA/572/87	Shri Govind Ram C. Vs. Union of India and Ors.	Shri K.K.Shah Shri B.B.Oza Shri R.P.Bhatt
14.	OA/573/87	Shri K.N.Dixit Vs. Union of India and Ors.	Shri K.K.Shah Shri B.B.Oza Shri R.P.Bhatt
15.	OA/574/87	Shri Deen Dayal Vs. Union of India and Ors.	Shri K.K.Shah Shri B.B.Oza Shri R.P.Bhatt
16.	OA/575/87	Shri Shital Prasad Singh Vs. Union of India and Ors.	Shri K.K.Shah Shri B.B.Oza Shri R.P.Bhatt
17.	OA/576/87	Shri Lal Singh P. Vs. Union of India and Ors.	Shri K.K.Shah Shri B.B.Oza Shri R.P.Bhatt
18.	OA/577/87	ShriGanga Ram M. Vs. Union of India and Ors.	Shri K.K.Shah Shri B.B.Oza Shri R.P.Bhatt

RAJKOT DIVISION

Sr.No. 1	Name of the Petitioner 2	Name of the Advocates 3
1. OA/31/88	Shri Chhelshanker B.	Shri N.J.Mehta
	Vs.	
	Union of India and Ors.	Shri R.P.Bhatt
2. OA/32/88	Shri K.Mathi	Shri N.J.Mehta
	Vs.	
	Union of India and Ors.	Shri R.P.Bhatt
3. OA/33/88	Shri Mohbatsingh K.	Shri N.J.Mehta
	Vs.	
	Union of India and Ors.	Shri R.P.Bhatt
4. OA/34/88	Shri Magan J.	Shri N.J.Mehta
	Vs.	
	Union of India and Ors.	Shri R.P.Bhatt
5. OA/35/88	Shri Chimanlal B.	Shri N.J.Mehta
	Vs.	
	Union of India and Ors.	Shri R.P.Bhatt
6. OA/36/88	Shri Narottam M.	Shri N.J.Mehta
	Vs.	
	Union of India and Ors.	Shri R.P.Bhatt
7. OA/37/88	Shri Noormohmad	Shri N.J.Mehta
	Vs.	
	Union of India and Ors.	Shri R.P.Bhatt
8. OA/38/88	ShriRanjitsingh D.	Shri N.J.Mehta
	Vs.	
	Union of India and Ors.	Shri R.P.Bhatt
9. OA/39/88	Shri Gandalal T.	Shri N.J.Mehta
	Vs.	
	Union of India and Ors.	Shri R.P.Bhatt
10. OA/40/88	Shri Bachu Nanji	Shri N.J.Mehta
	Vs.	
	Union of India and Ors.	Shri R.P.Bhatt
11. OA/41/88	Shri Popat Bhimji	Shri N.J.Mehta
	Vs.	
	Union of India and Ors.	Shri R.P.Bhatt
12. OA/42/88	Shri Mansingh Okhaji	Shri N.J.Mehta
	Vs.	
	Union of India and Ors.	Shri R.P.Bhatt
13. OA/43/88	Shri Bhagwanji Mohan	Shri N.J.Mehta
	Vs.	
	Union of India and Ors.	Shri R.P. Bhatt
14. OA/44/88	Shri Umedlal H.	Shri N.J.Mehta
	Vs.	
	Union of India and Ors.	Shri R.P.Bhatt
15. OA/45/88	Shri Gunwant Rai	Shri N.J.Mehta
	Vs.	
	Union of India and Ors.	Shri R.P.Bhatt
16. OA/46/88	Shri Yakoob R.	Shri N.J.Mehta
	Vs.	
	Union of India and Ors.	Shri R.P.Bhatt
17. OA/47/88	Shri Shivlal O.	Shri N.J.Mehta
	Vs.	
	Union of India and Ors.	Shri R.P.Bhatt
18. OA/48/88	Shri Chhganlal P.	Shri N.J.Mehta
	Vs.	
	Union of India and Ors.	Shri R.P.Bhatt
19. OA/49/88	Shri Mohmad Issa	Shri N.J.Mehta
	Vs.	
	Union of India and Ors.	Shri R.P.Bhatt
20. OA/50/88	Shri Narendra D.	Shri N.J.Mehta
	Vs.	
	Union of India and Ors	Shri R.P.Bhatt
21. OA/51/88	Shri Ibrahim Zaverbhai	Shri N.J.Mehta
	Vs.	
	Union of India and Ors.	Shri R.P.Bhatt
22. OA/52/88	Shri Vinaychand Adityaram	Shri N.J.Mehta
	Vs.	
	Union of India and Ors.	Shri R.P.Bhatt

Sr.No. 1	Name of the Parties Petitioner 2	Name of the Advocates 3
23. OA/53/88	Shri Osman M.	Shri N.J.Mehta
	Vs.	
	Union of India and Ors.	Shri R.P.Bhatt
24. OA/54/88	Shri Hussain Noormohmad	Shri N.J.Mehta
	Vs.	
	Union of India and Ors.	Shri R.P.Bhatt
25. OA/55/88	Shri Rukhad Savji	Shri N.J.Mehta
	Vs.	
	Union of India and Ors.	Shri R.P.Bhatt
26. OA/56/88	Shri Peter Rago Jerego Rago	Shri N.J.Mehta
	Vs.	
	Union of India and Ors.	Shri R.P.Bhatt
27. OA/57/88	Shri Krishnalal K.	Shri N.J.Mehta
	Vs.	
	Union of India and Ors.	Shri R.P.Bhatt
28. OA/58/88	Shri Ahmad S.	Shri N.J. Mehta
	Vs.	
	Union of India and Ors	Shri R.P.Bhatt
29. OA/59/88	Shri Mahendra Jeram	Shri N.J.Mehta
	Vs.	
	Union of India and Ors.	Shri R.P.Bhatt
30. OA/60/88	Shri L.N.Sharma	Shri N.J.Mehta
	Vs.	
	Union of India and Ors	Shri R.P.Bhatt
31. OA/61/88	Shri P.M.Pandya	Shri N.J.Mehta
	Vs.	
	Union of India and Ors.	Shri R.P.Bhatt
32. OA/62/88	Shri Shuklhal Manu	Shri N.J. Mehta
	Vs.	
	Union of India and Ors.	Shri R.P.Bhatt
33. OA/63/88	Shri J.B.Singh	Shri N.J.Mehta
	Vs.	
	Union of India and Ors.	Shri R.P.Bhatt
34. OA/64/88	Shri Mohabatsingh P.	Shri N.J.Mehta
	Vs.	
	Union of India and Ors.	Shri R.P.Bhatt
35. OA/65/88	Shri Husain U.	Shri N.J.Mehta
	Vs.	
	Union of India and Ors.	Shri R.P.Bhatt
36. OA/66/88	Shri Ambrose D.	Shri N.J. Mehta
	Vs.	
	Union of India and Ors.	Shri R.P.Bhatt
37. OA/67/88	Shri Jasubha K.	Shri N.J.Mehta
	Vs.	
	Union of India and Ors.	Shri R.P.Bhatt
38. OA/68/88	Shri Anwarkhan M.	Shri N.J.Mehta
	Vs.	
	Union of India and Ors.	Shri R.P.Bhatt
39. OA/69/88	Shri Naran Bhimji	Shri N.J.Mehta
	Vs.	
	Union of India and Ors.	Shri R.P.Bhatt
40. OA/70/88	Shri Dalla Uka	Shri N.J.Mehta
	Vs.	
	Union of India and Ors.	Shri R.P.Bhatt
41. OA/71/88	Shri Madhavsinh J.	Shri N.J.Mehta
	Vs.	
	Union of India and Ors.	Shri R.P.Bhatt
42. OA/72/88	Shri Naran Raja	Shri N.J.Mehta
	Vs.	
	Union of India and Ors.	Shri R.P.Bhatt
43. OA/73/88	Shri Mohbatsingh G.	Shri N.J.Mehta
	Vs.	
	Union of India and Ors.	Shri R.P.Bhatt
44. OA/74/88	Shri Ibrahim V.	Shri N.J.Mehta
	Vs.	
	Union of India and Ors.	Shri R.P. Bhatt

