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CENTRAL ADMINISTRATIVE TRIBUNAL

CUTTACK BENCH : CUTTACK.

Original Application No. 308 of 1989

Date of decision : 19th February, 1990

1. Shri Joseph Anthony, son of Shri W.A. Lazerees, SP.A. Grade-I, Diesel Loco shed, Bandamunda at present residing at Diesel Loco Shed Colony, P.S. Bandamunda and District Sundargarh.

.... APPLICANT

-Versus-

1. Union of India represented through the General Manager, South Eastern Railway, Garden Reach, Calcutta, West Bengal.

2. Chief Personnel Officer, South Eastern Railway, Garden Reach, Calcutta, West Bengal.

3. Divisional Railway Manager, South Eastern Railway, Chakradharpur.

4. Senior Divisional Mechanical Engineer (D), Bandamunda, Sundargarh.

..... RESPONDENTS

For the Applicant. Mr.D.S.Misra, Advocate

For the Respondents M/s. Bijay Pal, Senior Standing Counsel (Railway) and O.N. Ghosh

C O R A M :

THE HON'BLE SHRI P.S.HABEEB MOHD, MEMBER (ADMN)
A N D
THE HON'BLE SHRI N.SENGUPTA, MEMBER (JUDICIAL)

1. Whether reporters of local papers may be allowed to see the judgement ? Yes

2. To referred to the Reporters or not ? Yes

3. Whether Their Lordships wish to see the fair copy of the Judgement ? Yes.

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:- JUDGEMENT :-

P.S.HABEEB MOHD, MEMBER (ADMN) This is an application filed by Joseph Anthony, S.P.A. Grade-I Diesel Loco Shed, Bandamunda, Under Section 19 of the Administrative Tribunal's Act, 1985 in which he has challenged the order of dismissal from service passed by the 4th Respondent in Memo No. CON-T.A.-4 dated 11.11.85 (Annexure-1) and the further order passed in appeal by the 3rd Respondent and communicated to the applicant through the 4th Respondent in Memo No. E-12/D-JA-SPL-4756 dated 8.11.88 rejecting his appeal for re-instatement in service, with the prayer for issue of directions quashing the Annexure-1 and 4 and for his re-instatement in service with consequential benefits.

2. The case of the applicant is that one doctor K.C. Sahu filed a complaint against the applicant and while a Criminal Case was pending against him, Respondent No. 4 without holding any enquiry dismissed him from service invoking powers under Rule 14(2) of the Railway servants discipline and Appeal Rules. The Criminal Proceeding, the Criminal Misc. case No. 107 Cr.P.C. in the Court of the Executive Magistrate, Panposh was dropped on 20.4.88 with the following orders:-

"I am satisfied that there is no longer any apprehension of the breach of peace or disturbance of tranquillity..... Further proceeding is dropped and case is closed".

Though in Annexure-3 the applicant had cited the orders passed by the Magistrate, the appeal was rejected by

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the 3rd Respondents on the ground 'Hon'ble Magistrate has dropped the proceeding and closed the case which can not be deemed to be equivalent of Hon'ble acquittal of the delinquent employee".

3. The Respondents on the other hand have raised the plea of limitation and besides have stated that the applicant had initially approached the Calcutta Bench of the Central Administrative Tribunal in Original Application No. 440 of 1989 on the same matter and the applicant being permitted to withdraw the Petition, the case have been disposed of accordingly, by the Calcutta Bench. However, the point whether a fresh Petition could be filed before the Tribunal was not argued and the point was not pressed during the arguments of the case. The powers dispensing with the enquiry in the particular circumstances of the case were correctly invoked according to the Respondents and the dropping of the Criminal Proceeding by the Magistrate did not mean that Disciplinary action could not be taken by the Disciplinary Authorities or that the order of dismissal could not be confirmed by the Appellate Authority.

