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BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW BOMBAY BENCH, NEW BOMBAY.

Tr.Application No.216/86 & 225/86

1. Shri Salim Sardar Shaikh,
2. Shri Arjun Bhivajee,
3. Shri Pradip Narayan Patil,
4. Shri Hanumant Namdeo Khilare

Ex-employees of the Central Railway Workshop, Matunga, Bombay - 400 019. ... Applicants in Tr.Application No. 216/86

1. Jagdish Satyawan Pol, Room No.15-5/5, Milind Nagar, Gavadevi, Wakola Pipe Line, Santacruz(East), Bombay - 400 055.
2. Jeevan Kashiram Vengurlekar, Sakinabai Chawl, Parsiwada, Sahar Road, Andheri(East), Bombay - 400 099. ... Applicants in Tr.Application No. 225/86

V/s.

1. The Works Manager(R), Central Railway Workshop, Matunga, Bombay - 400 019.
2. The Additional Chief Mechanical Engineer, Central Railway, Matunga, Bombay - 400 019.
3. The General Manager, Central Railway, Bombay V.T.
4. The Union of India, through The Secretary, Ministry of Railways, New Delhi. ... Respondents in both the above cases.

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Coram: Hon'ble Member(A) J.G.Rajadhyaksha
Hon'ble Member(J) M.B.Mujumdar

Appearance:

1. Mr.Nathan,
Advocate for applicants
in Tr.Application No.216/86

2. Mr.S.R.Swar,
Advocate for applicants
in Tr.Application No.225/86

3. Mr.Chopra
Advocate for
Respondents.

JUDGMENT Date: 4th March, 1987

(Per M.B.Mujumdar,Member(J)

The four petitioners in Transferred Application No.216/86 and Two petitioners in Transferred Application No.225/86 had filed Writ Petition Nos.1189/83 and 230/85, respectively in the High Court of Judicature at Bombay for quashing the orders passed by Respondent No.1 by which they are removed from Railway Service. The orders were passed without holding any regular enquiry under the rules as Respondent No.1 found, as provided in Rule 14(ii) of the Railway Servants(Discipline & Appeal)Rules,1968, which would be hereinafter referred as the Rules, that it was not reasonably practicable to hold an enquiry. Both the Writs are transferred to this Tribunal under Section 29 of the Administrative Tribunals Act,1985.

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By this judgment I am disposing of both the Writ Petitions as the incident and the points involved are the same.

2. Five more persons involved in the same incident had filed another Writ Petition No.2425/83 and the High Court(Pendse ,J.) has allowed it on 14th September,1984. As the present petitions could not be decided by the High Court they are transferred to this Tribunal as stated above.

3. Petitioner Nos.1&2 in Transferred Application No.216/86 were working as Carpenter and Striker, respectively and Petitioners 3 & 4 were working as Khalasis in the Workshop of The Central Railway at Matunga. The petitioners in Transferred Application No.225/86 were working as Striker and Khalasi respectively, in the same workshop. All were permanent. The Petitioners in Writ Petition No.2425/83 which is disposed of by the High Court were working as Fitter, Welder, painter and khalasis, respectively in the same workshop and they were also permanent.

4. All the Central Trade Unions in the country including Hind Mazdoor Sabha to which the Railway Employees Unions were affiliated, were called for "Bharat Bandh" on 19th January,1982. However, the National Railway Mazdoor Union which is affiliated to the Hind Mazdoor Sabha had decided not to participate in the Bharat Bandh on that day. On the previous day i.e. on 18-1-1982 the Additional Chief Mechanical Engineer of the Matunga Workshop had issued a circular informing the employees that those who wished to stay at Matunga on 18-1-1982 in order to remain present on

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duty on 19-1-1982 can make use of the premises mentioned in the circular for their stay. The Railway Protection Force was instructed to make necessary arrangements at all these places. By the same circular, the members of the staff were warned that if any employee remained absent unauthorisedly on 19-1-82 he would be treated as a Striker and would have to face the normal consequences thereof, viz., no work, no pay, break in service, etc.

