

CENTRAL ADMINISTRATIVE TRIBUNAL  
LUCKNOW BENCH, LUCKNOW

INDEX SHEET

CAUSE TITLE TA 1036 OF 87

NAME OF THE PARTIES J. P. Tripathi Applicant

Versus

Co. T. of Ors Respondent

Part A.

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2	Order Sheet	2 to 11
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CERTIFICATE

Certified that no further action is required to be taken and that the case is fit for consignment to the record room (decided)

*File B/C, wee do of out 1/2 destroyed*

Dated.....

Counter Signed.....



*B. M.*  
Signature of the  
Dealing Assistant

Section Officer/In charge

No. *per 100* Copy

*On*

CENTRAL ADMINISTRATIVE TRIBUNAL  
LUCKNOW BENCH

FORM OF INDEX

~~D.T.A./R.A./C.G.P./ No. 1036/87~~

P A R T - I

~~(W.P. 1362/82)~~

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3.	Any other orders	:-	—	—	Nil —
	Judgement / 3. S.C.R	:-	9	—	12 to 20
5.	S.L.P.	:-	—	—	Nil —

*8/7/4/49*  
D.Y. Registrat

*2/1/2*  
Supervising Officer

*7/7/49*  
Dealing Clerk

Note :- If any original document is on record - Details.

*7/7/49*  
Dealing Clerk

V.K. Mishra

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD  
CIRCUIT BENCH, LUCKNOW

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(1)

INDEX - SHEET

CAUSE TITLE

TR 103 C/87 (CWP 1362/82)

OF 198

Name of the Parties

J P Trefpathi

Versus

Union of India.

Part A, B and C

A file

Sl. No.	DESCRIPTION OF DOCUMENTS	PAGE
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7	Power	A 105 to A 106
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(2)

(2)  
 ORDER SHEET  
 IN THE HIGH COURT OF JUDICATURE AT ALLAHABAD

of 1983.

1363  
 208

3

Jaydambad Tripathi vs. Union of India & Ors.

Date	Note of progress of proceedings and routine orders	Dated of which case is adjourned
1	2	3
24-3-82	<p>Mr. K.S. V.J.          MSS Am. mail J</p> <p>Admit, issue notice</p> <p>sd/s K.S. V.          sd/s S. Ahmad          24-3-82</p>	
	<p>6-5-1982. Fixed w.p. with          1 to 4 for attendance.</p> <p>Issue Notice to all          1 to 4 through R.P.</p> <p>sd/s K.S. V.          6-5-1982</p>	
10-3-83	<p>Service Report -</p> <p>sd/s 1. Power filed by Sri C. A. Basu, Adv.          sd/s 2. Power filed by Sri Siddhartha Verma,          May close. proceed?</p> <p>sd/s 10-3-83</p>	

ORDER SHEET  
IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
ALLAHABAD

.....T.D. NO. 1036.....OF 1961  
T. P. Inspector.....vs. U. L. D. & Others.....

DRAFT ORDER	ORDERS WITH SIGNATURE	Office Notes as to action (if any) taken on order
	<p><u>On</u></p> <p>This court publication No. 1036 of 1961 is to be served on the printer from Singh Lall &amp; Sons, Beach Printer The printer of the case are as under:</p> <p>1. The print publication is to be submitted 2. Counter and digital affidavit done at the office of S. A. N. Singh, before the Court of S. A. N. Singh, before the date of the hearing of the case.</p> <p>In this case orders to the parties have been issued by my office post fixing 9.30 A.M. Whether the same were delivered or not have been received back Case have been received back so far S. A. N. Singh before the date of the hearing of the case.</p> <p><u>On</u></p> <p>4/5/61</p>	
<p><u>On</u></p> <p>9.30 A.M.</p>	<p>Order issued to the parties no one appears for replying Court may not be in by 2.6.61</p>	

J. B.

(M)

ORDER SHEET  
IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
ALLAHABAD

..... FA: NO. 1036/87 ..... OF 120  
..... P. S. Toupattivs. vs. Union of India & Ors.