(12)

List of Citation cited by Mr. J.A. Misquitta & learned advocate Mr. B.B. Oza & Mr. K.K. Shah from the petitioner's side in case OA/368/87, O.A./369/87, O.A./370/87, O.A./416/87.

1. AIR 1963 SC 1124
2. Administrative Tribunal Act 776
3. D.A.R. Digest 314
4. 1987(i) SIR 336
5. 1987(3) ATC 281 (OA/556/87)
6. 1986(i) ATR CAT 446 (OA/556/87)
7. OA/429/87 (Kept with OA/556/87)
8. 1986 ATJ 463.
9. AIR 1956 Cal. 662
10. AIR 1970 AP 114
11. 1972 SLR (AII) 16
12. AIR 1973 SC 2701 - N.A.
13. AIR 1971 SC 144 (TA/1227/86)
14. ATR 1987 (i) CAT Gauwahati (OA/556/87)
15. Relevant Page No. 644
15. ATR 1987 (2) CAT 13 Dehli (OA/556/87)
16. ATR 1986 CAT 111 - Jodhpur (OA/556/87)
17. ATR 1986 253-Madras (OA/556/87)
18. ATR 1986 (Vol. -2) 557-Jabalpur
19. AIR 1967 SC 295
20. 1984 SCC 554 ([redacted])
21. 1987(i) ATJ 617 (OA/455/86)
22. AIR 1986 SC 1173 (OA/556/87)
23. AIR 1986 (2) SC 252 (OA/556/87)
24. ATR 1987 (2) CAT 297 (OA/556/87)
25. ATR 1986 (Val.-1) SC 150 (OA/556/87)
26. AIR 1985 SC 500 501
27. 1975 (2) SLR 683
28. ATR 1987 (i) CAT 359
29. ATR 1987(2) CAT 295 (OA/556/87)
30. -- do -- 561
31. ATR 1986 (2) Madras Loco Strike (OA/556/87)
32. ATR 1987 (2) 564 (OA/556/87)
33. ATJ 1986 (-639 - N.A.
34. ATC 1986 (i) - 326
35. -- do -- - 774
36. AIR 1961 SC 1070
37. AIR 1957 SC 882
38. AIR 1961 SC 751
39. AIR 1964 SC 364
40. AIR 1980 SC 840 (TA/297/86)
41. AIR 1963 SC 395
42. AIR 1966 SC 1827
43. AIR 1978 SC 851 (TA/454/86)
44. ——
45. 1984 LIC SC 915=(84(2) SLR-16)
46. 1977 LIC 450 (with TA/1227/86)
(1977 SLJ Page-01)
47. AIR 1974 SC 284 (OA/556/87)
48. 1975(2) LIC 1288 (75(2) SLR - 437)
49. 1985 LIC SC 534 (1985(i) SLR/735)
50. 1984 LIC (Cal.) 193 (2)
51. 1984 LIC (All) 682=(1984(2)SLR 347)
52. 1981 LIC (All) 881(2) N.Awailable
53. 1977 LIC (Dehli) 643=(77(2) SLR 127)
54. ATR 1987 (2) CAT 295 (OA/566/87)
55. ATR 1987 (2) CAT 310 "
56. ATR 1987 (2) CAT 103 "
57. ATR 1987 (2) CAT 130 "
58. 1987 (4) ATC 92
59. AIR 1968 14 (TA/1227/86)
60. AIR 1977 SC 752
61. AIR 1961 Cal. 40 (2)
62. 1982 LIC (Cal.) 574 (2)
63. AIR 1982 SC 937
64. AIR 1970 Ap 114 (OA/40/86)
65. AIR 1974 SC 87 (OA/556/87)
66. 1976 (2) LLJ Guj. 208=1976(2) Slr 124
67. 1970 AIR SC 1302 (OA/40/86)
68. 1983 SLR (2) 473

69. AIR 1937 P.C. 31 - R. Venkata
70. 1970 SLR 125
71. 1975 SLJ 37
72. 1954 AIR MB 259 x N.A. (Type note given)
73. 1955 AIR SC 70
74. 1960 AIR SC 1255
75. AIR 1977 SC 747
76. AIR 1956 (Cal.) 662 - N.A.
77. AIR 1974 SC 555 (OA/556/87)
78. AIR 1962 SC 36 (Not available)
79. AIR 1979 SC 429
80. 1984 LIC 886 N.A.
81. AIR 1967 SC 1427
82. AIR 1961 SC 1623
83. AIR 1958 Cal. 49
84. ATR 1987 (2) CAT 314 (OA/556/87)
85. ATC 1986 (i) Page 176
86. 1967 SLR 759 SC
87. 1982 (2) LLJ 1980
88. ATR 1986 (2) CAT 24 Cal.
89. AIR1964 SC 356
90. AIR 1962 Tripura 15 (Not available)
91. AIR 1964 SC 364
92. 1972 SLR (Madras) 723
93. AIR 1953 Raj. P-57 (N.A.)
94. 30 FJR 319 Patna H.C. = AIR 1972 SC 1917
95. AIR 1983 SC 1141 (TA/1402/86)
96. AIR 1966 SC 492
97. AIR 1972 SC 854
98. 1982 (2) SLR 458
99. AIR 1957 SC 425
100. AIR 1979 SC 220
101. AIR 1964 SC 72
102. AIR 1973 SC 270
103. AIR 1967 AII 378
104. AIR 1975 SC 259
105. AIR 1979 SC 49
106. AIR 1979 SC 220
107. AIR 1972 SC 1004
108. AIR 1972 SC 2170 N.A.
109. AIR 1964 SC 1658
110. AIR 1982 SC 149
111. AIR 1973 SC 303
112. 1973 (i) SLR Cal. 1153
113. 1982 (i) GLR 233.