5. All the applicants are removed from service for an incident which has happened on 19-1-1982. From the affidavit filed on behalf of the respondents and the files in respect of each of the applicant shown to us, what happened on that day may be stated like this:

6. At lunch hour about 1000 - 1500 employees gathered at the workshop canteen where 2 counters were opened for distributing Puri and Bhaji packets to the employees who had purchased coupons for the same. The canteen was selling Puri Bhaji at Rs.1/- per packet. The puris were being prepared in the kitchen of the canteen and the staff of the canteen was bringing the puri bhaji at the counters. Normally the canteen used to cater to 300 employees but on that day it was required to cater to about 3000 employees. The Management of the canteen had taken steps to organise the preparations of puri bhaji and its distribution at the counters. The distribution of the packets was started at about 10.30AM and by 11.15AM about 1100 employees were served. Puri bhaji packets were available for about 600 more employees. The preparation of more puri bhaji was going on in the canteen. But the crowd which

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had gathered at the sale counters pressed for immediate distribution of puri bhaji packets. The officers of the canteen were requesting the employees to be patient, but the crowd did not pay heed and started agitating. By that time some of the employees started inciting others to be violent and also started throwing stones at the staff of the canteen, office,etc. Some senior officers explained to the employees that efforts were being made by the canteen staff to serve puri bhaji packets to all the persons. The Works Manager announced repeatedly on the public address system and requested the employees to bear with the canteen staff and informed that all will get the puri bhaji packets, but if somebody needed refund of the amount arrangement for the same also would be made. But all these appeals had no impact on the crowd. Some employees threw stones and entered into the main canteen aswell as the canteen of the Additional Chief Mechanical Engineer's office. Some record was burnt and some articles like oil, rations were destroyed or damaged beyond repairs. Some cash was also removed. It is stated that the damage caused was to the tune of about Rs.36,000/-

7. On 21st to 23rd of January,1982 some senior officers who were present at the time of the incident submitted their separate reports. Each stated about the incident generally and also named some of the employees who had behaved in a violent and unruly manner. The record shows that 6 or 7 officers had made separate reports. More than 2 weeks after the reports were submitted the Works Manager(either D.N.Sarma or D.V.Singh) interviewed each of the applicants separately in the presence of some of officers including one of the officers who had submitted reports against him.

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The Works Manager explained to the applicant the charges of his alleged misbehavior on 19-1-82 at the lunch hour as per the evidence on record and gave an opportunity to give his say in the matter. The applicant denied the charges giving his own explanation as to what he was doing at the time of the incident. The statements were accordingly recorded in the presence of the officers. As the dates are relevant I may state that the applicants in Transferred Application No.216/86 were interviewed and examined on 1-3-82, 11-3-82, 8-2-82 and 11-2-82, respectively, and the applicants in Transferred Application No.225/86 were interviewed and examined on 1-3-82 and 18-2-82 respectively. The statements of the officers who had reported or of any other officer was never recorded.

8. However, on the basis of the reports, the Works Manager held that it was not reasonably practicable to hold an enquiry into the misconduct of the applicant on 19-1-82 and therefore dispensed with the normal enquiry procedure. It may be pointed out that in the file against each employee the reports of two officers are included and relied upon. The Works Manager further held that the applicant was not a fit person to be retained in regular service and therefore decided to remove him from service with immediate effect. Accordingly direction was given for issuing a notice regarding imposition of the penalty of removal from service. It may be noted that against each applicant there is a separate report. The reports are dated 1-3-82, 12-2-82, 8-2-82, 11-2-82, 6-3-82 and 18-2-82, respectively. Accordingly the final impugned orders were passed against the

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applicants on 5-3-82, 12-2-82, 10-2-82, 12-2-82,6-3-82 and 3-3-82,respectively. The reports against each applicant is worded in the same manner with necessary modifications regarding the names of the officers who had reported and dates. The impugned orders against the applicants are worded similarly. To make the matters more clear I will quote the order passed against applicant No.1 Salim Sardar Sheikh in Tr.Application No.216/86 It is dated 5th March'82 and is as follows :-

> "Whereas from the reports received by the undersigned it is seen that while on duty on 19-1-1982 Shri SALIM SARDAR SHAIKH, Designation: Carpenter,Salary No.00541898, Shop:'C' Sch.MTN is reported to have incited and instigated workers to violence, who had collected at the Time Office(East),ground Floor, Matunga Workshop at the lunch hour, commencing from 11.00 hours and was also seen throwing stones at the Time Office/ Workshop Canteen building, Matunga, damaging/ breaking window glass panes/canteen equipment utensils etc. and
>
> Whereas based on the evidence placed before, or obtained by the undersigned, the eye witnesses are either not willing or not likely to adduce evidence in an open enquiry of what they have personally witnessed; and
>
> Whereas the situation that prevailed on 19-1-1982 in the Workshop premises was most extra-ordinary, and, therefore, it was reasonable that independent witnesses would not come forward to give evidence in an open enquiry; and
>
> Whereas with a view to maintaining discipline and orderliness in the Workshop, employing thousands of workers at a time, offenders of a criminal nature cannot be allowed to go unpunsihed, solely on the ground that normal enquiry procedure as provided for in the

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Railway Servants'(Discipline and Appeal) Rules,1968, is not capable of being followed or is not practicable;

Now, therefore, by virtue of the powers vested under Rule 14(ii) of the Railway Servants'(Discipline and Appeal)Rules,1968, the undersigned is satisfied that it is not reasonably practicable to hold an enquiry into the charges against the said Shri SALIM SARDAR SHAIKH,Designation Carpenter,Salary No.00541 898,Shop'C',Sch. Shop MTN, and therefore, the undersigned hereby dispenses with the normal enquiry procedure laid down in the Railway Servants' (Discipline and Appeal)Rules,1968 in this case.

