IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, LUCKNOW BENCH
Registration O.A.No. 83 of 1988(L)

Ashfaq Ali .... Applicant

Vs.

Union of India & Others.... Respondents

Hon'ble Mr.Justice U.C.Srivastava,V.C.
Hon'ble Mr. A.B. Gorthi, Member (A)

(By Hon.Mr. A.B. Gorthi, Member (A)....)

In this application by Shri Ashfaq Ali, the prayer is that the order of suspension dated 22.11.85, the order of dismissal dated 12.12.85 and the order of the Appellate Authority rejecting the applicant's appeal be quashed and that he be given all consequential reliefs including re-instatement in service.

2. In the year 1984 the applicant was appointed as Helper at Gorakhpur Catering,N.E.Railway. There was a complaint that the applicant, together with 3 other Railway employees, committed rape on a dumb woman Smt Ishwari on the night 20/21-11-85. They were arrested but released on bail. All the 4 persons were however, suspended from duty on 22.11.85. Thereafter the Railway Authorities invoked rule 14(ii) of the Railway Servants (Disciplinary & Appeal) Rules 1968 ('the Rules' for short) and ordered dismissal of all the 4 involved persons including the applicant from the service. An appeal preferred by the applicant on 13.1.86 was dismissed by the Divisional Commercial Superintendent,Gorakhpur on 7-4-86, which rejection order, the applicant claims not to have received. On 5.8.87, the Railway Magistrate, Gorakhpur trying all the 4 accused persons, discharged them on the ground that no case of rape could be made out

against them on the available evidence. Thereafter, while the 3 other co-accused were allowed to rejoin duty, the applicant was refused to be re-instated by the respondents.

3. The respondents have contended that notwithstanding the fact that the applicant was acquitted of the charges by the Railway Magistrate, his dismissal under rule 14(ii) was legally in order as the applicant took a leading part in the crime of rape and that it was not in the interest of service to retain him in service. It was also contended that the trial by the Railway Magistrate was without jurisdiction. The respondents have tried to explain that the other 3 co-accused in the crime were re-instated in service " on an objective appraisal of the complaint" . Moreover the applicant was a temporary employee and keeping in view the gravity of the charge it was considered that he should not be retained in service.

4. The alleged crime of rape is said to have taken place in the canteen premises, most of the witnesses except for the victime of the crime were Railway employees. It is not clear from the Counter Affidavit as to what made the Railway Authorities to conclude that the enquiry into the case was not reasonably practicable as laid down under rule 14(ii). In any case since the individual after a proper enquiry by the police and a trial by the Railway Magistrate has been found not guilty, the case of the applicant deserves to be re-examined by the Railway Authorities afresh. Termination order passed under rule 14(ii) under the circumstances cannot be held to be legal as it would amount to circumventing the provisions of rule 14(i). The termination order is therefore liable to be quashed.

5. On the question of termination of service without holding any enquiry on the ground that it is not reasonably practicable to hold such enquiry, the law is well settled. A Civil Servant whose services are terminated by applying clause(b) to the second proviso of Article 311 of the Constitution of India or Rule 14(ii) of the Railway Servant (Discipline & Appeal) rules 1968 has the right in a departmental appeal to a full and complete enquiry into the charges levelled against him, subject to a situation envisaged in the second proviso to Article 311(ii) not existing at the time of the hearing of the appeal. Even in a case where such a situation exists, he has a right to have a hearing of the appeal postponed for a reasonable length of time for the situation to become normal. In the instant case it is amply evident that the Appellate Authority did not apply its mind to this requirement of law while rejecting the applicant's appeal.

6. In view of the above, the application is allowed and the order terminating the services of the applicant as also the order of the Appellate Authority rejecting the appeal of the applicant are both quashed. The applicant shall be reinstated in service and be entitled to all the consequential reliefs and benefits. However, we would like to make it clear that it is open to the competent authority to carry out a proper enquiry under the Rules into the conduct of the applicant, and thereafter take action as considered appropriate. Parties to bear their own costs.

MEMBER(A) VICE-CHAIRMAN.

13 December, 1991, Lucknow.

(sph)

ANNEXURE - A

CENTRAL ADMINISTRATIVE TRIBUNAL
LUCKNOW BENCH LUCKNOW.

.....

INDEX SHEET

CAUSE TITLE O.A. 83 of 1988

Name of the parties Ashfaq Ali

Applicant.

Versus.

Union of India (N.E.R.)

Respondents.

Part A.B.C.

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Checked by
Opinion sheet
Heads

recd back

Filed on 22.8.06

CENTRAL ADMINISTRATIVE TRIBUNAL

~~ADDITIONAL~~ BENCH,

~~23 A, Thornhill Road, Allahabad-211001~~

Registration No. 83 of 1989 (L)

APPLICANT (s) Ashfaq Ali

RESPONDENT(s) Union of India & ors.

Particulars to be examined	Endorsement as to result of Examination
1. Is the appeal competent ?	Yes
2. (a) Is the application in the prescribed form ?	~~Yes~~ No
(b) Is the application in paper book form ?	Yes
(c) Have six complete sets of the application been filed ?	Yes. (Six sets have been filed)
3 (a) Is the appeal in time ?	Yes (If not of knowledge of the final order is given on account)
(b) If not, by how many days it is beyond time ?	
(c) Has sufficient case for not making the application in time, been filed ?	
4. Has the document of authorisation/Vakalatnama been filed ?	Yes.
5. Is the application accompanied by B.D /Postal-Order for Rs. 50/-	Yes. (I.P.O No 5 DD 067025 dt. 20.7.06 Rs. 50/-)
6. Has the certified copy/copies of the order (s) against which the application is made been filed ?	Yes
7. (a) Have the copies of the documents/relied upon by the applicant and mentioned in the application, been filed ?	Yes
(b) Have the documents referred to in (a) above duly attested by a Gazetted Officer and numberd accordingly ?	Yes (By Notary)

OA 833/90-L

(A3)

[illegible]

[illegible] the request of [illegible] for applicant [illegible] to 5.5.90 [illegible]

JM

Hon'ble Mr. C. Mathew, VC

[illegible] for applicant [illegible] adjourned to [illegible]

VC

Hon'ble Mr. C. Mathew, VC

The applicant and his counsel is not present. The application is made by the applicant to adjourn the case as his travel is going to Delhi. This is a case of transfer of the applicant by the respondents and needs to be heard by a Division Bench. The case is admitted.

Issue notice to the respondents to file reply within 30 days of the receipt of the order with a copy to the applicant who may file rejoinder if any within 15 days thereafter.

The case is adjourned to [illegible] 90 for hearing.

The departmental enquiry file should also be brought before the court on the date of hearing.

VC

Notice issued with instructions

(A4)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CIRCUIT BENCH AT GUWAHATI
****

O.A./~~T.A.~~ No. 83 1988 (L)

Astang Ali,
Applicant(s)

Versus

U O I
Respondent(s)

Serial No.	Date	Orders
	21/8	OR In this case notices with copy of Court's order dt 5.9.00 were issued on 8/9/00 to the app. Parties to file their reply within 30 days & also produce before this Court the departmental enquiry file. No reply has been filed by the respondents. The notices which were sent by registered post have not been received back undelivered. Submitted for orders Jish 31/8/00 21.11.00 fixed in office report. dt. 31.8.00 with Court's order dt. 5.9.00. 21.11.00 No sitting. Adjourned to 23.12.00 for order. Jish 21/11 Power on behalf of respondent No. 4 filed today [illegible]

6/4/89. Hon. Justice K. Nath, V.C.
Hon. Mr. S. Misra, AM

(A5)

The learned counsel for the opposite parties says that the departmental enquiry file has been received and he wants a day's time to examine. Put up tomorrow for orders.

AM. V.C.

7-4-89 Hon. Justice K Nath --- VC
Hon. D.S. Misra --- AM

Sri Ashok Nigam, Advocate, makes appearance on behalf of the respondents and files preliminary objection on the point of limitation. A copy of the objection has been delivered to the learned counsel for the applicant.

List this case for orders on 20.4.89.

A.M. V.C.

OR
Case is submitted for orders on the point of limitation
Submitted for orders
18/4

O.A. No.83/88(L)

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

27/6/89 Shri S. M. Nasir, learned counsel for the applicant and ~~Shri~~ the brief-holder of the learned counsel on behalf of Opposite parties are present. The Opp. Ps. had been given adequate time to file counter reply and it was indicated on the last date that no further time would be given. The brief-holder for the counsel of the Opp.Ps. states that the learned counsel has sufferred a fracture. There is an application for one month's time to file a counter. The counter be filed within one month to which the applicant may file rejoinder, if any, within one week thereafter. The case be listed for final hearing on 10-8-89. There will be no further time for filing the counter; and in case counter is not filed as indicated above, the case will be heard and disposed of ex-parte on the date fixed.

A.M. V.C.

(sns)

OR As directed by the Court's order dt. 27/6/89 no reply filed. Case is submitted for ex-parte hearing
9/8

Hon' Mr. D.K. Agrawal, J.M.

10/8/89 Learned counsel for the parties are present. List this case on 8/9/89 for hearing if DR available.

J.M.

(sns)

OR As directed by the Court's order dt. 27/6/89 no reply has been filed so far. Submitted for ex-parte hearing.
7/9

8.9.89 Hon Justice K. Nath, V.C
Hon Mr K.J. Raman, A.M
On the request of both parties The case is adjourned to 17/11/89 for ex-parte hearing
A.M. V.C.

83/18

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CIRCUIT BENCH, LUCKNOW

ORDER SHEET

(A7)

REGISTRATION No. _____ of 198 .

APPLICANT — A. Ali

VERSUS

DEFENDANT / RESPONDENT — U.O.I.

	Brief Order, Mentioning Reference if necessary	How complied with anddate of compliance
4/5/90	Hon justice Mr K. Nath, V.C. Hon Mr. K Obayya, A.M. Shri S.M. Nasir, on behalf of the applicant files rejoinder. The applicant will arrange to deliver a copy of the rejoinder to the counsel for the opposit parties either personally or by registered post List id for final hearing on 24/8/90 sd/	
24-8-90	No sitting Adj to 12-9-90	CR RA is not available on the file S J 11

(A8) 83

7-12-91 Hon. Justice U.C. Srivastava, VC
Hon. Mr. A.B. Gorthi, A.M.

On the request of both the parties case is put up tomorrow.

A.M. V.C.

10/12/91 Hon. Justice U.C.S., VC
Hon Mr. A.B. Gorthi AM

Heard the Learned Counsel for the both parties

Judgement Reserved

AM VC

13.12.91 Hon'bl. Mr. Justice U.C. Srivastava VC
Hon'bl. Mr. A.B. Gorthi A.M

Judgement delivered today Seperatly.

AM VC

Recd. judgment copy
03/1/92
for Sri A. Nigam
RA for UOS

CENTRAL ADMINISTRATIVE TRIBUNAL
Circuit Bench at Lucknow.

...