(13)

LIST OF CITATION CITED BY ADVOCATE FOR PETITIONER
SHRI K.K.SHAH & SHRI B.B.OZA

~~APPLICANT'S CITATION~~

in the case O.A./556/87 to O.A./564/87
&
O.A./569/87 to O.A./577/87 from Petitioner side

01. 1988(6) A.T.C. 469, Relevant Page 475-478
02. 1987(3) A.T.C. 281
03. ATR 1986(i) CAT 446
04. O.A./429/87 (un-reported)
05. AIR 1986 SC 1173 Ramchandra
06. AIR 1974 SC 55 Relevant Page-42
07. AIR 1984 SC 629
08. ATR 1986 (Vol.I) C.A.T. 264 Madras
(B.Vasantkumar Narishma) Relevant Page-265
~~09.~~
09. ATR 1987 (1) CAT 475 Ahmedabad
10. 1983 S.C.C. (Lab & S) 519 (Senyarasingh V/s.State of Punjab)
11. ATR 1986 CAT 261 (A.Thangaduri V/s.Security Officer)
12. ATR 1986 CAT 278 Madras
13. ATR 1987(i) CAT 359 ND (Harmansingh V/s. Union of India)
14. ATR 1987 (2) CAT 295 Jodhpur (Umrao Singh)
15. ATR 1987 (2) CAT 561 Jabalpur (Chhotalal)
16. ATR 1986 (2) Madras
17. ATR 1987 (2) 564
18. ATR 1985 S.C.C. (3) 512 (1985 AIR (2) S.C. 1984)
19. AIR 1986 Vol. 73 571
20. 1985 lab. I C S.C. 587 (S.C.C.(L & S) 1985 Page-1)
21. T.A.No. 316/86 Page 963 ATJ-1987 ~~(Gitt SLR.)~~

LIST OF CITATION CITED BY MR.N.J.MEHTA LEARNED ADVOCATE FOR THE PETITIONER IN THE CASE OA/31/88 TO OA/74/88 (APPLICANT'S CITATION)

1. AIR 1961 Calcutta 40
2. AIR 1954 Bombay 351
3. 1963 (7) F.L.R. 269
4. 1963 (7) F.L.R. 106
5. AIR 1967 MP 91
6. AIR 1957 SC 7
7. AIR 1984 SC 629
8. AIR 1984 SC 1499
9. AIR 1980 SC 1896
10. AIR 1960 SC 219
11. AIR 1959 SC 259
12. 1988 (1) Judgment today 627
13. 1964 (4) SCR 718 or AIR 1964 SC. 364
14. 1986 (1) Scale 1308
15. AIR 1972 SC 2466
16. 1988 (6) ATC 469 at page 477
17. 20 GLR 290
18. 1969 (3) SCC 156
19. 1960 (3) SCR 578
20. ATR 1987 SC 71
21. AIR 1981 SC 136
22. 1988 (1) SC-P-627 (April Issue)

(14)

LIST OF CITATIONS CITED BY RES.'S LEARNED ADVOCATE MR. R.P.BHATT IN THE CASE

O.A./556/87 to O.A./564/87 & O.A./569/87 to O.A./577/87 & O.A./31/88 to O.A./74/88 & ~~2~~ O.A./368/87 to O.A./370/87 & O.A./416/87

from Respondent's side

01. 1980 (57) FJR 145 - [redacted]
02. 1982 (44) FLR 48
03. 1982 (1) LLJ 46 (SC)
04. 1981 (58) FJR 358 - [redacted]
05. 1980 (40) FLR 144 OR 1981 (59) FJR 204 -do-
06. 1981 (59) FJR 315 - [redacted]
07. 1986 (4) SLR 119)
08. 1987 (3) SLR 561) C.A.T.
09. 1987 (3) SLR 494)
10. 1987 (3) SLR 802)

(15)

The details regarding orders of dismissal

Sr.No.	Name of the petitioner	Designation and Divn. of service.	Order number & date of dismissal order.	Date of appellate order.
1.	2	3	4	5
1. MA/599/87 with OA/368/87	Shri J.A.Misquitta	Driver Gr.B Baroda Divn.	E/308/5/ Ele./4 dt.1-2-81.	18-6-87
2. MA/600/87 with OA/369/87	Shri U.K. Pradhan	Driver Gr.C Baroda Divn.	E/308/S/ Ele./1. dt.31-1-81.	18-6-87
	Shri J.G.Desai	"	"	"
	Yusufkhan B.	"	"	"
3. MA/601/88 with OA/370/87	Shri P.G.Goswami	Driver Gr.C Baroda Divn.	E/308/DSL 3. Dt.2-2-'81	18-6-87
	Azmatali T.	Driver Gr.B. Baroda Divn.	"	"
	Kana P.	Driver Gr.C.	"	"
	Hasmukhlal Pandya	"	"	"
	R.R.Khan	"	"	"
4. MA/598/88 with OA/416/87	Shri K.M.Rao	Driver Gr.A Baroda Divn.	E/308/S Ele.3. dt.2-2-81.	11-8-87
5. OA/556/87	Shri Hari Ram M.	Driver Gr.'C' Loco Foreman, Gandhidham	ConE.308/5 154. dt.4/2/1981	29.9.87
6. OA/557/87	Sh. Suraj Bal Singh	Driver Gr.'C' Loco Foreman Gandhidham	Con.E/308/5/ 169. Dt.14/2/1981.	28.9.87
7. OA/558/87	Sh. L.S.Chisty	Dsa. Driver Gr.'C' Loco Foreman Gandhidham	Con.E./308/5 171. Dt.15.2/1981	29.9.87
8. OA/559/87	Sh. J.N. Patel	D/Driver Gr. 'C' Loco Foreman, Gandhidham	Con.E/308/5/29.9.87 173 Dt.21/2/1981	
9. OA/560/87	Sh.R.P.Tiwari	Shunter Loco Foreman Gandhidham	Con.E/308/5/ 167. Dt.13/2/1981	29.9.87
10. OA/561/87	Sh.Madan Mohan	D/Assistant Loco Foreman Gandhidham	Con.E/308/5/ 160. Dt.9/2/1981.	29.9.87
11. OA/562/87	Sh.Gulab Rai	D/Assistant Loco Foreman Gandhidham	Con.E/308/5/ 162. Dt.9/2/1981.	29.9.87
12. OA/563/87	Sh.Gajanand Chaturvedi	Driver Gr.A' Loco Foreman Gandhidham	Con.E/308/5/ 155. Dt.5/2/81	20.10.87
13; OA/564/87	Sh.Rameshchandra Shukla	Driver Gr.'C' Gandhidham	Con.E/308/5 168 dt.14.2.81	29.9.87