Further, whereas based on the evidence placed before or obtained by the undersigned, the undersigned is satisfied that the said Shri SALIM SARDAR SHAIKH, is guilty of serious misconduct/misbehaviour in that he incited and instigated the workers to violence who had collected outside the Time Office on 19-1-1982 at the lunch hour, himself pelted stones and damaged canteen equipment, utensils, building etc. and,

Whereas therefore, the undersigned considers that the said Shri SALIM SARDAR SHAIKH, is not a fit person to be retained in Railway Service any longer;

Now,therefore, the undersigned thereby imposes the penalty of removal from service with immediate effect on the said Shri SALIM SARDAR SHAIKH and directs that this order be served on the said Shri SALIM SARDAR SHAIKH".

(Only the material portion of the order is quoted)

9. The impugned orders of removal from service are annexed as Exhibits A-1 to A-4 in Transferred Application No.216/86 and Exhibits B&C in Transferred Application No. 225/86. Against the order each applicant had preferred an appeal to the Appellate Authority. Copies of the appeal memo

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are at Exhibits B-1 to B-4 in Transferred Application No.216/86. After giving a personal hearing to the applicant and after considering the evidence on record the appellate authority i.e. Additional Chief Mechanical Engineer, Matunga held that there were adequate grounds for the Disciplinary Authority to dispense with the normal enquiry, that the charges which were held proved were fully established by evidence on record and the punsihment awarded was adequate and justified. The orders in appeal are at Exhibits C-1 to C-4 in Transferred Application No. 216/86. It may be pointed out that the applicants in the other application i.e. Transferred Application No.225/86 had not preferred appeals against the orders.

10. Now Rule 6 prescribes the penalties which can be imposed on a Railway Servant. The penalties are divided into two categories: minor penalties and major penalties. Major penalties which can be imposed are 5 in number. The penalty which is imposed upon the applicant is removal from service which is just lesser than the maximum penalty of dismissal from service. Rule 9 prescribes the procedure for imposing major penalties, while Rule 11 prescribes procedure for imposing minor penalties. Rule 14 is about special procedure to be followed in certain cases and it is important in this case. It is as under :-

> "14. Special procedure in certain cases - Notwithstanding anything contained in Rules 9 to 13 :-
>
> (i) where any penalty is imposed on a Railway servant on the ground of conduct which has led to his conviction on a criminal charge; or

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(ii) where the disciplinary authority is satisfied, for reasons to be recorded by it in writing, that it is not reasonably practicable to hold an inquiry in the matter provided in these rules; or

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

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

Provided that the commission shall be consulted where such consultation is necessary, before any orders are made in any case under this rule"

As no regular procedure was followed in this case before imposing the penalty upon the applicant we are not concerned with the earlier rules regarding procedure. It is under Rule 14(ii) quoted above that the Disciplinary Authority i.e. the Works Manager, has dispensed with the normal or regular enquiry as envisaged in the earlier rules.

11. Mr.Nathan, the learned advocate for the applicants in Tr.Application No.216/86 and Mr.Swar, the learned advocate for the applicants in Tr.Application No.225/86 have challenged the finding of the Works Manager regarding dispensing with the regular enquiry. According to them, the Works Manager was not justified in dispensing with the regular enquiry on the basis of the evidence of material before him. Needless to say that if the finding of the Works Manager is set aside the consequent orders of punishment passed against the applicants shall have to be quashed. On the contrary if the finding is upheld the orders of punishment

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would also be justified and shall have to be upheld.

12. Hence the only point that arises for consideration in both the cases is :

> Whether the finding of the Works Manager that it was not reasonably practicable to hold a regular enquiry against the applicants was proper and justified from the material placed before him ?

After considering the affidavits and files kept by the respondents against each of the applicants, my finding on the above point is in the negative.

13. It may be stated at the outset that the files against each of the applicants as well as against the applicants in Writ Petition No.2425/83 which is allowed by the High Court(Pendse.J) on 14th September,1984 were produced before us by the learned advocate for the Respondents, Mr.Chopra. The files were not shown to the advocates for the applicants. However, I have carefully gone through all the files. The facts mentioned above are narrated on the basis of the reports and other documents in the files. Nothing confidential or prejudicial in nature, such as the names of the officers who had submitted the reports, is stated while narrating the facts.