Gandhi Bhawan, Lucknow
May 4, 1989

Registration No. C.M.App. No. 71/89(L)
In
O.A. No. 83/88(L)

Ashfaq Ali ..... Applicant

Vs.

Union of India and ors ... Opp. Parties.

Hon' Mr. Justice K. Nath, V.C.

Hon' Mr. D.S. Misra, A.M.

(By Mr. Justice K. Nath, V.C.)

We have heard the learned counsel for the parties. The questions is whether this application under section 19 of the Administrative Tribunals Act, No. XIII of 1985, on 28-8-1988 is within ~~the~~ limitation or is barred by section 21 of the Act. The relief sought is to reinstate the applicant in service, after quashing the order dated 12-12-85 of the applicant's dismissal and the appellate order dated 7-4-86 confirming the dismissal.

2. Computed from 7-4-86, the application might have been barred by time, but the cause of action for the relief sought, is not merely dismissal and confirmation order, but, also the order of his discharge (Annexure No.5) passed on 5-8-87 by the concerned Magistrate in the criminal case, on the basis of which the applicant was dismissed. The order of discharge was followed by the applicant's representation for reinstatement dated 10-9-87 (Annexure No. 12),

...2/-

which has not been disposed off despite a reminder dated 18-3-88 (Annexure No. 13).

3. The dismissal order (Annexure No. 4) records that in the night of 20/21 November,85 the applicant alongwith others had been arrested at the Railway Station, Gorakhpur for offences punishable under sections 497 and 498 I.P.C. and 120 of Railways Act. Exercising powers under Rule 14(ii) of the Railway Servants Discipline and Appeal Rules, 1968, Opp.Ps. No. 3 straight-away passed an order of dismissal of the applicant. When the case figured before the Judicial Magistrate, Railway, of Gorakhpur on the charge sheet submitted by the Police, the learned Magistrate found that no prima-facie case was established against the applicant. It is not necessary to set out the details of the orders. It is enough to mention that the Magistrate held the applicant to be entitled to be acquitted and consequently passed the order of acquittal, that order is still in force. Since the order of dismissal (Annexure-4) was passed and later confirmed by order dated 7-4-86 (Annexure No. 8) for reason of alleged commission of offences under section 497 and 498 I.P.C. and 120 Railways Act, the acquittal order dated 5.8.87 (Annexure No. 5) gave a cause of action to the applicant to make a representation for setting aside the dismissal order and for reinstating him in service. In view of the fact that, he not only made representation (Annexure No. 12) on 10-9-87, followed by a reminder (Annexure No. 13) dated 18.3.88, the same have remained undisposed off, the cause continues.

...3/-

4. In these circumstances the applicant was entitled to file this application within two and half years from the date of making his representation dated 10-9-87, under section 21 (1)(b) of the Act. The application is, therefore, well within limitation.

5. Further, the objection regarding the form of the application is not fatal to the preliminary objection on behalf of opp. ps. are rejected. the objections

MEMBER (A) VICE CHAIRMAN

(sns)

Lucknow
May 4, 1989.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, LUCKNOW BENCH,

LUCKNOW.

Case No. of 1988.

Ashfaq Ali... ... ... Applicant

versus

The Union of India
and three others ... ... Respondents.

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Presented by:

(S.A.Hasir)
Advocate.

Dated: July 28, 1988.

A13

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, LUCKNOW BENCH,

LUCKNOW.

O.A. CASE NO._____OF 1988 (L)

Ashfaq Ali, aged about 30 years, son of Shor Ali, resident of Village Janki Nagar, hamlet of Village Ram Purwa, Post Office Kutchery, District Gonda (Helper Gorakhpur Catering, North Eastern Railway, Gorakhpur)...APPLICANT.

versus

1. The Union of India
2. Kachehriya Adhikshak, North Eastern Railway, Gorakhpur.
3. The Assistant Commercial Superintendent, North Eastern Railway, Gorakhpur.
4. The Divisional Commercial Superintendent, North Eastern Railway, Lucknow... ... RESPONDENTS.

PETITION UNDER SECTION 19 OF THE ADMINISTRATIVE TRIBUNAL ACT 1985.

The applicant named above begs to submit as under:-

1. That the present petition is directed against the notice No.C/54/Catg./CHP/85, dated 12.12.1985 issued

अनुवाद अपील

by the Assistant Commercial Superintendent, North Eastern Railway, Gorakhpur, contained in Annexure 4 through which the applicant was dismissed from service with immediate effect.

A N D

order dated 7.4.1986 passed by the Divisional Commercial Superintendent, North Eastern Railway Lucknow, vide letter No.C/34/Cat./GKP/Help/85 dismissing the appeal of the applicant, vide Annexure 8.

2. That on 7.4.1986 the Divisional Commercial Superintendent, Lucknow, dismissed the appeal of the applicant, as such the subject matter of order against which the redress is sought is within the jurisdiction of this Hon'ble Tribunal.

3. That on 7.4.1986 the appeal of the applicant was dismissed by respondent No.3. The said order was not communicated or served on the applicant in spite of several letters/reminders. On 8.7.88 the applicant managed to get a copy of the order dated 7.4.86 as such the petition is within limitation, if calculated from the date of knowledge.

4. That from 29.10.1976 the applicant was working as a Commercial bearer in Gorakhpur Catering Unit on commission basis. The work and conduct of the applicant was found to be satisfactory.

5. That on 31.10.1984 the applicant was appointed by the Assistant Commercial Superintendent, N.E.R.,

सहायक आदी

Lucknow on the post of Helper in the grade of Rs.196-232 on a clear vacancy when Sri Tej Bahadur Singh retired on 31.10.1984. Photo copy of the appointment letter dated 31.10.1984 is being filed herewith as Annexure 1.

ANNEXURE 1.

6. That on 1.11.1984 the pptitioner joined his duty at Gorakhpur Catering, North Eastern Railway, Gorakhpur, in pursuance of Annexure 1.

7. That after 1.11.1984 upto 25.11.1985 when the applicant was suspended from service there is no adverse entry to his credit in the service record, the work of the applicant being always found upto the mark.

8. That on 20/21.11.1985 at 3.55 Hours a report was lodged by Ramesh who is the husband of Smt.Ishwari, under sections 497/498 I.P.C. read with section 120 of the Railways Act at Police Station G.R.P.,Gorakhpur. In the said report the applicant was named as accused along with three other co-accused, namely, 1.Kedar Nath Jaiswal 2. Raja Ram and 3.Baij Nath.

A true copy of the F.I.R is being filed herewith as Annexure 2.

ANNEXURE 2.

9. That as alleged in the said F.I.R the applicant and three other co-accused named above committed rape on Smt.Ishwari in the Canteen during midnight.

10. That in pursuance of the said F.I.R the applicant was arrested along with three other co-accused on 20/21.11.1985 and was challaned before the Railway Magistrate by the G.R.P.,Gorakhpur.

3/74 13/87

11. That on 21.11.1985 the applicant along with three other co-accused were granted bail by the Railway Magistrate.

12. That on 22.11.1985 the applicant along with three other co-accused were suspended from service by immediate effect by respondent No.2 Kashotriya Adhikshak, Gorakhpur. The basis of suspension was F.I.R which is contained in Annexure 1.

Photo copy of the suspension order dated 22.11.1985 vide letter No.C/SGA/NC/85 passed by respondent No.2 is being filed herewith as Annexure 3.

ANNEXURE 3.

13. That on 12.12.1985 respondent No.3, Assistant Commercial Superintendent, Gorakhpur, dismissed the applicant from service with immediate effect under rule 14 (ii) of the Discipline and Appeal Rules, 1968.

Photo copy of the said dismissal order dated 12.12.85 is being filed herewith as Annexure 4.

ANNEXURE 4.

14. That on 13.1.1986 the applicant preferred an appeal before the respondent No.4.

In the appeal the grounds taken by the applicant were that he had been falsely implicated in the case by G.R.P. persons due to ill-feeling and enmity as they wanted free catering from the applicant and others but the applicant refused to oblige them.

That the shabby incident as alleged to have been committed in the Canteen cannot be believed to have taken place in presence of more than 15 persons who were present in the Canteen as hotel service was closed at about 22.00 hours

and thereafter the staff was busy in the room for closing the account and other works.

That no statement of Smt. Ishwari was recorded by the G.R.P. police in presence of the applicant.

That from the facts of the case no nuisance was at all possible at about 22.00 hours when hotel service was closed.

That the applicant was suspended and thereafter dismissed from service without giving opportunity to defend himself.

15. That after filing the above mentioned appeal the applicant sent several reminders to respondent No.4 that his appeal may be decided at an early date after hearing the applicant.

That all the efforts of the applicant went in vain as respondent No.4 never informed the applicant of the date of hearing of the appeal nor sent any information about its proceedings.

16. That on 5.8.1987 the Railway Magistrate, Gorakhpur, discharged the applicant along with three other co-accused from the charges under sections 497/498 I.P.C. read with section 120 of the Railways Act as no case could be made out under those sections.

Photo copy of the order dated 5.8.87 passed by the Railway Magistrate is being filed herewith

ANNEXURE 5. Annexure 5.

17. That on 17.9.87 after acquittal of accused persons respondent No.2 allowed duty to three other co-accused, namely, Kedar Nath, Dalj Nath and Raju Ram. The said three co-accused have joined their duty on 25.9.87 and they are still working on their respective posts of commission bearers at

Cerakhour Canteen. No departmental proceedings were initiated against them.

Photo copy of the said order dated 17.9.87 passed by respondent No.2 is being filed herewith as Annexure 6.

ANNEXURE 6.

18. That the applicant sent reminders regarding his appeal on 21.2.1986, 23.4.87.

After acquittal of the applicant he again sent reminders to the Senior Divisional Commercial Superintendent, Chief Commercial Superintendent S.C.R. on 9.9.87 and 10.9.87 for reinstatement but no action was taken by the aforesaid officers in the matter of the applicant.

19. That on 18.3.88 the applicant again sent reminder/representation to the Hon'ble Railway Minister, C.M., S.C.R., A.D.R.M. and Senior D.C.S. for consideration of his appeal and for reinstatement.

20. That on 7.6.1988 the applicant for the first time received information from the office of the Senior D.C.S., by letter dated 6.6.88 that his appeal for reinstatement has been rejected.

21. That even at this stage no information was given to the applicant about the decision of his appeal which he filed through proper channel on 13.1.88 before respondent No.4.

Photo copy of the said letter dated 6.6.88 is being filed herewith as Annexure 7.

ANNEXURE 7.

22. That after receiving information vide Annexure 7

the applicant did pairvi in the department himself and on 8.7.88 managed to get a copy of the order dated 7.4.86 vide letter No.C/34/Cat./UKP/Help/86 passed by respondent No.4 through which he dismissed the appeal of the applicant.

Photocopy of the order dated 7.4.86 passed by respondent No.4 is being filed herewith as Annexure 8.

ANNEXURE 8.

23. That the applicant exhausted the departmental remedy of filing the appeal under the Service Rules and thereafter no departmental remedy is open for him.