4. During the arguments of the case it was stated by the Learned Counsel for the Respondents that even if by way of judicial review the circumstances under which an enquiry could have been dispensed with could have been gone into by the High Court, the Tribunal has no such powers.

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5. After perusal of the records and hearing of the arguments we hold that the position taken by the Learned Counsel for the Respondents that the Tribunal could not go into such matters is without substance. The matter has been set at rest by the decisions of the Supreme Court in Sampath Kumar case and also in Parma Nanda-Versus-State of Haryana and others (A.I.R.1989 Supreme Court, 1185). It was held by their Lordship's of the Supreme Court that the Tribunal can exercise the powers of a Civil Court or High Court and Tribunal could exercise such powers which the Civil Court and High Court would have exercised by way of judicial review. In view of this the arguments advanced before us on this point is without substance.

6. The circumstances under which an enquiry could be dispensed with have been detailed in Satyabir Singh-vs-Union of India A.I.R.1986 Supreme Court (Pages-555-576)

"The finality given by Cl.(3) of Art.311 to the Disciplinary Authority's decision that it was not reasonably practicable to hold the inquiry is not binding upon the Court and the Court would consider whether Cl. (b) of the second proviso or an analogous service rule had been properly applied or not.

In examining the relevancy of the reasons given for dispensing with the inquiry, the Court will consider the circumstances which, according to the disciplinary authority, made it come to the conclusion that it was not reasonably practicable to hold the inquiry. If the Court finds that the reasons are irrelevant, the order dispensing with the inquiry and the order of penalty following upon it would be void and

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the Court will strike them down. In considering the relevancy of the reasons given by the disciplinary authority, the Court will not, however, sit in judgement over the reasons like a Court of first appeal in order to decide whether or not the reasons are germane to Cl. (b) of the second proviso or an analogous service rule. The Court must put itself in the place of the disciplinary authority and consider what in the then prevailing situation a reasonable man acting in a reasonable manner would have done. It will judge the matter in the light of the then prevailing situation and not as if the disciplinary authority was deciding the question whether the inquiry should be dispensed with or not in the cool and detached atmosphere of a Court-room, removed in time from the situation in question. Where two views are possible, the Court will decline to interfere.

..... As pointed out in Tulsiram Patel's case it is not necessary that a situation which makes the holding of an inquiry not reasonably practicable should exist before the disciplinary inquiry is initiated, because a situation which renders the holding of an inquiry not reasonably practicable can come into being even during the course of an inquiry. "

We have ^{also} the opportunity also of going through the relevant disciplinary proceeding file, produced by the Respondents.

7. For the purpose of the case it is necessary to quote in full the note made by the Disciplinary Authority dated 11th November, 1985 in Annexure-R/2 filed along with the reply of the Respondents.

SOUTH EASTERN RAILWAY
BONDAMUNDA
Dt. 11th November, 1985.

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NOTE

On receipt of letter No.E/1/ADMO/2100 dated 8.11.85 enclosed with report of Dr.K.C.Sahoo, I have gone through the report very carefully and have come to following conclusions.

- i) After going through the report of Dr.K.C.Sahoo, & after speaking to him and other, I have come to conclusion that Shri J.Anthony is guilty of assault on Dr.Sahoo without any provocation.
- II) After going through the report and considering various aspects of the case, I come to conclusion that Shri J.Anthony has inflicted Criminal blows on a Government Official while he was proceeding for duty. Thus he is guilty of serious mis-conduct and is not fit to continue in Railway Service.
- III) After considering the various aspects of the case I further come to conclusion that it is not reasonably practical to hold an enquiry as the incident was not observed by any Railway employees or witnesses who could be called for conducting the Enquiry. Moreover, since Shri J.Anthony has already assaulted Dr.Sahoo he may use the force in threatening the Enquiry Officer and obstruct the proceedings of the Enquiry.
- IV) Therefore, I decide, that Sri J.Anthony should be dismissed from Railway Service, without any Enquiry. //

8. A perusal of this note shows that the Disciplinary Authority had already made up his mind that the applicant was guilty of serious mis-conduct and is not fit to continue in Railway Service, as per the second paragraph of his note. It was only thereafter that he further came to the conclusion that it was not reasonably practical to hold an enquiry as the incident was not observed by the Railway Employees or witnesses who could be called for conducting the enquiry.

