

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD

CIRCUIT BENCH

LUCKNOW

(A/11)
(13)

T.A. 1036/87
(W.P. No. 1362/82)

J.P. Tripathi

...Applicant.

versus

Union of India & Ors.

...Respondents.

Hon. Mr. D.K.Agrawal, Judl. Member.

Hon. Mr. K. Obayya, Adm. Member.

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

Writ Petition 1362/82 filed in the High Court of Judicature at Allahabad, Lucknow Bench has been received in this Tribunal on transfer under section 29 of the Administrative Tribunals Act, 1985 and it was registered as T.A.1036/87. In this petition, the petitioner seeks a direction for quashing the order of his dismissal from service dated 29.6.81, the appellate order dated 7.11.81 and the review order dated 22.12.1981.

2. The petitioner was employed in Northern Railway as a Trains Clerk in 1977 and was working in the control room in DRM's office, Lucknow. By order dated 29.6.81 he was dismissed from service for alleged involvement in the assault of public servants Mohd. Husnain and S.C. Bajpai on 24.6.81. The dismissal order is accompanied by statement of charges and also the order indicating the circumstances under which it was not possible to provide any opportunity to the petitioner to defend his case before passing the impugned order. The contention of the petitioner is that he came to know of the incident of 24.6.81 in which the aforesaid public servants were assaulted, later, and that

B

A/2
(14)

the allegation that he is involved was false. His name is not mentioned in the F.I.R., though he is well known to the victim public servant. It is also contended by him that under Rule 14 of the Discipline & Appeal Rules, the disciplinary authority should be satisfied as to the circumstances necessitating dispensing with the enquiry, ^{this satisfied} / should be based on objective assessment and cogent reliable material. ~~xxx xxx xxx xxx xxx and reliable material~~. It was practicable to hold an enquiry in this case. Notice before imposing the penalty which is mandatory, requirement under rule 14 was not issued to him. The disciplinary authority has not taken into consideration the totality of circumstances ⁱⁿ / ascertaining the truth. Therefore, the punishment is arbitrary. He preferred an appeal which was rejected. The pleas urged by him in the appeal to consider the grounds for not holding the enquiry ~~were~~ not looked into and that the appellate order is cryptic, non-speaking and as such it is liable to be quashed. The review order also suffers from the same infirmity, as such cannot be sustained.

3. In the counter filed by the respondents, it is stated that the enquiry was held properly and formalities were fulfilled and action was taken against the petitioner after disciplinary ^{authority} ~~enquiry~~ was fully satisfied with the enquiries and revelation of confidential enquiry. It was neither possible, nor in the interest of administration to hold any enquiry as ~~no~~ stipulated in the rules. It is further contended by them that the appeal as well as the review was considered ^{and orders passed} / ~~and~~ after due consideration. The confidential enquiry held by the disciplinary authority

g

(15) (13)

established that ^{the}petitioner was actually involved in the assault.

4. In the rejoinder, the petitioner stated that ⁱⁿthe civil suit filed by one Naeem who ^{was} also dismissed for involvement in the same incident, ^{the} victim officials were examined and they have testified ^{to} the fact that nobody from the department was present at the time of incident, and they have not seen the petitioner at incident.

5. We have heard the learned counsel for the parties. The learned counsel for the petitioner assailed the impugned order as arbitrary and violative of Article 311 of the Constitution; there was no evidence to connect the petitioner overtly or covertly with the alleged incident of assault on the public servant. No reasons were given as to why the enquiry was not practicable and the appellate order disclosed that there was ^{no} application of mind of the "appellate authority" and the reviewing authority has passed a cryptic order. He contended that dismissal from service under rule 14 of the Railway Servants (Discipline & Appeal) Rules, 1968 is a draconian measure and should not be lightly applied in routine way. The learned counsel for the respondents reiterated the stand taken in the counter.

6. We have given our careful consideration to the rival contentions and perused the record placed before us by the learned counsel for the respondents. We have also noted that rules 9 to 13 of Railway Servants (Discipline & Appeal) Rules, 1968 lay down the procedure for imposing of penalties. In case of major penalties, the procedure is elaborate while in case of minor penalties it is not

R

(16) (A/TU)

so elaborate. But what is common in this procedure is that opportunity is afforded to the charged officer to explain his case, cross-examine witnesses, examine his own witnesses seek copies of documents relied upon. An enquiry, if it does ~~is~~ not conform to these rules, is void. Exception to these rules, however, is provided in rule 14 which lays down a procedure in certain cases. According to rule 14 (ii): "where a disciplinary authority is satisfied with reasons to be recorded by it in writing, that it is not reasonably practicable to hold enquiry in the manner provided in these rules.....disciplinary authority may consider the circumstances of the case and make such orders thereon as it deems fit."