24. That the applicant filed no case or writ petition in any court of law against the order dated 7.4.86 contained in Annexure 8 through which his appeal has been dismissed by respondent No.4. No case is pending in any court of law in respect of the matter in question.

25. That the postal order No.DD 067829 issued by Post Office High Court Branch, dated 26.7.88 for Rs.50/- only is being attached as court fee of this petition.

G R O U N D S

26. Because the suspension order was issued immediately on the arrest of the applicant through the applicant was bailed out within 20 hours. Respondent No.2 should have revoked the suspension order ~~in~~ and in not doing so he legally erred in exercise of his jurisdiction.

Dr. U.K. Shah

A29

27. Because the order of dismissal passed by respondent No.3 was passed in terms of rule 14 (ii) of the Discipline and Appeal Rules. The said order passed under rule 14 (ii) is illegal because the dismissal was ordered by the learned Assistant Commercial Superintendent only on the basis of alleged charges levelled by the police in the criminal case. There was no conviction till then.

28. That rule 14 (ii) by its very nature can be attracted in those cases only where the requirements provided therein are strictly complied i.e. when the employee is absconding or his whereabouts are not known or no officer is prepared to enquire into the matter due to threats or intimidation.

In the absence of all these ingredients and conviction this was not a case for invoking rule 14 (ii) of the Discipline and Appeal Rules. As such the dismissal order passed by respondent No.3 is illegal, against the rules and without jurisdiction.

29. Because the applicant was suspended by respondent No.2 and thereafter he was dismissed from service without affording any opportunity of being heard and without holding any departmental enquiry in the matter. In the present case no charges were framed by respondents against the applicant and no charge sheet of the departmental proceedings was ever served or issued to the applicant . As such the order of dismissal passed by respondent No.3 is in violation of principles of natural justice and rule 11 of the Discipline and Appeal Rules.

3/9/96 3/8/11

30. Because respondent No.4 dismissed the appeal of the applicant without giving any opportunity of being heard and without considering the provisions of Article 14 of the Constitution of India which forbids discrimination by law i.e. treating persons similarly circumstanced differently or treating equals and unequals as equals.

In the present case three employees who faced similar charges along with the applicant have been reinstated on theirrespective posts after acquittal in criminal case. Denying the reinstatement of the applicant without any basis is illegal and ultra vires.

Hon'ble Supreme Court has held in a number of cases that, to treat one person differently from the other, who are similarly situated and there is no rational basis for doing so would be violative of the Article 14.

31. Because the appellate authority failed to give personal hearing to the applicant while deciding the same. It is well settled law that the appellate authority must not only give personal hearing to the Government employee but should also pass a well reasoned order containing the facts of the case grounds taken by the employee and reasons for ~~recording~~ arriving at the conclusions for recording the finding.

In the present case respondent No.4 dismi the appeal without discussing the case of the applicant and without recording or discussing th a ~~wrd~~ word on the basis of which the appeal has been dismissed.

अ० अ० अवस्थी

P R A Y E R

That for the facts and circumstances mentioned above it is most humbly prayed that:-

(i) That the suspension order dated 22.11.85 passed by respondent No.2 and dismissal order dated 12.12.85 passed by respondent No.3 contained in Annexures 3 and 4, respectively be quashed;

(ii) That the order dated 7.4.86 passed by respondent No.4 contained in Annexure 8 may be quashed;

(iii) That the application of the applicant may be allowed with costs and the applicant may be reinstated in service.

(iv) That respondents be directed to give full pay and other allowances to the applicant from the date of suspension and the applicant may be considered to be in continuous service.

(v) That any other relief, which the Hon'ble Tribunal may deem fit and proper be granted to the applicant and against the respondents.

APPLICANT.

VERIFICATION

I, Ashfaq Ali, son of Shox Ali, aged about 30 years, working as Helper Gorakhpur Catering, North Eastern Railway Gorakhpur, resident of Jankl Nagar, hamlet of Village Rural Panna, P.O.Kabchary, District Gonda, do hereby

(A23)

verify that the contents of paras 1 to 25 are true to my personal knowledge and those of paras 26 to 31 are believed by me to be true on legal advice and that I have not suppressed any material fact.

आवेदक अली

Dated: 20th July, 1988. APPLICANT.

Place: Lucknow.

Through
M. Nasir
Advocate

आवेदक अली

12
(124)

Appointment Letter

Annexure-1

पूर्वोत्तर रेलवे

कार्यालय आदेश

श्री अशफाक अली पुत्र श्री अली, जानपान यूनिट में कमीशन विक्रेता पद के लिए चयनित अभ्यर्थी जो मण्डल चिकित्सा अधिकारी लखनऊ के एम0सी0 सं0 पी/198 दिनांक 27/30-10-84 के अन्तर्गत सी/एम चिकित्सा श्रेणी में सफल घोषित है और जिनके चरित्र का सत्यापन अभी नहीं हुआ है, को सहायक वेतनमान 196-232 में रु0 196/- वेतन पर तथा समय-समय पर मान्य अन्य देय भत्तों के साथ अस्थायी रूप से नियुक्त करके जानपान स्टाल गोरखपुर में श्री तेज बहादुर सिंह, सहायक के 30-9-84 को सेवा निवृत्त के फलस्वरूप रिक्त पद पर पदस्थापित किया जाता है। जो तत्काल प्रभावी होगा।

इनका इस पद पर बने रहना इनके चालचलन के सन्तोषजनक पाये जाने पर निर्भर करता है।

यह चतुर्थ श्रेणी अस्थायी कर्मचारियों पर लागू नियमों एवं शर्तों से प्रशासित होंगे।

(जी0 पी0 गुप्ता)
सहायक वाणिज्य अधीक्षक
लखनऊ।

सं0 ई/11/283/15/भाग-11/79/जानपान दिनांक 31-10-84

प्रतिलिपि सूचनार्थ एवं आवश्यक कार्यवाही हेतु प्रेषित:-

1- जानपान निरीक्षक, गोरखपुर।
2- स्टेशन अधीक्षक, गोरखपुर।
3- मुख्य डीजल अधीक्षक, गोरखपुर।
4- मुख्य मण्डल वित्त नियंत्रक, लखनऊ।
5- मण्डल कर्मचारी अधिकारी (कोचिंग)/गोरखपुर की उनके पत्र सं0 का/227/85/कोचिंग कमीशन विक्रेता/6: दिनांक 24-3-83 के सन्दर्भ में जारी आधार पर नियुक्ति की गयी है।
6- कार्यालय अधीक्षक/बिल, पेरोल, पास, मण्डल एवं वाणिज्य कार्यालय में)
7- सम्बन्धित कर्मचारी।

T.C.

अशफाक अली

T.C.

कृते मण्डल वित्त प्रबन्धक (-10)
लखनऊ।

Annex 2

Annex.2 NCR सं 8 A के आर 00762/ धारा 497/498 I.P.C. 120 Rly Act PS GR Pur

तारीख सूचना 20/21-11-85 समय करीब 22 बजे

तारीख सूचना 20/21-11-85 समय 3-55 बजे

घटनास्थल – रेस्टोरेन्ट रे० स्टे० ~~गोरखपुर~~ गोरखपुर

वादी – श्री मेश ग्राम इन्द्रपुर पो० बडगांव जिला गोण्डा

बनाम

1 – बैजनाथ बैरा S/o मोती लाल
2 – केदार नाथ जयसवाल S/o सूर्य लाल
3 राजा राम S/o हरी प्रसाद यादव
4 असफाक अली S/o शेर अली

} बैरा भोजनालय रे० स्टे० गोरखपुर

विवेचक – श्री जमीर नदि

सूचना जबानी वादी

एक गूंगा व्यक्ति जिसके पास एक पर्चा जिसपर मेश व उसकी स्त्री इशुरी का नाम अंकित है को दिखाते हुए तथा नाम पता पूछने पर इसकी तस्दीक करते हुए इशारे से बताया कि दिनांक 20-21/11-85 की रात मे करीब 10 बजे मैं अपनी औरत को साथ लेकर भोजनालय रेलवे स्टेशन गोरखपुर के बरामदे में सोया हुआ था आंख खुली तो देखा कि उसकी औरत गायब है। उसकी तलाश करके मैं परेशान श्री पी० एस० लाल हेड T.C., श्री जौहर अली T.C., राकेश सिंह T.C. दिलीप सिंह T.C. श्री खरगू जी घोटी लाइन के साथ तलाश करते रेस्टोरेन्ट की तरफ गये हुए पर कां० राम चन्द्र यादव व कां० राम नयन मौर्य भी मिल गये आगे बढ़ने पर गूंगे के इशारे पर देखा कि एक औरत हाथ में रूमाल ~~लिये हुए~~ उलटते पुलटते रेस्टोरेन्ट के पीछे बाहरी फाटक से बाहर

T.C

अधूरा पाठ अतः

14 (A29)

Ann. 2

पूर्वोत्तर रेलवे

गोपनीय/

कार्यालय,
क्षेत्र अधीक्षक/गोरखपुर

सं0:-सी/एसआए/एन0सी0/85

दि0:-22-11-1985.

निरीक्षक,
खान-पान इकाई,
पू0उ0रे0/गोरखपुर

विषय:- रेलवे प्लेटफार्म पर स्थित भोजनालय में गूंगी औरत के साथ सामूहिक बलात्कार।

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दिनांक 21-11-1985 को प्लेटफार्म पर स्थित भोजनालय में हुई घटना का पूर्ण विवरण 24 घण्टे के अन्दर इस कार्यालय को उपलब्ध करायें।

थाना राजकीय रेलवे पुलिस, गोरखपुर से भोजनालय के संबंधित कर्मचारियों के नाम की जानकारी करके उन चारों कर्मचारियों को तुरन्त निलम्बित कर दें और जबतक उक्त मामले में कोई निर्णय नहीं हो जाता है तबतक संबंधित चारों कर्मचारियों को निलम्बित ही रखें।

भोजनालय बन्द होने के बाद उसमें किसी भी कर्मचारी को रहने की अनुमति न दी जाय बल्कि रात्रि में भोजनालय का कार्य समाप्त होने के बाद सफाई करके ताला लगाकर उसे सील कर दिया जाय। इसकी चाबी खान-पान प्रेक्षक के पास ही रहेगी। प्रातःकाल खान-पान प्रेक्षक स्वयं इस सील को तोड़कर भोजनालय का कार्य शुरू करायेंगे।

काफी-कक्ष तथा हलवाई-खाने के विषय में वर्तमान में क्या प्रोसीजर अपनाया जा रहा है, की विस्तृत रपट इस कार्यालय को उपलब्ध करायें और बतायें कि काफी-कक्ष में उपरोक्त वर्णित घटना की तरह कोई घटना न होने के लिए क्या-क्या उपाय (सेफ-गार्डस) किये गये हैं।

सं0/-एक

क्षेत्र अधीक्षक/गोरखपुर

प्रतिलिपि:-

निम्नलिखित को सूचना एवं आवश्यक कार्यवाही हेतु:-

1- स्टेशन अधीक्षक/गोरखपुर।
2- प्रवर मंडल वाणिज्य अधीक्षक/लखनऊ।
3- प्रवर वाणिज्य अधिकारी (खान-पान)/गोरखपुर। उनके प0सं0:सी/57/1/5/सीआर/जीकेपी/पी0टी-III, दि0 22-11-1985 के सन्दर्भ में।

T.C

सं0/-एक

क्षेत्र अधीक्षक/गोरखपुर

T.C

अधिवक्ता अली

15 A27

Dismissal order.