14. Before considering the circumstances and material on record in its proper perspective it will be useful to understand the legal position. Rule 14 quoted above is analogous to the 2nd proviso to Article 311(2) of the Constitution. For understanding further discussion I will quote the entire Article 311 here:

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"311. Dismissal, removal or reduction in rank of persons employed in civil capacities under the Union or a State.

(1) No person who is a member of a civil service of the Union or an all-India service or a civil service of a State or holds a civil post under the Union or a State shall be dismissed or removed by an authority subordinate to that by which he was appointed.

(2) No such person as aforesaid shall be dismissed or removed or reduced in rank except after an inquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges:

Provided that where it is proposed after such inquiry, to impose upon him any such penalty, such penalty may be imposed on the basis of the evidence adduced during such inquiry and it shall not be necessary to give such person any opportunity of making representation on the penalty proposed :

Provided further that this clause shall not apply -

(a) where a person is dismissed or removed or reduced in rank on the ground of conduct which has led to his conviction on a criminal charge; or

(b) where the authority empowered to dismiss or remove a person or to reduce him in rank is satisfied that for some reason, to be recorded by that authority in writing, it is not reasonably practicable to hold such inquiry; or

(c) where the President or the Governor, as the case may be, is satisfied that in the interest of the security of the State it is not expedient to hold such inquiry.

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(3) If, in respect of any such person as aforesaid, a question arises whether it is reasonably practicable to hold such inquiry as is referred to in clause (2), the decision thereon of the authority empowered to dismiss or remove such person or to reduce him in rank shall be final".

15. The implications of the second proviso to Article 311(2) are considered by the Supreme Court in detail in Union of India V. Tulsiram Patel, 1985 Supreme Court Cases(L&S) 672. The majority judgment was delivered by Justice Madon. The judgment is exhaustive but a useful summary of the judgment is given in a subsequent judgment of the Rupreme Court in Satyavir Singh v. Union of India, Administrative Tribunal Reporter 1986 SC 78, delivered by Justice Madon himself. I will state the principles which are relevant in this case i.e. regarding the application of clause (b) of the second proviso to Article 311(2).

16. Legal position in this respect can be discussed conveniently with reference to 3 points -

(i) What are the circumstances in which the Disciplinary Authority will be justified in holding that it is not reasonably practicable to hold a regular enquiry ?

(ii) At what particular time the circumstances should exist for enabling the Disciplinary Authority to arrive at that finding ?

(iii) What is the scope and powers of this Tribunal while reviewing the finding judicially ?

17. The implications of clause (b) of the second proviso of Article 311(2), which is analogous to Rule 14(ii) of the Rules, are explained in paras 55 to 76, at page 89 to 92 in Satyavir Singh's case. Thus it is laid down that

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whether it was practicable to hold an enquiry or not must be judged in the context of whether it was reasonably practicable to do so. It is not a total or absolute impracticability which is required by clause (b) of the second proviso. What is requisite is that the holding of the inquiry is not practicable in the opinion of a reasonable man taking a reasonable view of the prevailing situation. The reasonable practicability of holding an inquiry is a matter of assessment to be made by the Disciplinary Authority and must be judged in the light of the circumstances then prevailing. The Disciplinary Authority is generally on the spot and knows what is happening. In para 59 The Supreme Court has enumerated some illustrative case and these are :

(a) where a civil servant, particularly through or together with his associates, so terrorizes, threatens or intimidates witnesses who are going to give evidence against him with fear of reprisal as to prevent them from doing so, or

(b) where the civil servant by himself or together with or through others threatens, intimidates and terrorizes the officer who is the disciplinary authority or members of his family so that he is afraid to hold the inquiry or direct it to be held, or

(c) where an atmosphere of violence or of general indiscipline and insubordination prevails, it being immaterial whether the concerned civil servant is or is not a party to bringing about such a situation. In all these cases, it must be remembered that numbers coerce and terrify while an individual may not.

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18. In para 60 it is pointed out that the Disciplinary Authority is not expected to dispense with a disciplinary inquiry lightly or arbitrarily or out of ulterior motives or merely in order to avoid the holding of an inquiry or because the department's case against the civil servant is weak and must fail.

19. Then in para 92, page 94 in Satyavir Singh's case the Supreme Court has pointed out that a civil servant who has been dismissed removed or reduced in rank by applying to his case one of the clauses of the second proviso to Article 311(2) or an analogous service rule has two remedies available to him. These remedies are :-

(i) the appropriate departmental remedy provided for in the relevant service rules, and

(ii) if still dissatisfied, invoking the court's power of judicial review.

