

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD
CIRCUIT BENCH
LUCKNOW

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T.A. 1032/87
(W.P.1289/82)

Zafar Ali Siddiqui ...Petitioner.

versus

Union of India & ors. ...Respondents.

Shri A.N.Sinha Counsel for Petitioner.

Shri S. Verma Counsel for Respondents.

Hon. Mr. D.K.Agrawal, Judicial Member.
Hon. Mr. K. Obayya, Adm. Member.

(Hon. Mr. K. Obayya, A.M.)

Writ Petition No. 1289/82 filed in the High Court of Judicature at Allahabad, Lucknow Bench has been received in this Tribunal under section 29 of the Administrative Tribunals Act, 1985 and registered as T.A.1032/87. The petitioner, who was employed in the Northern Railway, has challenged the order of his dismissal from service dated 29.6.81, the appellate order dated 7.11.81 and the order of the reviewing authority dated 22.12.81 rejecting the case of the petitioner and prayed for a direction to the opposite parties/respondents to treat the petitioner in service with effect from 29.6.81.

2. The petitioner was appointed as Trains Clerk in the scale of Rs 260-400 in 1976 and was posted under the Chief Yard Master, Kanpur. In 1978, he was promoted as Senior Trains Clerk and was posted at Lucknow under the Chief Controller. By an order dated 29.6.81 he was issued ~~with~~ a punishment notice dismissing him from service. The same day, an order also was issued dismissing him from

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service with effect from 29.6.1981. This order was accompanied by charge sheet and also an order indicating the circumstances under which it was not practicable to hold enquiry and provide opportunity to the petitioner of being heard. The petitioner preferred an appeal on 14.8.81 which was rejected by an order dated 7.11.1981. He preferred a review thereafter. It was also rejected by an order dated 22.12.1981-

3. The contention of the petitioner is that he was wrongfully held responsible for the assault on Mohammad Husnain and S.C. Bajpai, Deputy Chief Controller, Northern Railway by unidentified persons on 24.6.1981. The F.I.R. was lodged on the same day but did not mention the name of the petitioner as an assailant or as one who was responsible for the incident. The disciplinary authority did not consider the circumstances of the case and his order is, therefore, against the principles of natural justice, ^{being} arbitrary and not based on any evidence. It, ^{further} ~~is/therefore~~ contended that there was no material to ^{arrive} at the ~~conclusion~~ ^{conclusion} that it was not reasonably practicable to ~~arrive~~ hold the enquiry. The appellate order was not in accordance with the rules as it was not a speaking order and the review order also was passed without application of mind into the facts and circumstances of the case. It is further contended by the petitioner that both the officials Mohd. Husnain and S.C. Bajpai, alleged victims of assault deposed in the civil suit filed by one Naeem that they ^{whether} donot know/ ~~that~~ the petitioner had assaulted them but the person who ^a assaulted was not known to them and that nobody in the department was ^{present} ~~was~~ at the time of incident.

4. The case of the petitioner is that the impugned order

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was passed without notice or opportunity to him and that there was no circumstances to dispense with the enquiry and the appellate and review orders being not speaking orders are arbitrary and against the principles of natural justice, as such the order of his removal, the appellate order and review order are liable to be quashed.

5. In the counter filed by the respondents, it is admitted that the names of the assailants were not mentioned in the F.I.R., though the number of assailants was mentioned as 3. The name of the petitioner was not mentioned in the F.I.R. because of notorious activities and temperament of the petitioner. The victims were afraid to disclose the names of the petitioner but the confidential enquiry of the department revealed that the petitioner was actually responsible for the incident. It is further stated by them that it was neither possible, nor in the interest of administration to hold the enquiry as laid down under rule 9 and 10 of the Railway Servants (Discipline & Appeal) Rules, 1968. The material gathered against the petitioner was treated as confidential because of the tense situation and possibility of industrial peace being disturbed by rowdy elements if enquiry was held. It is further stated that the petitioner master-minded and connived with anti social elements in assaulting public servants. The petitioner is a miscreant and his conduct in the past also indicated that he was in the habit of assaulting the public servants.

6. In the rejoinder filed by the petitioner, the stand

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taken in the petition has been reiterated and it was pointed out that evidence in the suit filed by one Naeem who was also dismissed from service on same ground for involvement in the same incident, ~~the evidence~~ clearly revealed that the petitioner was not involved in the incident and the victims of the assault also mentioned that they had no suspicion on any other official. It is also stated that the disciplinary authority has not recorded any reasons and satisfaction while dispensing with the enquiry and that the F.I.R. lodged with the police was not followed and the police did not register any case against the petitioner.

7. We have heard the arguments of the counsel for both the parties and perused the record. The charge-sheet against the petitioner, which is contained in Annexure -4 to the petitioner reads as follows:

"On 24.6.81 while Shri Mohd. Hasnain Deputy Chief Controller, N. Rly., Lucknow was coming from his residence for performing his duty in 0.00 hrs. to 8.00 hrs. shift, at about 22.00 hrs. at the rear gate of DRM office, he was given a call from back and was asked to re-pay the money, Shri Hasnain turned back and replied that he has never borrowed any money from anybody. He was then mercilessly beaten by three persons with hockey sticks as a result of which he got grievous injuries on his person.