NORTH EASTERN RAILWAY

NOTICE OF IMPOSITION OF PENALTY UNDER RULE 14(ii) OF THE DISCIPLINE AND APPEAL RULES, 1968.

No. C/54/Catg/GKP/85
Dated : 12.12.1985.

Divisional Office
Lucknow.

To

Name	: Sri Ashfaq Ali
Father's name	: Sri Shor Ali
Designation	: Helper
Department	: Commercial
Date of apptt.	: 31.10.1984
Scale of pay	: Rs 196-232/RS
Station	: Gorakhpur.

On the night of 20/21-11-1985, a dumb woman was gangraped in the refreshment room of Gorakhpur station by Sri Ashfaq Ali, Helper and others. The Government Railway Police/Gorakhpur arrested the said Sri Ashfaq Ali and others from the refreshment room of the Catering Unit of Gorakhpur in the early hours of 21.11.85 on the charge of raping the dumb woman and a case under section 497 & 498 of IPC and Sec.120 of Railway Act has been registered against them on 21.11.85. Later, Sri Ashfaq Ali, Helper & others were bailed out.

2. Thus Sri Ashfaq Ali, while working as a helper in the Catering Unit's refreshment room at Gorakhpur took part in the gangrape of a dumb woman in the refreshment room on the night of 20/21-11-1985.

3. Therefore, I find that Sri Ashfaq Ali, Helper is not a fit person to be retained in service. I, the disciplinary authority empowered to dismiss Sri Ashfaq Ali from service, have decided under Rule 14(ii) of the Discipline & Appeal Rule 1968 read with proviso (b) to Article 311(2) of the Indian Constitution to dismiss Sri Ashfaq Ali from service. He is, therefore, dismissed from service with immediate effect.

4. Under Rule 18 of the Rly.Servants (D&A) Rules, 1968, an appeal against these orders lies to D.C.S./N.E. Railway/Lucknow, provided :

i. the appeal is submitted through proper channel, within 45 days of receipt of these orders; and
ii. the appeal does not contain improper or disrespectful language.

5. Receipt of these orders may be acknowledged.

T.C

अशफाक अली

T.C

(C.P. Gupta)
Asstt Commercial Smdt.
N. E. Railway/Gorakhpur.

16 (A23)

Annex 5

न्यायालय न्यायिक मजिस्ट्रेट, रेलवे, गोरखपुर

सं0

राज्य प्रति वेदप्रकाश एवं अन्य —अभियुक्तगण

धारा 497, 498 भा0द0सं0 एवं
धारा 120 रेल अधि0
थाना जी0आर0पी0 गोरखपुर

प्रार्थना

दिनांक 9.9.97

वादी द्वारा आरोप लगाये जाने के प्रथम पर मैं उक्त पक्षों को विस्तारपूर्वक सुना तथा पत्रावली पर उपलब्ध साक्ष्य का पूर्णरूप से अवलोकन किया। अभियोजन पक्ष के अनुसार दिनांक 20/21.11.9 की अपराधी रात में करीब 10 बजे वादी प्रकाश रेलवे क्वार्टर की पत्नी सुबह के बाद रेलवे स्टेशन गोरखपुर के नीलकाम के कमरों में सोये थे। वे सोकर उठे तो एक पर्दा पर लिखकर चोरों ने काम किया था, उसे देखकर निश्चित हुआ कि वे रात में सोये थे, तब उनकी नींद खुली तो उसे देखा कि उनकी पत्नी नहीं है। वह सोचने लगा और काम में लगेगा, बीच में उनकी पत्नी मिले और उसके साथ श्री0 रामचन्दर, हेड श्री0 लालचन्द से भेंट हुई। वही मलाकातियों को बताकर पर देखा कि रेलवे के पिछले कमरा के बाद में रखे गिर उनकी पत्नी आ रही है, रखेगा के हवाले से उसे अपनी बीवी बताया। उसके बाद पिता पर पता कि वे लोग उसके बाद अन्वेषण किए हैं और बाद में हवाला किया, जिसे नाम वेदप्रकाश, देवपरदाई, रामचन्द्र यादव एवं अज्ञात बताई है। यह बात की रिपोर्ट थाना जी0आर0पी0 गोरखपुर पर धारा 497, 498 भा0द0सं0 व धारा 120 रेल अधि0 में मुकदमा पंजीकृत किया गया। एस0आई0 श्री सिंह ने मुकदमे की जांच कर आरोप पत्र प्रेषित किया है।

इस केस में वादी ने धारा 497, 498 भा0द0सं0 में उन्हें है, इस सम्बन्ध में धारा 190 आ0प्र0सं0 पर पत्र देते हुए उनके इस अपराध के विषय में पुलिस को सूचना करने में असफल रहे हैं, केवल अभियोग पत्र पर न्यायालय को प्रसंज्ञान लेने का आदेश है। धारा 190 आ0प्र0सं0 में प्रावधान किया गया है कि आ0प्र0सं0 के चैप्टर बीस में अन्तर्गत अपराधों के लिए अभियोग पत्र के

T.C

T.C

अशफाक अली

(A29)

Duty orders of other accused

25-9-87 → Ans. 6

जरूरत पर दोनों तरफ लिखें
Use both side if required.

पूर्वोत्तर रेलवे
N. E. RAILWAY

N. E.—G. 40
RB—GL. 19

संख्या (No.) e/SCA/NC/79-80/87 दिनांक (Dated) 17-9-87

प्रेषक (From) ~~The SCA/Crd~~ सेवा में To ~~The CAIR/Crd~~

विषय (Sub:) Shri Kedar and Shri Baijnath

संदर्भ (Ref.) Com. Bearer.

Shri Kedar and Shri Baijnath commission/Bearer/Crd eating unit may be allowed duty

/SCA/Crd

copy to DRM/C/LM for information. ~~and~~ TC T.P.

SCA/Crd

अशोक कुमार

जरूरत पर दोनों तरफ लिखें
Use both side if required.

पूर्वोत्तर रेलवे
N. E. RAILWAY

N. E.—G. 40
RB—GL. 19

संख्या (No.) e/SCA/NC/79-80/87 दिनांक (Dated) 17-9-87

प्रेषक (From) ~~The SCA/Crd~~ सेवा में To ~~The CAIR~~ Crd

विषय (Sub:) Shri Raja Ram

संदर्भ (Ref.) commission/~~[illegible]~~ Bearer/Crd

Shri Raja Ram commission vouchers may be allowed duty.

SCA/Crd

(A30) 18

Annex 7

जरूरत पर दोनों तरफ लिखें
Use both side if required.

पूर्वोत्तर रेलवे
N. E. RAILWAY

N. E.—G. 40
KB—GL. 19

संख्या (No.) सी. टी. सी. / कै. / गो. पुर / 85 दिनांक (Dated) 6.6.98

प्रेषक (From) मो. रफीक (आ.) खलासी

सेवा में To श्री अशफाक अली
Ex Helper
खलासी लाइन मेरीडोक
गोरखपुर

विषय (Sub :) नौकरी में पुनः बहाली हेतु।

संदर्भ (Ref)

आपको सूचनार्थ एवं आवश्यक कार्यवाही हेतु अग्रेषित किया जिसमें आपने गोरखपुर स्टेशन में पुनः नौकरी पर रखने हेतु प्रार्थना की है। अतः आपसे निवेदन है कि आवश्यक कार्यवाही करें।

मो. रफीक
खलासी
गोरखपुर

T. C

T. C

अशफाक अली

19 (A31)

Order on dep. appeal Area 8.

इस पत्र पर दोनों तरफ लिखें
Use both sides if required

पूर्वोत्तर रेलवे
N. E. RAILWAY

N. E. - G. 4004
NB-GL 19

संख्या (No.) सी/34/Cat/91-P/Hel-P/G.S. दिनांक (Dated) 7-4-96

प्रेषक (From) SR DCS (G) NER/LJN

सेवा में (To) Sri Ashfaque Ali ex Helper C/o CMR/GKP R. Room GKP.

विषय (Sub.) Ashfaque Ali ex helper GKP

संदर्भ (Ref.)

Your appeal have been considered by the under signed and he has passed the following orders.
I have gone through the appeal dated 19/1/96 submitted by Sri Ashfaque Ali ex helper/GKP and also the records available. I find that he has been arrested under sec. 497 and 498 IPC and 120 of Railway act in connection with rape of a dumb women by him in the refreshment room of Gorakhpur.
Thus Sri Ashfaque Ali while working as a helper in the Catering unit's refreshment room at GKP took part in the gang rape of a dumb women in the refreshment room on the night of 20/21.11.95 and therefore the appeal is rejected.

T.C

अशफाक अली

T.C

DCS/LJN

2c (A8)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, LUCKNOW BENCH, LUCKNOW.

Application for interim relief

In re:

Case No._____of 1988

Ahsfaq Ali, aged about 20 years, son of Sher Ali, resident of Village & Janki Nagar, hamlet of Village Rani Purwa, Post Office Kutchery, District Gonda (Helper Gorakhpur Catering, North Eastern Railway Gorakh ur)... ... APPLICANT.

VERSUS

1. The Union of India
2. Mohkmiya Adhikshak, North Eastern Railway, Gorakhpur.
3. The Assistant Commercial Superintendent, North Eastern Railway, Gorakhpur.
4. The Divisional Commercial Superintendent, North Eastern Railway, Lucknow ... RESPONDENTS.

The applicant named above begs to submit as under:-

1. That for the facts and reasons given in the accompanying petition the interest of justice requires that the applicant may be allowed to work during the pendency of his petition and he may be paid salary for the same;

OR

The applicant may be treated as suspended employee

31/7/4.74, 31(d)

and he may be paid subsistance allowance during the pendency of this petition.

Wherefore, it is humbly prayed that the applicant may be allowed to work during the pendency of the case and the respondents be directed to pay salary OR the applicant may be treated as suspended employee and he may be paid subsistance allowance during the pdency of the case.

आपका आदी

APPLICANT.

Through

M. Nasir

Lucknow.
Dated: July 28, 1980.

Counsel for the applicant.

आपका आदी

Before the Central Administrative Tribunal

व अदालत श्रीमान [illegible] महोदय

[वादी] अपीलान्ट

श्री

प्रतिवादी [रेस्पान्डेन्ट]

वकालतनामा

Ashfaq A (टिकट)

vs

Union of India & Ors.