20. The scope of departmental remedies is considered in paras 93 to 103 in that case. In para 97 it is pointed out that even in a case where at the time of the hearing of the appeal or revision, as the case may be, a situation envisaged by the second proviso to Article 311(2) exists, as the civil servant, if dismissed or removed, is not continuing in service and if reduced in rank, is continuing in service with the reduced rank, the hearing of the appeal or revision, as the case may be, should be postponed for a reasonable length of time to enable the situation to return to normal. Then in para 101 the Supreme Court has laid down that a civil servant who has been dismissed or removed from service or reduced in rank by applying to his

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clause (b) of the second proviso to Article311(2) or an analogous service rule can claim in appeal or revision that an enquiry should be held with respect to the charges on which penalty has been imposed upon him unless a situation envisaged by the second proviso is prevailing at the hearing of the appeal or revision application should be postponed for a reasonable length of time for the situation to return to normal.

21. The scope of judicial review is discussed by the Supreme Court in para 138 in Tulsi Ram Patel's case and I cannot do better than by quoting that entire paragraph :-

> Where a government servant is dismissed, removed or reduced in rank by applying clause (b) or an analogous provision of the service rules and he approaches either the High Court under Article 226 of this Court under Article 32, the court will interfere on grounds well established in law for the exercise of power of judicial review in matters where administrative discretion is exercised. It will consider whether clause (b) or an analogous provision in the service rules was properly applied or not. The finality given by clause (3) to Article 311 the Disciplinary Authority's decision that it was not reasonably practicable to hold the inquiry is not binding upon the court. The court will also examine the charge of mala fides, if any, made in the writ petition. In examining the relevancy of the reasons, the court will consider the situation which according to the disciplinary authority made it come to the conclusion that it was not reasonably practicable to hold the inquiry. If the court finds that the reasons are irrelevant, then the recording of its satisfaction by the disciplinary authority would be an abuse of power conferred upon

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it by clause (b) and would take the case out of the purview of that clause and the impugned order of penalty would stand invalidated. In considering the relevancy of the reasons given by the disciplinary authority the court will not, however, sit in judgment over them like a court of first appeal. In order to decide whether the reasons are germane to clause (b), the court must put itself in the place of the disciplinary authority and consider what in the then prevailing situation a reasonable man acting in a reasonable way would have done. The matter will have to be judged in the light of the then prevailing situation and not as if the disciplinary authority was deciding the question whether the inquiry should be dispensed with or not in the cool and detached atmosphere of a court-room, removed in time from the situation in question. Where two views are possible, the court will decline to interfere.

22. From the above discussion for the purpose of this case, the following prepositions can be easily drawn:

While considering the legality of the impugned order Courts and this Tribunal can very well consider as to whether the reasons given in the orders for dispensing with the regular enquiry were proper and relevant. Of course the court shall have to do it after putting itself in the position of the officer who has passed the order and not in a cool atmosphere of the court. This preposition is obvious from what the Supreme Court has stated about the judicial review. Moreover the reasons and situations shall have to be considered not with respect to the date or time of the alleged incident but on the date when the order dispensing with regular enquiry was passed. If it is found that the reasons given in the order were not existing or were not relevant on the date when the order was passed, then it will be necessary

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to set aside the order. This preposition is clear from the discussion in Tulsiram Patel's case about the scope of departmental remedies. The discussion shows that if the situation improves even at the stage of hearing of the appeal the employee can claim that a regular enquiry should be held with respect to the charge on which he is removed from service.

23. Coming to the facts of this case, I have already stated on what basis the Works Manager has passed the orders dispensing with the regular enquiries against the applicants. On the basis of these orders final orders imposing the penalty were passed and in these orders also the reasons for dispensing with the enquiries are mentioned. I have quoted one order dt. 5th March,1982 passed against Salim Sardar Sheikh, applicant No.1 in Transferred Application No.216/86. All the orders are worded in the same manner. The first paragraph of the order is about what happened on 19-1-1982 at lunch i.e. about 11.00AM. It says that there was stone throwing and damaging and breaking of window glass panes canteen equipments, utensils etc. Obviously this has nothing to do with the dispensing of the regular enquiry. The second paragraph shows that the eye witnesses were either not willing or not likely to give evidence in open enquiry of what they had personally witnessed. In the third paragraph it is stated that the situation that prevailed on 19-1-82 in the workshop was most extraordinary and therefore it was reasonable that independent witnesses would not come forward to give evidence in an open enquiry. In the fourth paragraph it is mentioned that with a view to maintain discipline ~~it is~~ and orderliness in the workshop employing thousands of workers at a time, offenders of criminal nature cannot be allowed to go unpunished solely on the ground that normal enquiry as provided in the rules

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is not capable of being followed. It is on the basis of these reasons that Works Manager was satisfied that it was not reasonably practicable to hold a regular enquiry into the charges. As already pointed out the first paragraph is about the incident and it has nothing to do with dispensing with the regular enquiry. The reason in the third paragraph that the situation in the workshop at the time of the incident was extraordinary cannot be said to be a good ground for dispensing with the enquiry. The reason in the fourth paragraph that the offenders of criminal nature cannot be allowed to go unpunished also cannot be said to be a proper reason for dispensing with an enquiry though that appears to be the motive for the final order. What remains is the reason given in the second paragraph, viz., that the eye witnesses were neither willing nor likely to adduce evidence in an open enquiry about what they had personally witnessed. In my opinion this reason cannot also be held to be a relevant reason while dispensing with the enquiry.