On 24.6.81, while Shri S.C. Bajpai, Deputy Chief ~~Engineer~~ Controller, N. Rly. Lucknow was coming to perform his duty in 0.00 hrs. to 8.00 hrs shift in control office from his residence, he was intercepted by three persons at Vidhan Sabha Marg and was assaulted with hockey sticks as a result of which he got grievous injuries on his person.

Shri Zafar Ali Siddiqui, Sr. Trainis Clerk had earlier planned to beat up Shri Hasnain and had threatened him to this effect. He master minded the entire episode and connived with anti-social elements in getting Shri Hasnain and Shri Bajpai

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physically assaulted.

Shri Zafar Ali Siddiqui is a miscreant and is in the habit of assaulting the staff. On previous occasions also, there had been cases of assault on staff by him. He has created a terror amongst the staff in way of assaulting/ terrorising them by way of threatening of dire consequences, if anybody speaks against him or come forward to give evidence.

Thus, he has failed to maintain absolute devotion to duty and acted in a manner unbecoming of a Railway servant thereby violated Rule 3(I)(ii) & (iii) of Railway Services Conduct Rules, 1966."

8. The impugned order of dismissal dated 29.6.81 which followed the above charges contained in Annexure-3 is as follows:

"Whereas, I, Senior Divisional Operating Superintendent, Northern Railway, Lucknow, the authority empowered to dismiss/remove from service Shri Zafar Ali Siddiqui, Senior Trains Clerk/Northern Railway/Lucknow, who was appointed under the orders of Senior Divisional Personnel Officer, a Junior-Administrative Grade Officer, am fully satisfied that Shri Zafar Ali Siddiqui Sr. TNC is responsible for grave charges listed in the Annexure. The above employee is in such a mood that if notice is given and hearing accorded to him, there is an apprehension of grave disorders affecting the vital railway system. The said employee is apparently present at Lucknow yet he has created such an atmosphere of terror that it is not reasonably practicable to conduct an enquiry or to adduce any evidence against him.

THEREFORE, under the circumstances, it is not reasonably practicable to give him an opportunity of making representation under Article 311(i) Clause (2) of the Constitution of India. Therefore with the powers vested in me under Article 311(1), Clause (2), proviso (b) of the said clause, I

[Signature]

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order dismissal of Shri Zafar Ali Siddiqui Sr. Trains Clerk/Lucknow from service with effect from 29th June, 1981 afternoon."

From this it is evident that the recourse has been taken to rule 14(ii) of the Railway Servants(Discipline & Appeal)Rules, 1968. This rule lays down:

"notwithstanding anything contained in rule 9 to 13,.....

- (ii) where the disciplinary authority^{is} satisfied for reasons to be recorded in writing that it is not reasonably practicable to hold enquiry in the matter provided in these rules or
- (iii).....

the disciplinary authority may consider the circumstances of the case and make such orders thereon as it deems fit."

A reading of the above rule clearly indicates that while disciplinary authority is competent to dispense with an enquiry in taking a decision in disciplinary matters, such a course could be adopted only after he is satisfied ~~with~~ that it is not reasonably practicable to hold an enquiry and the reasons thereof should be recorded in writing. The record placed before us by the learned counsel for the respondents deals with appeal. The circumstances necessitating dispensing with the^l enquiry as laid down in rule 9 to 13 are not forthcoming in the record. It is mandatory that the reasons should be recorded in writing as to why it is not practicable to hold an enquiry. From the reading of the impugned order, it is seen that the disciplinary authority has come to the conclusion that he is "fully satisfied that Shri Z.A. Siddiqui is responsible for grave charges listed in the annexure. The basis for arriving at this decision is not explained. It is further mentioned in the order that the petitioner "is in such a mood that^l a notice given and hearing accorded to him^{of} there is an apprehension ~~and~~ grave

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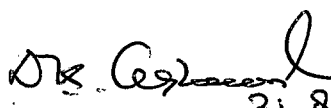
disorder affecting the vital railway system." The learned counsel for the respondents stated that there was a confidential enquiry which revealed the hand of the petitioner in the incident, resulting in assault of the public servant. What that confidential enquiry was, who were examined, what is the material against the petitioner, is not available in record. We have not been shown any record relating to this confidential enquiry. Admittedly, the petitioner continued to be in the service and attended to his duties from the date of incident i.e. 24.6.81 to the date of dismissal i.e. 29.6.81. It is not known why if his presence in the office was such ^{a force} fierce as to cause disruption to industrial peace, strike terror into the minds of the staff, ^{he} was allowed to continue in the office and not kept under suspension. It is also noticed that the F.I.R. did not mention the name of the petitioner as also in the civil suit thereafter, the victims of the assault who are the responsible government officers, never mentioned the names of the petitioner in their deposition in the civil suit. From this it would appear that the petitioners came to be linked with the incident with no evidence or clue. Perhaps this missing link was explained in confidential enquiry but that confidential enquiry was not placed before us. In the circumstances, we consider that dispensing with the enquiry as provided in rule 9 to 13 ^{is} ~~are~~ not justified since the petitioner was present in the office till the date of his removal and that the incident occurred outside the office and its effect on the staff was either minimal or non-existent.

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case if they so choose giving opportunity to the petitioner as provided in the rules. The petition is allowed as above. In the circumstances, the parties are left to bear their own costs.


Adm. Member.


Judl. Member.

31.8.1990

Lucknow Dated: August 31st, 90