Sr.No.	Name of the Petitioner	Designation & Divn. of service	Order No. and date of Dismissal Order.	Date of Appellate Order
1	2	3	4	5
14. OA/569/87	Sh. Natu T.	Driver Gr.'C' Loco Foreman, Gandhidham.	Con.E./308/5 Dt.21/1/1981.	29/9/1987
15. OA/570/87	Sh. Parbat Singh U.	D/Shanter LocoForeman, Gandhdham	Con.E/308/5/ 166. Dt.13/2/1981	29/9/1987
16. OA/571/87	Sh.R.K.Mishra	Driver Gr.'C' Loco Foreman Gandhidham	Con.E/308/5/ 156. Dt.6/2/1981.	29/9/1987
17. OA/572/87	Sh.Govind Ram C.	D/Assistant. Loco foreman Gandhidham	Con.E/308/5 161. Dt./9/2/1981.	29/9/1987
18. OA/573/87	Sh. K.N.Dixit	D/Assitant Loco Foreman Gandhidham	Con.E/308/5 75. Dt.25/2/1981.	29/9/1987
19. OA/574/87	Sh. Deen Dayal	D/Assistant Loco Foreman Gandhidham	Con. E/308/5/ 163. Dt.9/2/1981.	29/9/1987
20. OA/575/87	Sh. Shital Prasad Singh.	Driver Gr.'C' Loco Foreman Gandhidham	Con.E./308/5/ 170. Dt.14/2/1981.	29/9/1987
21. OA/576/87	Sh. Lal Singh P.	D/Shunter Loco Foreman Gandhidham	Con.E/308/5 165. Dt.13/2/1981.	29/9/1987
22. OA/577/87	Sh.Ganga Ram M.	Diesel Asstt. Loco Foreman Gandhidham	Con.E/308/5/ 164. Dt.11/2/1981.	29/9/1987
23. OA/31/88	Sh.Chhelshanker B.	Cleaner, Rajkot.	E/DAR/308/ XC/41,DRM dt.16-2-81.	9/12/'87
24. OA/32/88	Shri K. Mathi	Fireman'B' Rajkot	E/DAR/308/ XK/7, dt.31-1-81.	6/11/87
25. OA/33/88	Shri Mohbatsingh K.	Cleaner, Rajkot	E/DAR/308/ XM/33, dt.16-2-81	6/11/'87
26. OA/34/88	Shri Magan J.	Fireman'B' Rajkot	E/DAR/308/ XM/52, dt.21-2-81.	9/12/87
27. OA/35/88	Shri Chimanlal D.	Diesel Asst. Rajkot	E/DAR/308/ XC/54, dt.24-2-81.	8/12/87
28. OA/36/88	Shri Narottam M.	Cleaner, Shunter, Rajkot	E/DAR/308 XN/39, dt.16.2.81.	8/12/87
29. OA/37/88	Shri Noor Mohad	Shuntor, Rajkot	E/DAR/308/ XN/10, dt.7-2-81	26/10/87
30. OA/38/88	Shri Ranjitsingh D.	Cleaner Rajkot	E/DAR/308 XP/32, dt.14-2-81.	26/10/87
31. OA/39/88	Shri Gandalal T.	Driver Gr.C. Rajkot	E/DAR/308/ XG/19, dt.16-2-81	6/11/87

16

Sr.No.		Name of the Petitioner.	Designation and Divn. of Service.	Order number & date of dismissal Order.	Date of appellate order.
1	2		3	4	5
32.	OA/40/88	Shri Bachoo Nanji	Diesel Asstt. Rajkot	E/DAR/308/XB/48, dt.19-2-81	6-11-87
33.	OA/41/88	Shri Popat Bhimji	Driver Gr.C Rajkot.	E/DAR/308/XP/49, dt.16-2-81.	2-11-87
34.	OA/42/88	Shri Mansingh Okhaji	Driver Gr.C Rajkot.	E/DAR/308/XM/28, dt.31-1-81.	26-10-87
35.	OA/43/88	Shri Bhagwanji Mohan	Clener Rajkot.	E/DAR/308/XB/37, dt.16.2.81	2-11-87
36.	OA/44/88	Shri Umedlal H.	Cleaner Rajkot.	E/DAR/308/XG/31, Dt.16-2-81	8-12-87
37.	OA/45/88	Shri Gunnwant Rai	Clener Rajkot	E/DAR/308/XG/36, Dt.16/2/81	8-12-87
38.	OA/46/88	Shri Yakoob R.	Driver Gr.'C' Rajkot	E/DAR/308/XY 34, Dt.31-1-81.	19-10-87
39.	OA/47/88	Shri Shivlal G.	Fireman 'C' Rajkot.	E/DAR/308/XS/56, dt.20-2-81.	8-12-87
40.	OA/48/88	Shri Chhganlal P.	Fireman 'B' Rajkot.	E/DAR/308/XC 5, 10-2-81.	8-12-87
41.	OA/49/88	Shri Mohamad Issa	Cleaner Rajkot	E/DAR/308/XG/31, dt.16-2-81.	26-10-87
42.	OA/50/88	Shri Narendra D.	Cleaner Rajkot	E/DAR/308/XN/40, dt.16-2-81.	9-12-87
43.	OA/51/88	Shri Ibrahim Zaverbhai	Driver 'B' Rajkot.	E/DAR/308/XE/24, dt.15-2-81.	8-12-87
44.	OA/52/88	Shri Vinaychand Adityaram	Diesel Asstt. Rajkot	E/DAR/308/XV/25, dt.15-2-81	8-12-87
45.	OA/53/88	Shri Osman M.	Driver 'C' Rajkot	E/DAR/308/XO/49 dt.19-2-81.	8-12-87
46.	OA/54/88	Shri Hussein Noormohmad	Driver 'C' Rajkot	E/DAR/308/XH/29 dt. 15-2-81.	2-11-87
47.	OA/55/88	ShriRukhad Savji	Driver 'B' Rajkot	E/DAR/308/XR/12 dt. 7-2-81.	6-11-87
48.	OA/56/88	Shri Peter Rago Jerego Rago	Fireman 'B' Rajkot	E/DAR/308/XP/8, dt.31-1-81.	8-12-87
49.	OA/57/88	Shri Krishnalal K.	Clener Rajkot	E/DAR/308/XK/35, dt.16-2-81.	6-12-87
50.	OA/58/88	Shri Ahmad S.	Driver 'C' Rajkot.	E/DAR/308/XA/22, dt.14-2-81.	2-11-87
51.	OA/59/88	Shri Mahendra Jeram	Fireman 'B' Rajkot.	E/DAR/308/XM/11 dt.7-2-81.	2-11-87