24. As already pointed out in each order dispensing with enquiry, reports of 2 officers are referred to and it is on the basis of these reports that the Works Manager dispensed with the regular enquiry. I have gone through the reports in all the cases and I may point out that invariably at the end of the report each officer had requested that his report should be kept confidential and secret. Each officer had expressed a fear that giving evidence may endanger his life or the lives of his family members. But these reasons are not at all convincing. No officer had stated that he was threatened by any particular person or his friend. The officers were senior officers while the applicants were petty employees like Khalasis,

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Carpenter, Strikers, etc. It has also be remembered that the incidents were not preplanned. If the authorities of the canteen had made adequate preparations for supplying packets of puri bhaji to all or most of the employees, the incident would not have happened at all. The employees did not want the puri bhaji packets free of charge. They had paid or willing to pay for the same. Hence if the authorities had decided to hold regular enquiries against the employees who had taken to violence I do not think that the other employees would have gone to their help and taken revenge against the officers who had made the reports. I have therefore no hesitation in holding that the reasons given in the final orders or in the earlier orders for dispensing with the regular enquiry were not relevant or proper. In fact the ground mentioned in the fourth para shows that the authorities were bent upon teaching a lesson to some of the employees for the incident. As already pointed out the applicants were interviewed separately on different dates in the presence of some officers including one of the officers who had made the report against him. Hence by using common sense the applicants could have made out who had made reports against them or on whose reports they were removed from service. Hence the ground given in the second para, viz., that the witnesses were neither willing nor likely to give evidence in an open enquiry also loose its force. In fact it is not mentioned in the final order that the witnesses were not coming forward to give evidence because of the fear to their own lives or to the life of members of their family.

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25. Though, as already pointed out, the reports in which the Works Manager held that it was not reasonably practicable to hold an enquiry ~~were~~ are dtd. 8-2-1982, 11-2-1982, 12-2-1982, 18-2-1982, 1-3-1982 and 6-3-1982, The final orders in which the finding was reiterated are dated 10-2-82, 12-2-82, 3-3-82, 5-3-82, 6-3-82, respectively. But the reports of the concerned officers against the applicants were dt. either 22-1-82 or 23-1-82. Only in one case the report dtd. 21-1-82. In other words from the dates of the reports of the officers till the reports in which findings were given that it was not reasonably practicable to hold an enquiry, there was a gap of 3 to 6 weeks. Though the officers might have expressed some fear in their reports there is nothing to show that they were afraid to give evidence on the dates on which the findings ~~was~~ were given by the Works Manager. In fact apart from the reports which were made within 3 or 4 days of the incident, their statements were never recorded nor any enquiry was made with them. Hence there is nothing to show that the ground of fear given by the officers in their reports for not giving evidence in an enquiry continued till the finding was given by the Works Manager, that it was not reasonably practicable to hold the regular enquiry. In other words even assuming that there ~~was~~ were some relevant reasons for dispensing with the regular enquiry when the officers made their reports it cannot be said those reasons survived till the Works Manager decided to dispense with the inquiry.

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26. To sum up, the reasons given by the Works Manager for dispensing with the regular enquiry are neither relevant nor proper. Apart from this there is nothing to show these were in existence when the orders dispensing with enquiry passed. Hence the consequent orders removing the applicants from the service shall have to be quashed and set aside.

27. Mr.Nathan and Mr.Swar the learned advocates for the applicants relied on a judgment of the Bombay High Court delivered by Justice Pendse in Writ Petition No.2425 of 1983. In that case there were 5 applicants and they were also removed from service for the same incident which had taken place in the work shop on 19-1-1982. We had called for the files concerning them also and gone through those files. These files were seen by Justice Pendse also though they were not shown to the applicants' advocate in that case. I may mention that even in these cases the reports of the officers,orders passed by the Works Manager dispensing with the enquiry and the final orders are just similar to their counter parts in the cases before us. While quashing and setting aside the orders passed against the applicants in that case the High Court has observed as follows :