Order	Date	Order with Signature	Office Notice as to action (if any) taken on order
2	13/6/88	<p><u>Order issued</u></p> <p>An application has been filed in this Tribunal for transferring the case No. 1036/87 from Lucknow Bench to the Circuit Bench, Lucknow. It is accordingly fixed for hearing at Circuit Bench, Lucknow, on the 18-7-88. Notice may be given to the parties concerned.</p> <p>J.K.S.</p> <p><u>13/6/88</u></p> <p>Hon'ble Ajay Jain, A.M.</p> <p>On the request of the applicant dated 15-6-88 this case was transferred to the Circuit Bench at Lucknow and notices were sent to the applicant and to the applicant's counsel at Allahabad on 30-6-88 fixing the case at Lucknow for today. No body is present either on behalf of the applicant or for the respondents. First notices be issued to both the parties. The respondents should file reply to the petition within one month. Rejoinder can be filed within fifteen days thereafter. After exchange of both the replies the case be listed for final hearing on 2-3-9-88.</p>	
3	10-7-88		<p>Notice issued to both the parties.</p> <p><u>17.7.88</u></p>

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
EXECUTIVE BENCH AT DELHI.

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D.A./T.A. No. 1036 1983

J. P. Tripathi

Applicant(s)

Versus

U O X

Respondent(s)

Sr. No.	Date	Orders
(6)	27.10.88	Hon. D. S. Misra, A.M. Hon. G. S. Sharma, J.M. Reply on behalf of the respondents has been filed today. On the request of learned Counsel for the applicant, he is allowed 3 weeks time to file rejoinder. List this case to hearing on 24.11.1988. } J.M. 27.10.88 Deputy
	18.XI.88	<u>OB</u> No rejoinder affidavit has been filed by the counsel for the applicant as directed by the court's <sup>vide</sup> order dt. 27 X 88. Submitted.
(7)	26-11-88	Hon. D. S. Misra, A.M. Hon. G. S. Sharma, J.M. Sri. Maiter Abas for applicant Sri. S. Verma for respondents Counter & rejoinder have been filed. Arguments heard. Judgement reserved. } J. M. P.M.

Final  
10/11

W.M.

(8) (9)

Hon' Mr. Justice K. Nath, V.C.  
Hon' Mr. K.J. Raman, A.M.

28/6/89

Appearance has not been made on behalf of any of the parties, although it seems to have been heard on 24/11/88 and now it has been directed for a fresh argument. The office at Allahabad seems to have issued notice to Lawyers on 5-6-89, but, it is not clear, whether the Lawyers have been served the notice or not. But, what is more important is that Shri Haider Abas, the learned counsel for the applicant has been elevated to be a Judge of the High Court. The office will re-examine the record <sup>of</sup> the case first, and find out the names of Lawyers for the parties, and issue notices afresh to those Lawyers fixing the date on 8-8-89 for hearing.

Notice be also issued to the applicant by name indicating that if his Lawyer was Shri Haider Abas, now elevated as Judge of High Court, he may engage some other Lawyer for the case.

*WDK*  
 A.M.

*g*  
 V.C.

(sns)

*OR*  
 Date noted by  
 applicant & respo  
 nse  
 submitted for  
 hearing

8/8/89

Hon' Mr. D.K. Agrawal, J.M.  
 Shri L.P. Shukla, Learned counsel for the applicant requests that this case be listed on 21/8/89. Allowed. Let this case be listed on 21/8/89 for hearing.

*J.M.*

*OR*  
 Submitted for  
 hearing

(sns)

*L*  
 (sns)

21.8.89

No Sitter Adj. to 22.11.89.  
 Applicant is present & learned Counsel for the party is also present.

*h*  
 B.C.

*OR*  
 Submitted for  
 hearing

21-11-89  
22-11-89 was  
holiday for election

No Sitter Adj to 1.2.90.

*h*  
 23/11/89

20-3-90

F.A. 1036/87

(10)

(A)

Hon D.K. Agrawal J.M.  
Hon K. Obayya, A.M.

Mr. L.P. Shakla for Applicant.  
Mr. Siddharth Verma for Respondents.

Arguments heard. Respondents  
have not complied with the order dated  
26-2-90, in as much as they have not  
produced the relevant documents. If  
they do not produce the same, adverse  
inference would be drawn against  
them. They are, however, at  
liberty to produce the said  
documents within 3 weeks. Judgment  
reserved. List it on 16-4-90 for  
receiving the documents, if any.  
Copy of the order shall be given  
to the learned counsel for the  
respondents, as desired.

Deoan

J.M.

B

D.K.A.

Received copy  
C.P. Tribunal  
3/4/90

IN THE HON'BLE HIGH COURT OF JUDICATURE AT ALLAHABAD

( LUCKNOW BENCH ) : LUCKNOW :

WRIT PETITION NO.