Sr.No.	Name of the petitioner.	Designation and Divn. of service.	Order number & date of dismissal Order.	Date of appellate order.
1.	2	3	4	5
52.	OA/60/88 Shri L.N.Shrama	Driver 'B' Rajkot	E/DAR/308/XL/1, dt.31-1-81.	8-12-87
53.	OA/61/88 Shri P.M.Pandya	Shunter, Rajkot	E/DAR/308/XP/27, dt.15-2-81.	2-11-87
54.	OA/62/88 Shri Shukhlal Manu	Cleaner Rajkot	E/DAR/308/XS/42, dt.16-2-81.	2-11-87
55.	OA/63/88 Shri J.B.Singh	Fireman'B' Rajkot.	E/DAR/308/XJ/26, dt.15-2-81.	2-11-87
56.	OA/64/88 Shri Mohabatsingh P.	Fireman 'B' Rajkot.	E/DAR/308/XM/51, dt.21-2-81	8-12-87
57.	OA/65/88 Shri Husain U.	Fireman 'B' Rajkot	E/DAR/308/XH/13, dt.7-2-81.	8-12-87
58.	OA/66/88 Shri Ambrose D.	Shunter, Rajkot	E/DAR/308/XD/2, dt.31-1-81.	8-12-87
59.	OA/67/88 Shri Jasubha K.	Fireman'C' Rajkot	E/DAR/308/XJ/59, dt.25-2-81.	8-12-87
60.	OA/68/88 Shri Anvarkhan M.	Cleaner Rajkot	E/DAR/308/XA/34, dt.16-2-81	8-12-87
61.	OA/69/88 Shri Naran Bhimji	Driver 'C' Rajkot	E/DAR/308/XN/9, dt.7-2-81.	8-12-87
62.	OA/70/88 Shri Dalla Uka	Driver 'A' Special Rajkot	E/DAR/308/XD/42, dt.16-2-81.	8-12-87
63.	OA/71/88 Shri Madhavsinh J.	Driver 'C' Rajkot	F/DAR/308/XN/23 14.2.1981	8-12-87
64.	OA/72/88 Shri Naran Raja	Fireman'B' Rajkot	E/DAR/308/XN/18, Dt.14-2-81.	8-12-87
65.	OA/73/88 Shri Mohabatsingh G.	Shunter Rajkot-	E/DAR/308/XM/20, dt.14.2.81.	2-11-87
66.	OA/74/88 Shri Ibrahim V.	Driver 'B' Rajkot	E/DAR/308/XI/3, Dt.31-1-81.	8-12-87.

17

J_U_D_G_M_E_N_T

OA/368/87 with MA/599/87
with
OA/369/87 with MA/600/87
with
OA/370/87 with MA/601/87
with
OA/416/87 with MA/598/87
with
OA/31 to 74/88
with
OA/556 to 564 &
OA/569 to 577/87

21-6-1988

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

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The petitioners in Baroda, Gandhidham and Rajkot Divisions of the respondents services in railways having been aggrieved by the orders rejecting their appeals or representation and confirming the orders of dismissal passed by the respective disciplinary authorities, have approached the tribunal. The respondent railway administration on the ground that the applicants did not report for duty and wilfully absented themselves without authority and joined strike and indulged in activity to jeopardise and dislocate essential service dismissed the petitioners in exercise of the powers under Rule 14(ii) of Railway Servants (Discipline and Appeal) Rules, herein after referred to as RSDAR which are analogous to the provisions of Article 311(2) of the Constitution dispensing with the inquiry for reasons stated in the said orders which also gave notice of the right of appeal against the orders. The details regarding such orders of dismissal against each applicant is listed. The petitioners of Baroda division sought writ from High Court which directed them to file appeals against the impugned orders. These appeals were filed but were dismissed. They then filed applications before this Tribunal which quashed the appellate order and directed the appellate authority "either to hold inquiry

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itself or order it to be held"by a competent authority. The petitioners from Gandhidham division filed SCA/628/81 in the High Court which was transferred to this tribunal and registered as TA/200/87. The petitioners had already made representations which were pending with the appellate authority. This Tribunal while disposing of TA/200/87 directed the appellate authority to hold an inquiry or order it to be held by a competent authority to decide the representations. The petitioners of Rajkot Division filed SCA/686/81 which was transferred and registered as TA/94/86. The petitioners therein had already filed appeals which were pending with the appellate authority. This tribunal while disposing of TA/94/86 directed the appellate authority to hold an inquiry or order it to be held by competent authority and to dispose of appeals on merits. The appellate authority in Baroda division set up a Board of Inquiry consisting of two Members which made the inquiry and submitted its report to the appellate authority. The appellate authority of the other two divisions namely Gandhidham and Rajkot appointed an inquiry officer who submitted a report after his inquiry. The appellate authority after considering the inquiry report passed orders rejecting the appeal and confirmed the dismissal ordered by the disciplinary authority. The petitioners in the three divisions have challanged these orders in their petitions before this tribunal. The grounds of challange and the respondents' contention relating thereto are almost identical in most respects and in fact are almost identically worded. Learned counsel Mr. N.J. Mehta and the petitioner Mr. Misquitta have ably and vigourously presented their cases. It will be convenient to discuss the main contentions advanced by them and take up distinguishing facts and contentions relating to individual cases thereafter.