> The disciplinary authority has recorded the reasons for exercise of the powers and though they were not made available to the petitioners, the said reasons were made available for my perusal by Shri Rege. On perusal of the reasons, it becomes clear that the disciplinary authority exercised the powers only on the ground that the Officer who had made the report involving the petitioners had sounded an apprehension that there will be a danger to his life in case he is required to depose in disciplinary proceedings. In my judgment, this is not the suffieient

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reason for exercise of the powers. In the first instance, the Officer who made the report was a senior Officer working with the establishment and it is futile for an Officer of such a standing to claim that there will be a danger to his life in case his name is disclosed and in case, he is required to depose in the disciplinary proceedings. The higher the power the Officer holds, the greater the responsibility to be fearless and on perusal of the report of the Officer, I am not satisfied that the apprehension expressed by the Officer is reasonable. There is nothing to suggest that any of the petitioners are given to violence or had given any threats and, therefore, the apprehension seems to be entirely imaginary. It is necessary for this Court to peruse the reasons given by the disciplinary authority for dispensing with the enquiry to ascertain whether any reasonable, prudent person would have reached the same conclusion on the facts and circumstances of the case. In my judgment, it is impossible to record such a conclusion. As mentioned hereinabove, large number of employees had gathered around the canteen at the time of the incident and if such a Senior Officer could pin-point five workers as having indulged in pelting stones, there is no reason whatsoever why such Officer should not depose in the enquiry. In my judgment, the exercise of powers under Rule 14(ii) of the Rules was wholly misconceived and the disciplinary authority was in error in dispensing with the enquiry. The orders of dismissals passed by the disciplinary authority, therefore, deserve to be quashed and set aside.

28. Mr.Nathan the learned advocate for the applicants submitted that the judgment of the High Court in the above case is binding on this Tribunal because the facts are the same.

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Whether the judgment is binding on the Tribunal or not is not an easy point to decide because the Tribunal is constituted and is having jurisdiction over the entire country. But it cannot be denied that the judgment of the High Court based on the same facts deserves to be respected. Propriety also requires that the persons similarly placed should not be treated in a different way. It would have been different thing if the legal position as laid down by the Bombay High Court in the above case was over-ruled or changed by the Supreme Court either in Tulsiram Patel's case or in any other case. In fact it is pertinent to point out that the legal principles laid down by the High Court are in fact reiterated by the Supreme Court in Tulsiram Patel's case.

29. In result Transferred Application Nos. 216/86 and 225/86 are allowed in terms of prayers (a) and (b). Impugned orders passed by the Works Manager removing the applicants from service are hereby quashed and set aside and the applicants in both the applications are directed to be reinstated forthwith to the posts which they were holding prior to their removal from service, with full backwages and consequentila benefits due to them according to rules and without any break in service. In the circumstances of the case, there will bo no order as to costs.

(M.B. Mujumdar)
Member (J)

JUDGMENT

(PER: J.G. Rajadhyaksha, Member(A) - Dissenting)

1. I have read the judgment prepared by my Brother Member. With respect, I write this dissenting judgment.

2. These two applications were originally Writ Petitions Nos. 1189/1983 and 230/1985 filed in the High Court of Bombay. They have been transferred to this Tribunal and are renumbered Transferred Application No. 216/86 and 225/86.

3. The facts as I understand them are briefly that various Political Parties and Trade Unions gave a call for "Bharat Bandh" on the 19th January, 1982. The applicants, in these two applications, who were working in the Central Railway Workshop at Parel are stated to have come on duty on 19.2.1982 defying the Bharat Bandh called at the instance of their rival Union. About 3000 labourers and workers had come to the workshop. They were issued food coupons, as usual, but because of the steps taken by the Administration to call some workers for halting overnight in the

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workshop premises and allied buildings on the 18th January, 1982, the number far exceeded the number of coupons available and the food prepared. This led to restiveness and ultimately to riots. Officers and Supervisors of the Workshop who tried to pacify the workers, failed in their effort and then reported the incident to the Works Manager and secretly or confidentially named the workers who had taken part in initiating or fomenting trouble. 12 such persons were proceeded against departmentally after the Management decided to dispense with the requirements of holding a regular departmental enquiry under article 311(2) clause(b) to proviso '2' as well as Rule 14(ii) of the Railway Servants' (Discipline and Appeal) Rules, 1968. The reasons recorded in the penal order were that it was "impracticable to hold departmental enquiries in the situation then prevailing", and, therefore, orders inflicting punishment of dismissal without enquiry were passed against the applicants. They had appealed but the appeals were also rejected by Departmental authorities. It is, therefore, that they went to the High Court by way of Writ Petitions. Two of these Writ Petitions are before us as Transferred Applications.

4. Mr. Nathan, Learned Advocate, for four applicants' in application No. 216/86 and Mr. Swar, Learned Advocate for two applicants in application No. 225/86 appeared and were heard. Mr. Chopra represented the Respondents.