बनाम प्रतिवादी (रेस्पान्डेन्ट)

मुकदमा नं० सन् पेशी की ता० १९ ई०

ऊपर लिखे मुकद्दमा में अपनी ओर से श्री S. M. NASIR

Advocate 53. [illegible] वकील महोदय एडवोकेट

नाम अदालत
मुकद्दमा नं० नाम
फरीकैन बनाम

को अपना वकील नियुक्त करके प्रतिज्ञा (इकरार) करता हूँ और लिखे देता हूँ कि इस मुकद्दमा में वकील महोदय स्वयं अथवा अन्य वकील द्वारा जो कुछ पैरवी व जबाबदेही व प्रश्नोत्तर करें या कोई कागज दाखिल करें या लौटावें या हमारी ओर से डिगरी जारी करावें और रुपया वसूल करें या सुलहनामा व इकबाल दावा तथा अपील निगरानी हमारी ओर से हमारे या अपने हस्ताक्षर से दाखिल करें और तसदीक करें या मुकद्दमा उठावें या कोई रुपया जमा करें या हमारी या विपक्षी (फरीकासनी) का दाखिल किया हुआ रुपया अपने या हमारे हस्ताक्षर युक्त (दस्तखती) रसीद लेवें या पंच नियुक्त करें—वकील महोदय द्वारा की गई वह सब कार्यवाही हमको सर्वथा स्वीकार है और होगी मै यह भी स्वीकार करता हूँ कि हर पेशी पर स्वयं या किसी अपने पैरोकार को भेजता रहूँगा अगर मुकद्दमा अदम पैरवी में एक तरफ मेरे खिलाफ फैसला हो जाता है उसकी जिम्मेदारी मेरे वकील पर नहीं होगी इसलिए यह वकालतनामा लिख दिया प्रमाण रहे और समय पर काम आवे ।

Accepted
S. M. Nasir
Advocate

अशफाक अली

हस्ताक्षर

साक्षी (गवाह) साक्षी (गवाह)

दिनांक 29 महीना 7 सन् १९ ई०

In the Central Administrative Tribunal, Lucknow Bench, Lucknow.

Registration No. 83 of 1986 (L)

Ashfaq Ali .... Applicant.

Vs.

Union of India and Other .... Respondents.

COUNTER AFFIDAVIT ON BEHALF OF OPPOSITE-PARTIES NOS. 1 TO 4

I, Ratna Pal Singh, aged about 45 years, son of Sri Ishwar Ram, working as Asstt. Commercial Superintendent, North-Eastern Railway, Ashok Marg, Lucknow, hereinafter described as the Deponent, do hereby solemnly affirm and state on oath as under:-

1. That the deponent is opposite-party No.3 himself and he has been authorised to represent the opp. parties Nos. 1, 2 and 4 in the instant petition. He has read and understood the contents of the petition and he is replying to them under the instructions of and on behalf of himself as well as the opposite parties Nos. 1, 2, and 4.

Contd..2

2. That the contents of paragraphs 1 and 2 to the petition need no reply. It is, however, submitted that the orders sought to be impugned in the paragraph are correct, and suffer with no infirmity, what so ever.

3. That in reply to the contents of paragraph 3 of the petition, only this much is admitted that the appeal of the petitioner was dismissed on 7.4.1986, rest of the paragraphs is denied as incorrect. In the first place, the petitioner's appeal was dismissed by respondent No. 4 and not by the respondent No.3. It is further stated that the petitioner was duly communicated with the order of rejection, letter no. U-54 /ont./Ahr/AAL, dated 7.4.1986. It is specifically denied that the applicant submitted any letter/ reminder to the answering opp. parties as alleged in the para graph.

The deponent is further craves leave of the Hon'ble Tribunal to point out that the petition itself is time barred and not maintainable. Even if, the statement of the petitioner

is accepted to the extent that he filed an appeal, on 13.1.1986 (as stated in paragraph 21 of the petition.), he could file petition within one year after six months of the date of appeal, whether it was disposed off or not. Even if, the petitioner wants to take advantage of the order rejecting the appeal on 7.4.1986. the petition ought to have been filed within one year of the said order . Thus in any case the petition, at best, could be filed on or before 6.10.1987. The petitione however, has been filed on 28.7.1988 i.e. after about a year of the last date of limitation. This being so, the petition is barred by the provisions of the said rule (2) to 21 of the Administrative Tribunal act , 1985 and is liable to be dismissed on this count alone.

4. That the contents of paragraph 4 of the petition are incorrect, hence denied. The petitioner was engaged for the first time on 31.10.1984, vide order referred in paragraph 3.

सहायक [illegible] निरीक्षक,
पूर्वोत्तर [illegible] लखनऊ

A38

5. That in reply to the contents of paragraph 5 of the petition, it is submitted that the petitioner was appointed as helper in the scale of Rs. 196-232 in Catering Department Gorakhpur unit on purely temporary basis further subject to the verification of his character.

6. That the contents of paragraph 6 are not disputed.

7. That the contents of paragraph 7 to 13 are denied. No, C.R. is maintained for temporary/ ad hoc employee as the petitioner was. It is denied that his work and conduct was found upto to mark. It is further submitted that the applicant was main accused in a Criminal Case of read under section 497/ 498 read with section 120 of the Indian Railway Act. So far as the narration of events subsequent to the F.I.R. being lodged against the petitioner are concerned, they need no reply. As they are matter of record.

8. That the contents of paragraph 14 of the petition are not admitted as stated. While it is admitted that the applicant has preferred an appeal before the respondent No. 2, it is denied that the petition

15/11/84

or was innocent. He was removed from service, after due enquiry held in accordance with rule 14 of the Railway Servant Discipline and Appeal Rules, 1968 (more-in-after referred to as Discipline Rules for short). The petitioner's appeal was also duly considered by the Competent Authority, the respondent No.4, and was rejected on merits, vide order dated 7.4.1986 contained in Annexure No.6 to the petition.

9. That the contents of paragraph 15 are incorrect hence, denied, as submitted in those paragraphs no reminders or representations were received by the answering opposite-parties from the petitioner regarding opportunity of personal hearing at the time of the pending appeal or soliciting an early disposal as alleged in the paragraph under reply.

10. That in reply to contents of para 15, be relevant to point out here that the disciplinary proceedings in the case of the petitioner were taken under rule 14 of the said rules in which a summary

15/11/89

proceedings have been envisaged. There is no obligation on the part of the disciplinary authority to give personal hearing or to issue charge-sheet or to give opportunity of rebutting the said charge-sheet, or charges. The petitioner's offence was been of a very grave nature which not only constituted grave offence but a flaw on his services, hence, rule 14(2) of the said rules was put into operation and the order was passed under the same(Annexure No.4 to the petition).

11. That in reply to the contents of paragraph 16, it is submitted that the petitioner was the main accused in a criminal case read under section 407/ 498 read with section 120 of the Indian Railways act. Although the case being a cognizable offence could be tried by a session court alone, it was ordinarily tried in the court of judicial Magistrate Moradabad. No doubt, that the Judicial Magistrate(Railway) acquitted all the accused, the petitioner not

सहा... अधीक्षक,
... लखनऊ

get benefit out of it for various reasons in the first place, the trial and consequential acquittal was without jurisdiction. In the second place, no proper investigation was done by the Police and the accused got the benefit of doubt, it was not a case of clear acquittal on merits. In the third place, the staff of military catering department and particularly of a restaurant ought to be above suspicion and highest integrity because both male and female visitors came to it, a moral turpitude on the part of the petitioner was established in departmental proceedings and all the circumstances and evidence on record indicating that continuance of petitioner's services was against public interest, the competent disciplinary authority acted rightly in dismissing him. It is not necessary for a departmental action under the said rule 14(2) to obtain conviction of the employee concerned from the court also because both proceedings are independent to

each other. In the fourth place, the petitioner was only a temporary employee working on ad hoc basis against in a casual capacity and his services were liable to be terminated by the competent-authority as and when deem fit. It is the subjective satisfaction of the competent authority to assess the suitability of a temporary employee keeping in view of the interest of the services, which was judiciously exercised in the present case.

12. That in reply to the contents of paragraph 17 it is submitted that on an objective appraisal of the complaint, the other co-accused were allowed to continue, but, the petitioner who has been the main accused was not found suitable hence his services only were terminated.

13. That in reply to the contents of paragraph 18 only this much is admitted that a reminder dated 21.2.86 sent by the petitioner was received by Divisional Commercial Superintendent, North Eastern Railway, Lucknow, and the petitioner was informed through the Catering Inspector, Gorakhpur Unit against vide

सहायक कार्मिक अधिकारी,
पूर्वोत्तर रेलवे, लखनऊ

letter C-18/ [illegible]/ G.S.C / Help/85 dated 7.4.1986, on the said date .. Rest of the para are denied as incorrect.

14. That in reply to the contents of paragraph 19 it is submitted that the only representation dated 18.3.1988 was received by the Senior [illegible] N. E.R. Railway, who has not been implicated and the same was disposed off, letter no. C/84/ [illegible]/ Gorakhpur/85 dated 6.6.1988 which was personally handed over to the petitioner on 7.6.1988. A true copy of the said reply dated 6.6.1988 is being annexed as annexure No. C-1 to this counter-affidavit.

15. That the contents of paragraphs 20 and 21 are denied as incorrect, as submitted earlier the petitioner was duly communicated with the order rejecting the appeal on 7.4 .1986 through the Ordering Inspector, Gorakhpur. The real facts in this regard have already been stated in the foregoing paragraphs.

15/11/89

सहा[illegible]
पूर्वोत्तर रेलवे लखनऊ

..10

16. That the contents of paragraph 22 are denied as incorrect. The order dated 7.4.1986 was duly served to the petitioner through the Co-tering Inspector himself. The story of doing privi and get an order on 6.7.1988 has been concocted in order to c/reate some ground for limitation.

17. That the contents of paragraph 23 are incorrect, hence, denied. The petitioner has got statutory remedy in the shape of a traffic a revision under Rule 25 of the said Discipli nary Rules, 1988 which he has not feel exhausted. The petition is liable to be dismissed on this court also.

18. That the contents of paragraph 24 and 25 need no comment.

19. That the contents of paragraph 26 are denied and incorrect. Nothing of the grounds mentioned in para is tenable either in law or in fact. The petition itself is based on incorrect and perjured facts and misconceived

motion of the case is liable to be dismissed with costs to the answering opposite-parties.

Lucknow.

Dated:-15/11/87

Deponent, 15/11/87

Verification

I, Netra Pal Singh aged about 45 yrs S/o Shri Ashok Kumar working as Asstt. Commercial Superintendent, in the office of Divl. Railway Manager verify that the contents of para 1 is true to my personal knowledge and para 3 to 4 are true on the basis of records and those of paras are believe to be true on legal advice. I have not

Lucknow

Dated:-15/11/87

Deponent, 15/11/87

Netra Pal Singh
Asstt. Commercial Superintendent
Lucknow
3/12/90

Annexure No C-1

In the Central Administrative Tribunal Lucknow

O.A. No 83 of 1992

Ashok Kumar Mozadhar

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जरूरत पर दोनों तरफ लिखें
Use both side if required.