OF 1982

Jagdamba Prasad Tripathi, aged about 29 years,  
S/o Late Sri S.P. Tripathi, resident of 253/110,  
Saryu Niwas, Nadan Mahal Road, Lucknow.

--- PETITIONER.

VERSUS

1. Union of India through the General Manager,  
Northern Railway, ~~Baroda~~ Baroda House,  
New Delhi.
2. Senior Divisional Operating Superintendent,  
Northern Railway, Hazratganj, Lucknow.
3. Additional Divisional Railway Manager, (O)  
Northern Railway, Hazratganj, Lucknow.
4. Divisional Railway Manager, Northern Railway,  
Hazratganj, Lucknow.

--- OPPOSITE PARTIES.

WRIT PETITION UNDER ARTICLE 226 OF CONSTITUTION OF INDIA

*10/3/82  
3 Ver  
22.5.1982*  
The above named petitioner most respectfully  
begs to submit as under:-

1. That the present writ petition is directed against the order dated 20.6.1981 passed by the Opposite Party No. 2 dismissing the petitioner from service, exercising the powers conferred under Rule 14(ii) of the Railway Servants (Discipline & Appeal) Rules 1968, order dated 7.11.1981 passed by the Opposite Party No.3 rejecting petitioner's appeal dated 11.8.81 and the order dated 22.12.81 passed by opposite party No.4 rejecting petitioner's review petition dated 17.11.1981. A true copy of the impugned orders dated 20.6.81,

J. P. Tripathi

(12)

~~A/10~~

1036/87(G)  
1362/82

20.10.1972. 10.10.1972.

J. P. Tripathi AM  
Sri L. P. Shukla Advocate for the  
Union of India

Union of India AM  
Sri S. Varma Advocate for the  
Union of India

QUESTION:

1. Whether the order of 1036 is a temporary allowed  
in the 21st Settlement?

2. Whether the 1036 is the 10th Settlement?

3. Whether the Settlement which is on the fair  
basis of the Settlement?

4. Whether the 1036 is circulated to all concerned?

ANSWER:

20.10.1972.

R

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD

CIRCUIT BENCH

LUCKNOW

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

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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 authority after disciplinary ~~enquiry~~ was fully satisfied with the enquiries and revealatiof of confidential ~~enquiry~~. It was neither possible, nor in the interest of administration to hold any enquiry as ~~as~~ stipulated in the rules. It is further contended by them that the appeal as well as the review was considered/ ~~and~~ and orders passed after due consideration. The confidential enquiry held by the disciplinary authority

(15)

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(13)

the established that/petitioner was actually involved in the assault.

4. In the rejoinder, the petitioner stated that/the civil suit filed by one Naeem who, also dismissed for involvement in the same incident, <sup>was</sup> the victim officials were examined and they have testified <sup>to</sup> 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 <sup>no</sup> 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

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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 ~~xxx~~ 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

(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

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~~ these documents. Immediately after the incident 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 <sup>ed</sup> 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 ~~strike~~ 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

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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/ ~~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 <sup>here</sup> ~~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 <sup>is</sup> very cryptic in one para order and has not considered any of the aspects

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(20) (AO)

raised in the review petition.

9. In the circumstances, we hold that there has been no justification for dispensing with the enquiry as contemplated in the Railway Servants (Discipline & Appeal) <sup>their</sup> Rules, 1968 and has been no evidence whatsoever to connect the petitioner with the alleged incident of assault on the public servant and the order of dismissal that followed, is bad in law, arbitrary, without any basis or evidence. We also hold that the appellate authority was wrong in not giving consideration in various contentions given by the applicant in appeal, the reviewing authority also failed to consider the contentions raised before him.

10. Taking the facts and circumstances into consideration, we quash the impugned order dated 29.6.81 (Annexure-1) and (Annexure 2) appellate order dated 7.11.81/ and the review order dated 22.12.81(Annexure-3). We direct the respondents to reinstate the petitioner with immediate effect. The petitioner is entitled for the arrears of salary and other benefits with effect from 29.6.81 & the date on which he was dismissed from service. The respondents will settle all the claims of the petitioner within a period of three months. It is, however, open to the respondents to proceed with the disciplinary enquiry, if they so choose giving the opportunity to the petitioner as provided in law.

11. The petition is allowed, leaving the parties to bear their own costs.

Adm. Member.

Lucknow Dated August, 3/ 90.

DR. .....  
31.6.90.  
Jid. Member.