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2. The appellate authority in the case of Baroda and Rajkot Divisions ordered the inquiry to be held under Rule 9 of the RSDA Rules but the appellate authority in the case of Gandhidham division has stated that Rule 9 is not applicable but inquiry was ordered keeping in view the provisions of Rule 22 of the said rules. Following the judgment in Satyavir Singh's case "full and complete inquiry" is necessary in an appeal to which the petitioners have a claim. It must, therefore, be observed that whichever provision is invoked, this requirement has to be satisfied. In the case of Baroda and Rajkot divisions the respondents admittedly have made an inquiry under Rule 9 and in the case of Gandhidham division whether that rule has been in terms stated to govern the inquiry or not, the inquiry made in that division will also need to confirm to this requirement of full and complete inquiry.

3. In all the three divisions no separate and distinct charge sheet accompanied by statement of allegations and list of witnesses and documents relied upon have been furnished to the petitioners. In the case of Rajkot division the petitioners have been referred to the order by which the punishment of dismissal was given. In the case of Baroda division also the order of dismissal constitutes notice of the contents of charges and statement of allegations. In the case Gandhidham division according to the report of the inquiry the charges were explained as detailed in it. That report states that the copies of the documents relied upon were given and a copy of the order dated 4-2-1981 also was furnished. It is, therefore, clear that no distinct charges and statement of allegations were furnished. The petitioners have relied upon AIR 1961 Calcutta 40 for contending that

referring to the order of dismissal does not constitute distinct charges furnished to them to which they have to reply and that it is no excuse to say that the delinquent employee can be presumed to know all about the charges, and that there is no duty cast upon the petitioner to connect the charge sheet with any previous proceedings. The respondents have cited in their support 1984(4) SLR 119 and 1982(44) FLR 48 for their contention that a domestic tribunal is not bound by technical rules and procedure laid down in the Evidence Act and the party should have had the opportunity of adducing the evidence on which it has relied which can be given to the petitioner for testing it. In this case the order of dismissal itself states that the inquiry preceding prior to the punishment has been dispensed with for reasons narrated in the order itself. The circumstances causing satisfaction to the authority regarding dispensing with the inquiry and constituting charges or statement of allegations are stated therein. The inquiry under Rule 9 is prescribed for being prior to the order of punishment and for yielding the basis for deciding the guilt and the punishment of the delinquent employee. At the appellate stage following the decision in the Satyavir Sing's case an inquiry was ordered by this tribunal. It only requires to be a full and complete inquiry and if in a division it has not been described as being under Rule 9 that by itself would not constitute any flaw. The important test is whether the delinquent employee had adequate notice of the charges and allegations which they were required to answer. On a perusal of the order of dismissal it can be said that this has been set out with adequacy. While, therefore, we hold that the requirement of distinct charges and statement of allegations is desirable and necessary requirement, the

the course adopted by the respondent authorities does not constitute by itself to be a fatal flaw so far as the inquiry in question is concerned.

4. The respondent authorities, however, are required to set out a list of documents and witnesses on which they rely and furnish a copy thereof to the delinquent employees. This has not been done and in fact some of the applicants have asked for specific documents among which are the copies of the entries of recording of the calls and the reports of the call boys that they were not found at the residence but these have not been furnished. Copies of the vigilance report on which reliance was placed were asked for but were not supplied because of their being confidential. In fact one applicant Mr. Misquitta has stated that he was given the file of the ex-employees but the other documents were not made available as they were said to be available at respective headquarters and that those records were not available at the respective centres. The call boys and the witnesses were not produced in Rajkot and Baroda divisions for examination. Some petitioners called for documents like call book, sick memo book and statement of call boys and witnesses of the record. Some of these documents were made available during the inquiry but copies thereof were not furnished. The petitioners have relied upon AIR 1954 Bombay 351 for their contention that reasonable opportunity to defend themselves has, therefore, not been given. The respondents have relied upon 1987(3) SLR 494 for their contention that failure of supplying the documents demanded is not sufficient to vitiate the inquiry. This would depend upon the nature of documents and their relevance

for the purpose of charges and defence with the petitioners have to design. Heavy reliance has been placed on the evidence of the call boys and, therefore, the documents and the witnesses and the sickness registers are crucial for the inquiry in the present cases. We have no doubt that failure to furnish copies and to examine the witnesses considerably derogates from the reasonablness of opportunity to which the petitioners are entitled because it is the respondents who have relied upon such records and witnesses for their case. The respondents have to establish that the petitioners were absent wilfully from their home when called and were absconding. This had to be established with reference to the testimony of documents and witnesses who were to be available to be cross examined by the petitioners. If such documents are not furnished and witnesses are not examined, it is difficult to uphold the contention of the respondentss that reasonable opportunity has been allowed. In the case of Hari Ram, OA/556/87, a call boy and a clerk were examined and their statements are on record. The statements of these witnesses were supplied to Hari Ram. In the rejoinder filed by the applicant it is stated that the respondents had not informed nor made sincere and genuine attempt to inform him that he had to go for duty and that no evidence worth its name was given to prove the allegations. It is also stated that the respondents knew about his whereabouts as admitted in para 1(c) of the reply and yet no attempt was made to serve the call boys at the place where he could be found. The Board of inquiry has stated in its report in the case of Baroda division that there is no reason to doubt the statement of calls as names of call

(20)

boys are available in all cases, also the names of witnesses in two cases and the statement is signed by the running supervisor and, therefore, the plea that the documents show that the calls were subsequently fabricated has no basis. In the case of Baroda division the counter signature by ATFR has been made on 27-3-81 and his plea that this might have been fabricated is not accepted only because it is made after some lapse of time. The inquiry report entirely relies upon the fact that the statement was made out when the calls were sent out on the report of the call boys and the witnesses are signed by JVI and counter signed by ATFR - ADI. There is no doubt that this has some evidentiary value but fairness demanded that the witnesses and call boys should have been examined and made available for cross examination as also the counter signing officer when the entire reliance was sought to be placed on these entries.

5. It is difficult to resist the conclusion that in a period of stress when individuals are employed for service of communication, strict proof of such communication has to be given with reference to examination of the witnesses and cannot be substituted by reliance only on the documents when the claim regarding such communication having been served has been challanged. Regarding the joining of the petitioners in strike and inciting others to engage in unlawful activities jeopardising the running of essential service, the respondent authorities in the inquiry have only relied upon vigilance intelligence reports. These reports were stated to be confidential and neither have they been produced nor have the agencies through which they

were collected been made available for examination of the delinquent employees nor have they been placed on record for perusal. It is not even clear in all cases whether the access to the vigilance intelligence reports was given to the inquiry officer or whether even appellate authority perused them at the time of disposal of the appeals or representations. Clearly the respondent authorities, therefore, have not only substantially but solely relied upon these reports for coming to the conclusion that the petitioners have been guilty of the grave charges of inciting others to join unlawful strike and jeopardising the running of essential service.