पूर्वोत्तर रेलवे
N. E. RAILWAY

N. E.—G. 40A
RB—GL. 19

संख्या (No.) सी 154/कैट/गोरखपुर/83 दिनांक (Dated) 0-0-

प्रेषक (From) वा० रे० म० (वा०), लखनऊ

सेवा में (To) श्री अशोक कुमार अवस्थी EX प्रा० [illegible] द्वारा स्टेशन अधीक्षक गोरखपुर

विषय (Sub :) नौकरी में पुनः बहाली हेतु।

संदर्भ (Ref :)

आपको प्रमवादी को अपील दि० शून्य जिसमें आपके गोरखपुर स्टेशन में पुनः नौकरी पर रखने हेतु प्रार्थना किया था प्रमवादी ने निम्न ओदश दिये।

"रेवड है"

कृते वा० रे० म० (वा०), लखनऊ

सूचित हेतु हस्ताक्षर करें प्रमवादी के ओदश नोट पर

ओदशपाल
7-6-92

O/C

सहायक वाणिज्य अधीक्षक,
पूर्वोत्तर रेलवे लखनऊ

A42

Before the Central Administrative Tribunal, Lko Bench,

Lucknow.

Case No. 83/88 (L)

COURT FEE

Ashraq Ali --- Applicant

Vs.

Unions of India and others. Opp. Parties.

Received copy
[illegible]
[illegible]

Application for filing documents in compliance of order dated 20.4.89.

The applicant named above begs to submit as hereunder :-

1. That on 20.4.89, the applicant was directed to file the copies of reminders as mentioned in paras 18 and 19 of the petition along with its' proof that the said reminders be given to the opp. parties.

2. That, the applicant sent the reminders to opposite parties through registered post.

3. That, the applicant sent reminders to the D.C.S. N.E. Railways on 21.2.86 and 23.4.87 for early disposal of his appeal by registered post.

The copy of First reminder dt. 21.2.86 is filed herewith as Annexure No. 9 and second reminder is Annexure No. 10 respectively.....2/-

Receipt for sending the same by registered post are being filed in Annexure no. 11 at serial numbers 3 and 4 respectively.

4. That, the applicant on 10.9.87 sent reminder to senior Divl. Commercial Superintendent, Chief Commercial Supdt. True copy of said reminder is being filed herewith as Annexure 12, the receipt for its posting is at sl. no. 2 of Annexure--11.

5. That on 18.3.88, the applicant again sent reminder to the persons mentioned in para 19 of petition. True copy of the representation is being filed herewith as Annexure-13 and the same were sent by registered post. Receipt for registered post is filed herewith as Annexure no. 14.

Wherefore, it is humbly prayed that these documents be taken on record and may be read as the Annexures 9 to 14 with the writ petition.

Lucknow dated

4/5/89

(S.M. Nasir)
Advocate,
Counsel for the Applicants

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[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

The Union of Indi[illegible]

9

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible] above [illegible] also [illegible]

[illegible]

(850)

[illegible]

[illegible]

[illegible] the [illegible] which [illegible] committee.

[illegible] of a family consisting of father, [illegible], 2 sons, widow mother, 4 brothers (2 in [illegible] 2 [illegible] years) with no other sources of [illegible] which is [illegible] days of [illegible] in [illegible] mountain [illegible].

In [illegible] circumstances, [illegible], [illegible] be [illegible] to [illegible] and [illegible] to [illegible] restore the [illegible] to service [illegible] this synthetic and [illegible] structure [illegible] infected.

[illegible],

[illegible]

([illegible] Gli.)
[illegible],
[illegible], [illegible], [illegible].
[illegible].

[illegible] sent for information and kind [illegible] above to the party civil.

[illegible]

([illegible] Gli.)

[illegible]

(251)

In the Central Administrative Tribunal,

Principal Bench, New Delhi.

Case No. 43/ of 1989

[illegible] .... Applicant.

Versus

The Union of India [illegible] others ... Respondents.

Annexure No. ...10.....

The Divl. Commercial Manager,
[illegible] Railway,
Lucknow.

Subject: Request against penalty of removal [illegible] by DCM/LKO.

Reference your memo dt. 13.1.89 received on 21.2.89.

With [illegible] request I have to state that after penalty imposed upon me vide letter No.C/54/Cmte/3.2/85 dt 1.2.85 delivered to me on 20.12.85, I have [illegible] to DCS/LKO on 13.1.89. After getting notice from you and examined it. [illegible] but measures to [illegible] action [illegible].

[illegible] communicate to me [illegible] so that I may knock the door [illegible] of [illegible].

[illegible],

Yours faithfully,

(Signature)
[illegible] Cabinman,
[illegible] No. 57 [illegible]
[illegible].

Dt. [illegible].89.

Annexure No-11

एम० ओ० (S)
M. O. (S)

क्रमांक/No. 551

मनीआर्डर की रकम प्राप्त की ए० (अक्षरों में)/Received Rupees (In words)

प्राप्तकर्ता का नाम/being amount of money order payable to _____ (Payee's name)

(1)

कमीशन/Commission

मनीआर्डर क्लर्क/M. O. Clerk

NOT INSURED

क्रमांक/No. 1701

स्टाम्प पर लगाए टिकटों का मूल्य/Amount of stamps affixed

प्राप्त पत्रिका/Received at

दाने वाले का नाम/Addressed to

पाने वाले अधिकारी के हस्ताक्षर/Signature of Rec

(2)

(3)

क्रमांक/No. 337

(4)

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[illegible] Administrative Tribunal,

[illegible] Bench [illegible].

[illegible] 19[illegible](1)

[illegible] .... [illegible]nt.

Vs.

[illegible] ... ... [illegible].

[illegible] ...12....

To,

[illegible]

Sub:- [illegible] Unit/ [illegible].

I [illegible] respectfully [illegible] to state that [illegible] [illegible] Catering Unit [illegible] 22.10.73. [illegible] was [illegible] on [illegible] in [illegible] [illegible] to [illegible]s.

2. [illegible] 21.11.85 [illegible] 2.30 [illegible] [illegible] 21.11.85 [illegible] ...

3. [illegible] in the [illegible] under Sec. 49 [illegible] Sec.[illegible] of [illegible] Act.

[illegible] custody on 21.11. [illegible] .11. [illegible] not allowed by the Sr.D[illegible]/[illegible] to [illegible] given a memo No. DC/53/[illegible] Dt. 2.11.85. (Copy enclosed.) to meet SC[illegible]/CF for further orders.. At the same time [illegible] memo No. D.C./53/[illegible] 5 Dt.22.11.85 (copy enclosed.) [illegible] also given to me to meet the [illegible]

~~[illegible]xxxxxxxxxxxxxxxx~~

-2-

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[illegible]

2. [illegible] both [illegible] 23.10. [illegible] 27.55 [illegible] 27.10.5 ([illegible] .)

3. [illegible] 25.11. [illegible] visd(b) to [illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

Very truly yours,

[illegible]

Dt. 10-9-87

Copy to:

[illegible]

1. [illegible]
2. [illegible]
3. [illegible]
4. [illegible]

A56

[illegible] against the Income-[illegible]

[illegible] Section.

Order No. [illegible] of 1958(1)

[illegible] ..... Applicant.

Vs.

The Income-tax Officer [illegible] ..... Opposite party.

13

To,

[illegible]

[illegible]

[illegible]

Sir,

[illegible] 38-[illegible] [illegible] 1 IOs.

[illegible] in certain [illegible] in 1[illegible].

[illegible], [illegible] correction [illegible] 120 of [illegible] by GIT, [illegible].

2. [illegible].

[illegible] 1[illegible].5 [illegible]

[illegible]

[illegible]

4. [illegible] on 13.1.[illegible] [illegible] copy of the [illegible] 5.1.[illegible] [illegible]

5. [illegible] 1.[illegible] 13.[illegible] and 10.1.87 after client acquitted from the court, to the M.I.C.J.S. [illegible] 5. [illegible] 1.9.87, I am in submitted [illegible] nothing was [illegible]

6. [illegible] acquittal on 5.1.87 as [illegible] [illegible] given to the [illegible]

7 That the order of my dismissal in the circumstances being illegal and discriminatory needs setting aside for reasons set forth below:-

a. That [illegible] suspension was issued [illegible] [illegible] [illegible] [illegible] being [illegible] within [illegible], the order of revoking of suspension [illegible] and I was not given duty [illegible].

b. That the orders of dismissal in terms of Rule 11(12) of the [illegible] are illegal because the dismissal was ordered by the learned [illegible] only on the basis of [illegible] charges framed by the police in the criminal case. There was no conviction till then as it is [illegible], [illegible] [illegible]

[illegible]

[illegible], [illegible] [illegible]

[illegible], [illegible]

The order of dismissal passed by the disciplinary authority terminating the services on the basis of charges filed in the court, there being no conviction, without waiting for the results, and without even preliminary enquiry is not legally sustainable and the order of dismissal thus could not [illegible] is therefore, void.

c. That one of the principles of natural justice is that a man cannot be condemned [illegible], this is an example of [illegible] [illegible] and [illegible] opportunity to defend [illegible] even preliminary enquiry in [illegible] [illegible] by the [illegible] [illegible] [illegible].

No action in fact was warranted on mere charges when the they could not be substantiated in trial and there was no conviction on the date of removal.

d. That rule 14 (II) by its very nature can be resorted to only in those cases where the requirements provided therein are strictly complied and when the employee is absconding or whereabouts not known or no officer is prepared to enquire into the matter due to threats or intimidation. In absence of all these ingredients and conviction there was not a case for invoking rule14(II) of the D.I.

8. That the Hon'ble Supreme Court has held in many of its judgments that the order imposing the penality has to be fair, just and reasonable as the right to impose a penality carries with it the duty to act justly.

9. That article 14 of the constitution of India forbids discrimination by law i.e. treating persons similarly circumstanced differently or treating equals as unequals and unequals as equal. Thus, reinstatement i.e. 3 employees who faced similar charges along with me in the criminal trial and after acquittal of all, carving the same to me that is my reinstatement without any basis is illegal and ultravires. Hon'ble Supreme-court has held in many cases that to treat one person differently from others when there is no rationale basis for doing so would be violative of the great guarantees given by Article 14 of the Indian constitution.

10. That the appelate authority failed to give personal hearing. It is now settled law that the appelate authority must not only give personal hearing to the Govt. servant but should also use a reasonabl

order. Consideration of natural rules of justice requires that personal hearing must be given, also holding that the order passed must be a reasoned order dealing with the contentions raised by the employee in the appeal.

For reasons set forth above, it is respectfully submitted that I have not been guilty of any misconduct or offence and thus no punishment should be given to me.

I belong to a minority community and have not an inch of land as source of earning and have a big family to support and during my service, I did not receive any chargesheet or even a warning.

It is therefore humbly prayed that your Honour may call for papers and order for my reinstatement with all benefits from date of removal.