7. The application of the rule 14(ii) has been the subject matter of many judicial pronouncements. It is well settled that disciplinary authority must act fairly and reasonably and not arbitrarily and that there should be ~~no~~ material to suggest that the enquiry in a manner laid down under rules 9 to 13 is not practicable and that there is material to suggest imposition of penalty without holding the enquiry. Reasons should be recorded as to the circumstances necessitating doing away with the enquiry. In *Tulsiram Patel and others vs. Union of India* (1985 (22) SLR 576) the Hon. Supreme Court held that "reasonable practicability of holding enquiry is a matter of assessment to be made by the disciplinary authority; such authority is generally on the spot and knows what is happening." It was also held that the order of disciplinary authority dispensing with the enquiry and order of punishment are subject to judicial review. Reiterating the principles laid

p.

(17) (15)

down in the case of Tulsi Ram Patel supra, the Hon. Supreme Court in Satyavir Singh vs. Union of India (1986(1) SLR, page 255) observed that "in re-examining the relevancy of the reasons given for dispensing with the enquiry, 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 enquiry. If the court finds that the reasons are irrelevant, the order dispensing with the enquiry and the order of penalty following upon it would be void and the court will strike them out. It was further observed that "in considering the relevancy of the reasons given by the disciplinary authority, the court will not, however, sit in the judgment over the reasons like the court of appeal nor decide whether or not the reasons are germane to clause (b) of the 2nd proviso are analogous service rules. The court must put itself in place of disciplinary authority and consider what is in the then prevailing situation, a reasonable man acting in a reasonable manner would be 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 enquiry should be dispensed with or not in the cool and detached atmosphere of court room removed in time from the situation in question. Where two views are possible, the court will decline to interfere".

8. The charge against the petitioner was that he planned to beat up Shri Hasnain and Shri Bajpai, Deputy

.p

(18) (10)

Chief Controllers, Northern Railway and on 24.6.81, masterminded the incident in which both these officers were beaten up resulting in causing grievous injuries to these officers. The charge alongwith punishment notice and also order containing reasons for dispensing with the enquiry were all served on the applicant on the same day, i.e. 29.6.81. We have carefully looked into ~~these~~ ^{the victim} these documents. Immediately after the incident ^{the victim} officers gave ^{their} reports in the office of the D.R.M. In / reports there is no mention that the petitioner was responsible for organizing the assault. Also the F.I.R. was lodged in the police station. In the F.I.R. also no mention is made of the involvement of the petitioner. The police case, however, was not proceeded with and the petitioner was not arrested. The department has filed before us the record relating to the disciplinary proceedings. This record commences with page No. 8 and deals with appeal and the review. The record relating to the disciplinary proceedings in which the punishment was awarded, has not been made available and the respondents have not been able to show us any other paper where the disciplinary authority has recorded the reasons as to why ~~he~~ ^{ed} consider that open enquiry against the petitioner for alleged offence of assault on public servant, was not reasonably practicable. This being a mandatory provision of the rule, the orders passed in a summary manner without an enquiry strikes at the very root of the mandatory provisions and on this ground alone the enquiry without affording opportunity to the petitioner and also the order of dismissal that followed it, are liable to be quashed. The learned counsel for the respondents stated that the disciplinary authority held a confidential

R

(19) (47)

enquiry and that enquiry has disclosed the complicity of the petitioner in the alleged incident. We have not been shown any such confidential enquiry. It has to be presumed that the disciplinary authority has not complied with the provisions of rule 14(ii) and as such the impugned orders cannot be sustained. It is also seen that the petitioner has preferred an appeal in which he has urged certain specific grounds pointing out certain lapses on the part of disciplinary authority and the enquiry held by the disciplinary authority. The appellate ^{authority} ~~order~~ has not considered these grounds at all and passed the order in a routine manner holding that he has no reason to doubt the correct application of mind by the disciplinary authority. The review order also is one para order which said that there was no justification to change the orders of the appellate authority. The appellate order should be in conformity with the provisions of rule 20(ii) in as much as the orders were passed in a perfunctory manner without considering all the specific grounds urged by the petitioner particularly in the context of ^{here} ~~their~~ being no enquiry and opportunity given to the petitioner to explain his case before the disciplinary authority. We are of the view that the order of the appellate authority suffers from serious flaws. The order of the appellate authority should be based on considering the evidence on record and also particularly sufficiency of the reasons recorded by the disciplinary authority for dispensing with the enquiry. This being not the case, the appellate order is liable to be set aside. The reviewing authority ^{in his} ~~is~~ very cryptic in one para order and has not considered any of the aspects

P

/

Adm. Member.

Lucknow Dated August, 3/ 90.