6. Petitioners have explained their absence from duty by the plea of sickness and have stated that they were under treatment by a non-railway doctor. The respondents have stated that by a message dated 28-1-81 which is as follows:

> "Private doctor's certificate in respect of staff reporting sick should not be accepted with immediate effect until further orders. Notify this to all staff."

they had informed that private doctor's certificate will not be accepted with immediate effect. Rules for the grant of leave on medical certificate provide for a restricted scope for railway servants being attended by non-railway doctors. The orders of dismissal are passed in the very early part of the first week of February, 1981. It has to be noted that the message does not supersede the rules in terms regarding grant of medical leave on non-railway doctor's medical certificate. The petitioners' absence from their homes is sought to be explained by their plea that they were going for normal sundry work and by itself does not

(21)

establish that the certificates are fraddulently produced or that the plea of sickness was advanced falsely. Stricter proof for establishing this is necessary.

7. The petitioners have stated that a large number of strikers or absentees have been reinstated, many of them on court's orders and quite a number of them on the orders of the respondent authorities. They have urged AIR 1984 SC 629 in their favour. The respondents have on the other hand stated that there is application of mind in distinguishing the case of the petitioners from others and the fact that individual merits in respect of the absence and grounds of family circumstances were kept in mind shows that the petitioners have not been discriminated against unfairly. They have urged 1980(4) FLR 144 and 1981(59) FJR 204 in their favour. In our orders dated 6th March, 1987 in OA/34 to 43/87 we had referred to our impression that no logical basis for distinguishing the cases of those who were leniently dealt with from those of the petitioners was discernable. The respondents' general plea that this is not so is not adequate. From the nature of the inquiry conducted and from the orders rejecting the appeal, we do not find how these cases have been distinguished.

8. The petitioners have urged that the punishment of dismissal is grossly excessive and dis-proportionate and have urged AIR 1980 SC 1896, 1960 SC 219 and AIR 1959 SC 259 in their support. Normally the stribunals do not interefere with the orders regarding quantum of punishment because the inquiry officers, the disciplinary

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authority and the appellate authority have an opportunity to assess evidence in individual cases and are in a better position to decide this question. However, in these cases we find that the punishment of dismissal has been given for only absence from duty. The charges of absconding or wilfully remaining absent or inciting others for jeopardising or paralysing the essential service have been stated but the evidence for such charges has not been brought on record or tested by cross examination. Accordingly such charges cannot be held to have been properly proved. For this reason the punishment of dismissal has to be considered in respect only of the charge of absence from duty. Regarding the applicants who have pleaded sickness for the reason for such absence and have resorted to the certificate of non-railway doctor under the bona fide belief that this was not dis-allowed, the charge of unauthorised absence is even weaker. We, therefore, cannot but conclude that the punishment of dismissal which would be grossly disproportionate even if the charge of wilful absence were established which is not the case in most of these petitions.

9. Some of the applicants have pleaded that by virtue of their being drivers of a certain category they should not be called for duty as drivers of categories which would be liable to such calls in the first instance would be available. They have also pleaded that the nature of satisfaction under Rule 14(ii) is different from the nature of satisfaction under Article 311(2). The respondents on the other hand have pleaded that the nature of sarisfaction for dispensing with the inquiry under both Rule 14(ii) and Article 311(2)

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is subjective and judicial bodies should not go into the adequacy of circumstances for which the inquiry was dispensed with. It has also been stated that the reasons for dispensing with the inquiry have not been reduced in writing and have not been communicated to the petitioners. We have not thought it fit to go into all these pleas. After the judgment in Tulsi Ram Patel and Satyavir Singh's cases it is now established law that even in appeal or revision an inquiry should be held and in these cases such an inquiry has been ordered and has been held. Secondly the law now is established that while the competent authority needs to address itself to the circumstances which justify the conclusion that the inquiry preceding the order of punishment can be dispensed with, such satisfaction has to be only of the competent authority and the reasons of which have to be recorded in writing need not be communicated. In this case, however, the reasons are not only recorded in writing but have been incorporated in the order of punishment and, therefore, this requirement has been fulfilled. Thirdly it is also established law that such orders are subject to judicial review and the fact that appeal against them has been provided under the Rules shows as stated in Tulsi Ram Patel's case that the delinquent employees so punished are not entirely without remedy in these cases. This remedy has been resorted to and, therefore, it is not relevant to go into the pleas made by the petitioners and respondents in this regard.

10. In the case of Rajkot division the appellate authority while agreeing with the findings of the inquiry officer and confirming the penalty imposed, appears to have had some reservations regarding the evidence amounting

to full and satisfactory proof. He has used the following words.

"It is becoming evident that the ex-employee secured medical certificate from private doctor who appear to be liberal in such matters to the utter disregard of the damage caused to the running of essential services. I find that the main body of the charge against the ex-employee stands proved. Therefore, in accordance with the powers conferred under Rule 14(ii) of the Railway Servants (Discipline and Aappeal) Rules, 1968 that the delinquent employee is dismissed from service with immediate effect."

11. Mr. Misquitta has urged that in Western Railway the nature of dislocation was far less because of the scale of absence was much lesser than in the other divisions and, therefore, the apprehension that the essential services were likely to be paralysed was grossly exaggerated. These pleas need not concern us because it is not ex-post facto apprehension being found exaggerated but the satisfaction of the competent authority regarding the threat of dislocation at the time when the order was passed, which is important. Mr. Misquitta has also urged that the authority which punished him should have been higher than the appointing authority but was [illegible] lower.

12. The learned advocate Mr. N.J. Mehta and the petitioner Mr. Misquitta have pleaded that the order of punishment has been given by an authority which is lower than their appointing authority, when Article 311 (1) requires that such authority should not be subordinate to the appointing authority. They have not established

this with reference to the pay scales of the appointing authority of the post of which the petitioners were at the time holding and the reports of the inquiry does not show that this plea was raised before the inquiry officer or the appellate authority.