I beg to remain your most obedient servant.

Sd/- (Ishwar Ali.)
Village Kani Purwa,
Tehsil Lasar,
Distt Hatwari.

Dated: 18.3.88.

Annexure No. 14

बीमा नहीं NOT INSURED

लगाये गये डाक टिकटों का मूल्य रु० पै०
Amount of stamps affixed Rs. 5 P. 90

एक रजिस्ट्री ..... प्राप्त किया
Received a Registered .....

पाने वाले का नाम .....
Addressed to .....

क्रमांक/No. 1756

तारीख मोहर
Date Stamp

पानेवाले अधिकारी के हस्ताक्षर
Signature of Receiving Officer

— 5

बीमा नहीं NOT INSURED

लगाये गये डाक टिकटों का मूल्य रु० पै०
Amount of Stamps affixed Rs. 5 P. 90

एक रजिस्ट्री ..... प्राप्त किया
Received a Registered .....

पाने वाले का नाम .....
Addressed to .....

क्रमांक/No. 1757

तारीख मोहर
Date Stamp

पानेवाले अधिकारी के हस्ताक्षर
Signature of Receiving Officer

— 6

बीमा नहीं NOT INSURED

लगाये गये डाक टिकटों का मूल्य रु० पै०
Amount of Stamps affixed Rs. 5 P. 90

एक रजिस्ट्री ..... प्राप्त किया
Received a Registered .....

पानेवाले का नाम .....
Addressed to .....

क्रमांक/No. 1758

तारीख मोहर
Date Stamp

19.3.88

पानेवाले अधिकारी के हस्ताक्षर
Signature of Receiving Officer

— 7

बीमा नहीं NOT INSURED

लगाये गये डाक टिकटों का मूल्य रु० पै०
Amount of Stamps affixed Rs. 5 P. 90

एक रजिस्ट्री ..... प्राप्त किया
Received a Registered .....

पाने वाले का नाम .....
Addressed to .....

क्रमांक/No. 1759

तारीख मोहर
Date Stamp

पानेवाले अधिकारी के हस्ताक्षर
Signature of Receiving Officer

— 8

In the Central Administrative Tribunal,

Tribunal, Circuit Bench, Guwahati.

C.M. No. 314/90 (L)

O.A. No. 33/90(L)

Misc. Application No. of 1990.

Lalfan Ali ..Applicant

Versus

Union of India and Others ..Respondents.

Application for condonation of delay filing Rejoinder.

In the above noted case, rejoinder to the counter is being filed. There was delay in filing the same due to the undersigned illness.

It is prayed that the delay may be condoned and rejoinder be brought on record.

लालफाक
(Lalfan Ali)

Applicant.

Dated: 26.4.90

Guwahati. 4.5.90

165.

In the Hon'ble Central Administrative Tribunal,

Allahabad, Circuit Bench, Lucknow.

C.M.P. No. 314/90 (L)

in

O.A. No. 93/90(L)

Ashraq Ali --Applicant

Versus

Union of India and Others --Opposite Parties.

Rejoinder to the counter of the opposite parties.

I, Ashraq Ali, aged about 32 years, son of Sher Ali, resident of village Kanti Nagar, hamlet of village Rani Purwa, Post office Katchery, Distt. Gonda, do hereby state in reply to the counter of opposite parties as under:-

1. That para 1 of the counter needs no reply except this that the AGS who took decision to dismiss the applicant under Rule 14(11) has not filed the ~~xxx~~ counter.

2. That in reply to para 2 of the counter it is stated that the impugned order of AGS dated 12-12-85 (Annexure 5) and order dated 7-4-86 (Annexure 3) passed by AGS are arbitrary, illegal and unjust for reasons set forth below:-

a) That as held by Hon'ble Supreme Court in re:AIR 1985, Supreme Court, 1116 - Union of India Vs. Tulsi Ram Patel and Others: " a disciplinary authority is not expected to dispense with a disciplinary ~~authority~~ enquiry lightly or arbitrarily or most of ulterior motive or merely in order to avoid holding of an enquiry. The liberty given to the decision of the disciplinary authority by Article 311(iii) is not binding upon the Court so far as it's power of judicial review is concerned and in such a case, the Court will strike down the order of dispensing with the enquiry as also of the order imposing penalty."

b) That decision in terms of rule 14(II) was taken by ASO on the basis of MI. The charge of rape could not be treated as proved merely on the basis of the complaint without examining the complainant. MI was taken by the ASO to be conviction and so order of dismissal in exercise of powers under Rule 14(II) of the CCS, 1965 is thus arbitrary whimsical and arbitrary specially when at the time the order

was passed, the trial court had not granted the hearing of the criminal case and the applicant was later acquitted (Annexure 5). No reasons were indicated by the DA while dismissing the applicant for not holding DAR enquiry when the applicant was neither absconding nor causing any disturbance.

c) That DA's decision to dispense with the disciplinary enquiry under DAR 1968 without reasons is thus arbitrary, and as such, the order of dismissal dated 12-12-95 (Annexure 4) is not a legal order and merits quashing.

d) That DAR enquiry under Railway Servants DAR 1968 cannot be dispensed with unless there is material on record that the applicant had terrorised or intimidated the witnesses or was absconding and as there was no such evidence on record, resort to invoke rule 14(II) of DAR, 1968 was illegal and arbitrary.

e) That a complaint against a government servant, if it relates to a criminal offence, it has been held by Courts, that it will not be safe to conduct a preliminary investigation by the disciplinary authority. It will thus be a negation of rules of natural justice if on receipt of such a complaint of so called preliminary enquiry at the instance of

disciplinary authority, the government servant is proceeded against for alleged misconduct as without holding an enquiry and calling the co-delinquent and the railway employee. Therefore any decision taken to the contrary is illegal and arbitrary.

2) That there being acquittal from the first court and the appellate court in this case (vide Annexures 5 and 6) and appeals being filed for reinstatement and their disposal by cryptic and one word order 'Khed hai' shows lack of application of mind, biased prejudiced and vindictative mind and also flagrant disobedience and disrespect to the verdict of the 2 courts who acquitted the applicant and the other co-accuseds. The order that ' the applicant took part in the gang rape of a dumb woman are thus unwarranted and illegal based on no evidence in view of the judgements of the two Courts and acquittal of all the accuseds from the two courts.

3. That averments made in para 3 are not admitted as stated. The issue of termination raised by the opposite party has not decided by the hon'ble tribunal vide their order dated 1-5-91 while disposing off application no.71/90( )

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holding the application filed as within limitation. The Hon'ble Tribunal may also pleased to dismiss other preliminary objections raised in the order of dismissal of the above mentioned application.

4. That averments made in para 4 of the counter are not admitted and averments made in para 4 of the application are reiterated as correct.

5. That averments made in para 5 of the application are reiterated as correct and those made in para 5 of the counter are not admitted as correct.

6. That para 6 needs no reply.

7.&8 That averments made in para 7 of the application are reiterated as correct and those made in para 7 of the counter are not admitted as stated. It is categorically denied that the applicant was the main accused in the criminal case filed against the applicant and three other co-accused. That averments made in para 8 of the counter are not admitted as stated and averments made in para 8 of the application are reiterated as correct. That

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greater proof of innocence of the applicant can there be that both the courts - trial and appellate court acquitted all the accused persons including the applicant and nowhere in the two judgements is the applicant mentioned as the main accused. The case being tried by a criminal court against all the accused including the applicant constituted a action, when all the accused persons - all military employees after suspension called for of PRI were released from suspension leaving the applicant for months long thereto the opposite parties. To this liability was held against the applicant or against the co-accused.

That the Hon'ble Supreme Court has held in the Jaswant case - Union of India vs. Tulsi Ram Patel and Others, AIR 1985, SC, 1416 that for exclusion under 11(2) of the CCS, 1965 observing " that the Disciplinary Authority is not expected to dispense with the disciplinary enquiry lightly and arbitrarily or act with ulterior motive or merely to order to avoid the holding of the enquiry because the department's case against the government servant is weak and must fail." It was further held that the finality given to the decision of the Disciplinary Authority by Article 311(III) is not binding on the court so far as it's power

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of proper judicial review is concerned and in such a case the court will strike down the order dismissal with the inquiry as also the order of imposing the penalty.

Thus, the order of suspension against the applicant alone while other co-accused were released from suspension and given duty followed by removal under para 14(ii) of the DAR being highly discriminatory, arbitrary and illegal in face of the acquittal by the criminal courts. Order of appellate authority (Annexure 8) is erratic, vague and baseless in face of clean acquittal of the charge of alleged rape. Averments made in para 14 of the application are neither and incorrect.

9. That averments made in para 15 of the application are reiterated as correct and averments made in the counter are not admitted. Copies of the representations sent by the applicant under registered cover were denied by the opposite parties and were filed on 4-5-89 along with the counter other dispatch receipts of the same and the public authorities was also pleased to order the same to be brought on record. Hence are contrary to 14.

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10. That in reply to para 10 of the counter it is stated that the disciplinary authority took the decision to dismiss that the DAR enquiry all ready to settle under Rule 14 (II) without sufficient reason in an arbitrary manner and in doing so, it has shown discrimination, which is indicated by the fact that while the applicants were in the same in the IT and in the array of accused in the criminal case and while all the 4 accused including the applicant were acquitted from both the courts, but while duty was given to the other 3 within the months of suspension all before decision of the criminal case by the trial court, the applicant has not so far been given duty.

That the appellate authorities did not apply their mind to the issues raised by the applicant in the appeal viz question of vires of the order of dismissal and maximum penalty in the order of dismissal even after clean acquittal in the two courts.

In this connection it is submitted that it was held in 1981 LIC, 6[illegible] - Dinkey Bihari Lal Union of India and Others, DB, Allahabad High Court that " Railway servants Di Rule 68, Rule 14 (II) made of their service in exercise of

(A71)

powers under - no opportunity of service and explanation given before passing the order-order held wrong and null and void for violation the principle of natural justice.'

11. That even with regard to para 11 of the counter are not admit as stated. It is categorically denied that the applicant was the main accused. Applicant's name is at no. 4 in FIR and in the court case, both of the trial and the appellate court, both of the courts have found the applicant as the main accused. It is arbitrary and illegal, thus, to call the applicant as the main accused, besides it is alleged by the opposite parties that in the preliminary enquiry alleged to have been done in this case, only witnesses supplied to applicant had found the applicant guilty and yet the applicant was never heard and there was no mention of the evidence of the complainant also. The position therefore with these infirmities is arbitrary and illegal. Many Hon'ble Courts have held that it will not be a fair and in the interest of justice to arrive at the conclusion of guilt when the complainant was not examined by the disciplinary authority. The observation of the Hon'ble Supreme Court

अनुपालक

that none of the accused were caught on the spot, no identification parade was held and both the courts acquitted all the accused persons and some of the courts have observed that the applicant was the main accused." If there could be trial for the offence of the applicant and the three railway employees, as accused in this case before the earlier courts, resulting in acquittal, definitely an inference under 311 could have been held against the accused." If the preliminary enquiry was held in which the applicant or the co-accused and the complainant were not given opportunity to depose, then there can be no justification to dispense with the enquiry." It cannot be said that does not mean conviction and so the order of removal on the basis of merely the 311 was illegal and unwarranted besides 133, 373 and 377 being at variance, they could not have had personal knowledge about the incident." It has been held by the Hon'ble Supreme Court in many cases and the latest being 1989/2 S.L.J. 113 in the Dr. Mrs. Sarati P. Menon Vs. Union of India and Others that if in case of punishment on ad hoc basis against a substitute vacancy, the services of an employee cannot be terminated unless the deficiencies are communicated to the employee.