9. A scrutiny of the above note clearly shows that the Enquiry was dispensed with not in the context of the circumstances as the law requires, but the Disciplinary Authority was already convinced on going through the report of the

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Doctor and after speaking to the doctor and others about the guilt of the applicant. It is not clear as to who are the others, referred to in the first paragraph of the note. It is further stated that the incident was not observed by any Railway Employees or witnessess. Therefore, it is clear that the Disciplinary Authority had up his mind in advance and thereafter is only trotting out reasons for not holding the inquiry.

10. The provision in the Railway Service Disciplinary and Appeal Rules, 1963 states clearly as follows:-

Rule (14) Special procedure in certain cases-

Not-withstanding anything contained in Rules 9 to

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(i) Where any penalty is imposed on a Railway servant on the ground of conduct which has led to his conviction on a criminal charge; or

(ii) 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

(iii) where the President is satisfied that in the interest of the security of the State, it is not expedient to hold an inquiry in the manner provided in these rules;

The Disciplinary authority may consider the circumstances of the case and make such orders thereon as it deems fit;

Provided that the Commission shall be consulted where such consultation is necessary, before any orders are made in any case under this Rule;

11. The requirement of law is, as per Rule 14(ii) that where the Disciplinary Authority satisfied for reasons to be recorded by it in writing that it is not reasonably practicable to hold an enquiry provided in the Rules, the Disciplinary Authority may consider the circumstances and make such orders thereon as deems fit. The note of the Disciplinary Authority dated 11.11.85 is clearly vitiated by bias and it does not conform to the requirements of Rules 14(ii).

12. Since the impugned order Annexure-1 has been passed on the basis of the note recorded referred to earlier i.e. , the findings of the Disciplinary in the disciplinary proceeding which was also recorded on the same date does not conform to the requirement of law. Though there is a reference in Annexure-1 that the Disciplinary Authority was satisfied that for the reasons he has recorded in writing it was not praticably to hold an enquiry this is only paying lip service to the requirement of law.

13. In the circumstances, we have no hesitation in quashing impugned order No.E/1/ADMO/2100 dated 08.11.1985 vide Annexure-1.

14. The Appellate Authority's order dated 4.8.88 only states that the dropping of the proceedings by the Hon'ble Magistrate was not exoneration from the offence. The Appellate order does not deal in detail with any of the points raised in the appeal petition of the applicant. There is also a reference to the available evidence on record. It is not clear what was the available evidence on record, except the Disciplinary Authority's order in addition to

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to the Criminal Proceeding which disposed of in Criminal Misc. case No. 524/85 dated 20.4.88.

In the circumstances, we find that the appellate authority's order (Annexure-4) is also vitiated and it is also accordingly quashed.

15. In the circumstances, we quash order No. E.12 D/JA/SPL/4756 dated 4.8.1988 and the Disciplinary Authority's order as well as the Appellate Authority's order (Annexures-1 & 4 respectively). The applicant is reinstated in service and the Respondents will be at liberty to proceed against the applicant if they so decide after confirming to the requirements of law. However, the applicant will not be entitled to any back wages. After disposal of the proceeding, if any, appropriate orders will be passed by the Respondents as to how the period between his dismissal from service and re-instatement is to be treated. Respondents will comply with this order within the period of 2 months from the date of receipt of the copy of the order.

There will be no order as to costs.

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MEMBER (JUDICIAL)

D. J. 19/2/1990
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MEMBER (ADMINISTRATIVE)