13. In Gandhidham division the inquiry report shows that the witnesses have been examined and the call book register in which the calls were noted have been sought to be proved with reference to the signature of the call boys and witnesses and such call boys and witnesses have also been examined. So far as the absence of the petitioners alleged is concerned, this has been sought to be proved from the testimony of the clerk who has deposed with reference to the master rolls about the absence. So far as the respondent authorities' attempt to inform the petitioners is concerned, this is sought to be proved from the documents of the call register and call boys and witnesses in cases in which they accompanied them. In many cases the call boys have stated that they do not remember whether the petitioners were found at home or not and in many cases their signatures have not been proved in documents like call registers. There are, however, a few cases in which call boys have testified that they have served the calls and found that the petitioners were not available at their residence and their family members had been informed and in some cases they have also admitted their signatures in the call registers. The inquiry reports show that without making any distinction between such cases and other cases in which the call boys have not supported the contention by specifically averring that they had served the calls and found the petitioners

absent or by proving their signatures in the call registers, the inquiry officer had concluded that the petitioners were guilty of remaining unauthorisedly absent on the basis of such calls having been served and their being found absent. We, therefore, find that in such cases in which the call boys have testified that they had served the calls or their signature is proved, there is valid distinction required to be made and there is justification for holding that the petitioners wilfully absented themselves in spite of being served with calls. These cases are :

1. OA/561/87 - Shri Madan Mohan
2. OA/557/87 - Shri Suraj Bal Singh
3. OA/562/87 - Shri Gulab Rai
4. OA/569/87 - Shri Natu T.
5. OA/572/87 - Shri Govind Ram C.
6. OA/574/87 - Shri Deen Dayal
7. OA/560/87 - Shri R.P. Tiwari
8. OA/577/87 - Shri Ganga Ram M.
9. OA/556/87 - Shri Hari Ram M.

14. In the case of Rajkot division the inquiry officers have examined witnesses and produced relevant registers which have been shown or cross examined by the petitioners. They have distinguished some cases in which they have specifically concluded that the charge of the petitioners being found absent has not been proved on the basis of the documentary evidence. In this division no witness has been examined and no attempt has been made to confront the petitioners with the oral testimony of the call boys or witnesses with reference to the entries in the call register. In this division the inquiry report is, therefore, based on mere absence and the conclusion of guilt has been drawn on the

(24)

the assumption of general knowledge of strike and that it was illegal and that there was a ban on private doctor's certificate. In some cases notably one in which the petitioner was admittedly in hospital as an indoor patient, it has been held that because he did not inform the railway doctor, he had no valid excuse.

15. In Baroda division no witnesses have been examined and the entire reliance has been placed on the call boys register. However, in neither Rajkot nor Baroda division any attempt has been made to prove the entries at least regarding the signatures of the call boys and the witnesses if any accompanying them..

16. It is noticed also in the inquiry in Baroda and Rajkot division that the delinquent officer has been straight away examined by the inquiry officer and many questions are of the nature of cross examination. The proper sequence of the case of the disciplinary authorities being first placed and thereafter the delinquent officer asked to give explanation with reference thereto and to put up his defence has not been scrupulously followed. As has been held in some cases viz 1963(7) FLR 106 and 1963(7) FLR 269, this detracts from the reasonablness of opportunity.

17. On the allegations of <u>mala fide</u> against Mr. Pai made by Mr. Misquitta in OA/368/87 and Mr. Rao in OA/416/87 different orders were passed. The request of Mr. Rao for change of Board was acceeded to with the following observations.

> "He has not given any convincing reason for change of board of enquiry. However, in order to remove his imaginery and wrongly placed

fears, the board of enquiry consisting of Shri B.R. Pai, Sr. D.P.O. and Shri H.B. Singh, Sr. DEE(TRO) is replaced by another board of enquiry."

In the case of Mr. Misquitta, however the request was not allowed and it was observed as follows.

"Shri B.R. Pai, Sr. DPO has affirmed the written statement in OA No.34/87 to OA No.43/87 before the Central Administrative Tribunal, ADI for Union of India as per Railway Board's letter No.E(G) 82 LL-2 dt. 21-2-1983 vide item xvii. Except this, he has no connection whatsoever with this case. The affirmation was done as part of his duty in compliance of Board's letter quoted above. Moreover, he is not the person who has to take a decision on the appeals preferred by the ex-employees. There is also no reason for him to be prejudiced against them. As such I find no reason to change Shri Pai from the Board of Enquiry. He should, therefore, continue as member of the Board of enquiry."

While we have no satisfactory proof of any mala fide on the part of Mr. Pai, the reasons which prevailed upon the respondents to change the member on the request of Mr. Rao can be said to fully apply to the request of Mr. Misquitta also. It would have been entirely proper and prudent on the part of the respondent authorities to have given the same order in the case of Mr. Misquitta. The fact that Mr. Pai had made affidavit in the written statement on behalf of the respondent authorities as part of his duty raised doubts in the mind of the petitioners that he was too closely identified with the stand of the

respondent authorities taken in proceedings in courts and, therefore, they had reservations regarding Mr. Pai bringing upon an open impartial and objective mind to the inquiry.

18. In view of the foregoing discussion our conclusion is that in 9 cases mentioned in para 12 in Gandhidham division full and complete inquiry as was practicable has been held and reasonable opportunity has been given to the petitioners to answer the charges and the evidence has been properly tested and appreciated. However, the charges established are only regarding wilful absence from duty and not instigation or joining in the strike or paralysing or jeopardising essential service. In this context the extreme punishment of dismissal from service cannot be regarded as just or proportionate. Any penalty other than removal or dismissal from service would meet the ends of justice. These cases are remitted to the appellate authority to determine the penalty in each case. We direct that this be done within three months from the date of this order.

19. In the case of all other petitioners in Gandhidham and all petitioners in Rajkot and Baroda division we do not find that the inquiry is full or complete or provides reasonable opportunity to the petitioners and no evidence justifying the conclusion has been found and the appellate authority has mechanically endorsed the recommendations of the inquiry officer. For these reasons the impugned orders of the disciplinary authority and the appellate authority are quashed and set aside. The petitioners are directed to be reinstated from the date of the order of dismissal by the disciplinary authority in these cases barring the nine cases stated above in Gandhidham division. Their period of absence will not constitute a break in their service. They will be

entitled to back wages on the petitioners satisfying the respondents that they have not accepted any employment or have not been paid their wages or any portion thereof.

20. In the circumstances of these cases we award cost of Rs.300/- for each case barring the 9 cases referred to. We do not consider it necessary to award any interest. We direct that these orders be implemented within six months.

21. Subject to the above observations and directions we find merit in the petitions to the extent stated. MA/598 to 601/87 stand disposed of with the above orders.

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

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