In this case, it is note-worthy that the Disciplinary Authority has dispensed with the enquiry under D.C. without sufficient cause in an arbitrary manner. As such, the order is illegal. The Disciplinary Authority has erred in holding the 1st to be convicted and on the order of dispensing with the D.C. enquiry is erroneous unwarranted and illegal.

12. That averments made in para 12 of the counter are categorically denied, and averments made in para 17 by the applicant are reiterated as correct. It is pre-eminently stated that the applicant was never the main accused and it is based on the whimsical attitude of the opposite parties. Both the judgements show that the applicants name was not mentioned in the FIR and before the court and no where it has come in any judgement of the two court courts or the prosecutions case that the applicant was the main accused. In any case in the circumstances, to give duty to the 3 concerned railway employees except the applicant is discriminatory and highly arbitrary. As the Supreme Court has held in many cases that the order of imposing the penalty has to be just and fair and reasonable as the right to impose penalty carries with/the duty to act justly. That

Article 14 of the Constitution of India forbids discrimination by law i.e. treating persons similarly circumstanced differently or treating equals as unequals and unequals as equals. Therefore, on this ground alone, the order of termination is illegal.

13. That averments made in paras 13 and 14 of the counter are not admitted as stated and averments made in paras 16, 17 and 18 of the application are maintained as correct. Averments made in para 14 of the counter are wrong. Copies of re~~ident~~ order are enclosed (Annexure R 14) filed along with the counter in English, non speaking and displays lack of application of mind. Applicant's service period under registered cover have already been brought on record vide orders of the Hon'ble Court, by Annexures being Annexures R 10 to 14.

14. That averments made in para 15 of the counter are denied, and those of paras 20 and 21 of the application are maintained as correct.

15. That averments of para 16 of the counter are not admitted as alleged, and those of para 22 of the application are reiterated as correct.

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16. That averments made in para 17 of the counter are not admitted as stated, and averments made in para 23 of the application are reiterated as correct.

17. That paras 18 needs no reply.

18. That averments made in para 19 of the counter are vague, incorrect, false and the applicant submits that each ground mentioned in para 23 has it's force based on the rulings of the Hon'ble Supreme Court, High Court and CAT and the applicant prays for the grant of reliefs as prayed.

It would be relevant at this stage to refer to the under-mentioned ruling for perusal of the Hon'ble Court,

i) [illegible], 1977, 77, CPC, Allahabad High Court, Division Bench, Ram Bharosi Vs. Union of India and others.

" [illegible] Government (Disciplinary and Appeal) Rules, 1965, rule 11 [illegible] - Removal from service in exercise of power under - No opportunity of hearing and explanation given before passing the order - Order, held was rendered null and void for violation of principles

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of natural justice."

In this case, the petitioner, a railway employee was prosecuted for offences under Sections 420, 192, 471 and 120 B of the Penal Code. The prosecution failed to establish the charges and the petitioner was acquitted on 27-7-70. Meanwhile, by an order dated 22-1-70 the Divisional Superintendent, Jalgaon, removed the petitioner from service in exercise of his powers under Rule 14(ii) of the Railway Servants Discipline and Appeal Rules, 1968. The petitioner's appeal against the order failed. Thereafter, the petitioner filed this petition under Article 226 of the Constitution, challenging the order removing him from service. The Division Bench was pleased to allow the petition and quash the impugned order dated 22-1-70 and 12-12-70.

ii) 1984, 1985, 1983, 114, Maharashtra.

A. Venkatesan Vs. Union of India and Others.

Railway Servants (Discipline and Appeal Rules, 1968), Rule 14(ii) - Determination of - Termination of services of railway employee dismissed for violation of Rule 3(1), (2), (3) of Railway Servant Conduct Rule - Disciplinary proceedings on same charges - criminal trial for proved to be true in appeal and defendant acquitted - non-cancellation of dismissal - not ignorance of that

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cause notice before imposition of major penalty termination could not be delegated under rule 14(ii).

iii) 1990, ATJ, 01, 120 (D)

N. Sathyam Vs. Sr. DCS and another.

Railway Servants Discipline and Appeal Rules (1968) Rule 14 - Dismissal without enquiry.- Order not stating reason for not holding enquiry - Reasons not communicated to member of Bar - Held - dismissal bad.

अधिवक्ता

Applicant. Trichur.

Dated: 26.4.90

AFFIDAVIT

I, Ashwani Ali, aged about 32 years, son of Sher Ali, do hereby verify that the contents of this rejoinder are true to my personal knowledge on the basis of records and those pertaining to legal pleads in behalf of the counter are believed to be true on legal advise.

अधिवक्ता

Applicant. Trichur.

Dated: 26/4/90 (26.4.90)

Annex - R/1

A28

IN THE COURT OF ADDL. SESSIONS JUDGE
(SPECIAL JUDGE), GORAKHPUR.

PRESENT: SRI R. P. SINGH ------
--- HJS.

Crl. Revision No. 244 of 1987

State
vs.
1. Brijnath
2. Kedarnath
3. Rajaram
4. Asfaq Ali

U/SS 497, 498 I.P.C. and 120 Railway Act. P.S.G. R.P.

JUDGMENT.

This revision has been filed by the State of U.P. against the order dated 5.8.87 passed by Sri P.N. Tiwari,

Certified to be true copy

गोरखपुर

The then J.M. Railway, Cooch Behar.

2. The brief facts giving rise to this revision are that one Ramnath filed an F.I.R. against the O.P.s at P.S. O.R.P. on 21-11-85 at 3.55 A.M. regarding offence dated 20-11-85 ~~at 3.55~~ on the basis of the said report a case was registered against the O.P.s and after investigation the Police charge-sheeted them U/S 95 U97, U98 I.P.C. and 120 Railway Act. The learned J.M. Railway at the stage of framing of the charges perused the record and the evidence collected by the I.O. He observed that in view of the provisions ~~contd~~ contained U/S 190 Cr.P.C. the Police had no power to investigate in respect of the offences U/S 95 U97 and U98 I.P.C. In such cases cognizance could be taken under the law on the basis of a private complaint presented by the aggrieved person directly before the magistrate. Accordingly he held that

the accused persons for the said offences.

4- I have heard the learned counsel for the parties and perused the record of the case as also the impugned order.

5. It is not-worthy that the police after investigation did not find that any case U/S 376 I.P.C. was disclosed in the instant case. It further does not appear that the attention of the learned magistrate was drawn on the point that the facts of this case came within the purview of sec. 376 I.P.C. Consequently, it cannot be said that the learned magistrate did not apply his mind properly to the facts of this case and acted beyond his jurisdiction. At this stage it may very well be scrutinised whether this case attracted the mischief of section 376 I.P.C. or not.

6. It would be crucial to peruse the F.I.R. of the instant case in order to consider the tenable said point. In the F.I.R. it has clearly been mentioned that the wife of the informant with whom the offence of Rape is said to have been

अनुवादक

committed herself came to him and he being shown a currency note of Rs. 2/- offered cash, that the said persons had subjected her to sexual intercourse there is nothing to indicate that the said act was done against the will of the woman. it is further important to note that the medical evidence discloses the age of the girl about 19 years. In this way, if there was consent of the woman, as it is obvious in the instant case, the offence of rape cannot be said to have been committed consequently. I do not find any substance in the contention of the revisionist that the facts of this case came within the provision of sec. 376 I.P.C.

7- this revision has thus got no force and hence liable to be dismissed

(26. 26/4/89)

Order.

the revision is hereby dismissed.

S.P. 26.4.89

DATED. GORAKHPUR:
APRIL 26, 1989

(R.P. SINGH)
ADDL. SESSIONS JUDGE (SPL. JUDGE)

Judgment signed, dated and pronounced in open court today.

S.P. 26.4.89

DATED. GORAKHPUR.
APRIL 26, 1989

(R.P. SINGH)
ADDL. SESSIONS JUDGE
(SPL JUDGE.)

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the o.ps. were not liable to be prosecuted for the said offences. In respect of the offence u/s 120 Railway Act, he observed that since there was none at the place where the occurrence is said to have taken place, the question of nuisance to public did not arise. and consequently the offence u/s 120 Railway Act was not attracted. In this way he dis-charged the o.ps.

3. Aggrieved by the above said order, this revision has been preferred. It has been contended in the memo of revision that even if it is held that the accused persons were not liable to be prosecuted for the offence u/s 490 490 I.P.C. and 120 Railway Act, as held by the learned J.M. Railway, nevertheless the facts of this case attracted the mischief of Sec. 376 I.P.C. and the learned magistrate had no jurisdiction to dis-charge.

Cal to Litigation by

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the accused persons for the said offences.

4. I have heard the learned counsel for the parties and perused the record of the case as also the impugned order.

5. It is noteworthy that the police after investigation did not find that any case U/S 376 I.P.C. was disclosed in the instant case. It further does not appear that the attention of the learned magistrate was drawn on the point that the facts of this case came within the purview of sec. 376 I.P.C. Consequently, it cannot be said that the learned magistrate did not apply his mind properly to the facts of this case and acted beyond his jurisdiction. At this stage it may very well be scrutinised whether this case attracted the mischief of section 376 I.P.C. or not.

6. It would be crucial to peruse the F.I.R. of the instant case in order to consider the relevant point. In the F.I.R. it has clearly been mentioned that the wife of the informant with whom the offence of Rape is said to have been

committed herself came to him and having shown a currency note of Rs. 2/- this case of that the said persons had subjected her to sexual intercourse there is nothing to indicate that the said act was done against the will of the women. it is further important to note that the medical evidence discloses the age of the girl about 19 years. In this way, if there was consent of the women, as it is obvious in the instant case, the offence of rape cannot be said to have been committed consequently. I do not find any substance in the contention of the revisionist that the facts of this case came within the provision of sec. 376 I.P.C.

7- this revision has thus got no force and hence liable to be dismissed

26/38/4/89

Order

the revision is hereby dismissed.

DATED. GORAKHPUR:
APRIL 26, 1989

(R.P. SINGH)
ADDL. SESSIONS JUDGE (SPL. JUDGE)

Judgment signed, dated and pronounced in open court today.

DATED. GORAKHPUR.
APRIL 26, 1989

(R.P. SINGH)
ADDL. SESSIONS JUDGE
(SPL. JUDGE)

— 8.00/-