5. Mr. Nathan's contentions are that applicants who were loyal workers were actually in the workshop to attend the work. Respondents No. 2 issued general threats of action in advance if people abstained from work. Applicants who were members of the National Railway Mazdoor Union ignored the Bandh Call. As the canteen did not have adequate food ready for 2,500 odd workers on the premises, there were disturbances which led to damage to railway property and intimidation of Supervisory staff. The applicants had not participated in the strike. There is no evidence whatsoever that the applicants actually participated in rioting or in causing damage to Railway property and intimidation of Officers. In fact, they had alibi to show what they were exactly doing when the riots broke out. Yet it was alleged that the

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applicants had committed grave mis-conduct and they were therefore, proceeded against. Formal open enquiry was dispensed with and the disciplinary authority recorded orders of punishment and dismissed the applicants from services. These orders have been challenged. It is Mr.Nathan's contention that at the time of issuing the orders dismissing the applicants from service, the situation which was stated to have existed on 19-1-1982 was not existing at all, and therefore, the Administration was not justified in dispensing with the enquiry and dismissing the applicants without enquiry. He further contends that law requires that the reasons for dispensing with the enquiry must be communicated to the persons, proceeded against without enquiry. The authority must also record the reasons in advance and in the absence of such proof of application of mind to the situation existing at the time of issue of disciplinary orders, the action taken would be vitiated and the dismissal orders would have to be set aside. Mr.Nathan also desires to rely upon a judgment given by Mr.Justice Pendse of the Bombay High Court in Writ Petition No.2425 of 1983 in which he allowed the petition filed by 5 out of the 12 persons dismissed by Railway Authorities and ordered their reinstatement.

6. The relevant parts of the Justice Pendse's judgment have been reproduced by my Brother Member in his judgment. Mr.Nathan adds that Mr.Justice Pendse also observed after seeing the material produced before him that there was not enough cause for dispensing with the enquiry. Briefly stated, the Learned High Court Judge further observed that it was impossible to hold that Senior Officers such as Managers and Supervisors would feel so intimidated as not to give evidence in a departmental enquiry against their juniors who are involved in such enquiries. He, therefore, felt that there was

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no substance in the contentions before him that enquiries were impracticable and, therefore, he set aside the dismissal orders. It was Mr.Nathan's contention therefore, further that if five of the twelve delinquents could be reinstated the same yardsticks as adopted by the High Court should be applied to the remaining applicants before this Tribunal (6 of them in these two applications)and their dismissal should be set aside and they should be ordered to be reinstated in service. Mr.Swar supports the contentions of Mr.Nathan.

7. Mr.Nathan also discussed the observations and the law laid down in the famous case of the Union of India v/s. Tulsiram Patel and Others. He stressed that reasons for dispensing with the enquiry have to be recorded in writing in advance and communicated to the delinquents. These should also be made available to the applicants in the shape of copies of proceedings underlying the decisions that an enquiry should be dispensed with. He points out that there is a burden on the appellate authority of examining the circumstances and coming to the right conclusions. This has not been discharged and therefore,a Judicial review has been necessitated. He argues further that the Tribunal sitting in judgment on the action taken by the Railway Administration must conclude that circumstances did not exist to justify dispensing with the enquiry and therefore the action of the Railway Administration should be held to be arbitrary, mala fide and the punishment excessive, specially because out of a crowd of about 2500 workers only 12 were singled out for such action. His plea is that the grounds that witnesses apprehended danger to their life and, therefore, they were not willing to appear before the disciplinary authority were so vague that they should not have been relied upon. If applicants had resorted to nit

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rioting, they should have been proceeded against in a Criminal Court. There was adequate Railway Protection Force around the premises for preventing or quelling riots and such action has not been taken. Therefore it goes to show that the action against the applicants is nothing short of victimisation and vendetta. The dismissal orders did not disclose grounds in full, they did not consider evidence and,therefore, if there is no evidence at all the orders would be bad. Similarly, the appellate authority is also wrong in arriving at its conclusions that the punishments were warranted. Personal hearing was given to the applicants. The orders in appeal are not reasoned and speaking orders. Yet the applicants are not interested in attracting the law in the case of Ram Chander v/s. Union of India as it cannot help them to get justice where the principles of natural justice have been trampled upon. Railways' own administrative lapses have been visited upon the applicants. The reply filed by the Respondents also goes to show that their own canteen arrangements broke down,leading to disturbances by the workers. He,therefore, reiterates his contention that the action is illegal and mala fide. Railway Servants'(Discipline and Appeal)Rules have been violated,principles of natural justice have been trhown to the winds. The decisions to dispense with the enquiry are not based on valid grounds. Therefore invocation of Rule 14(ii) was not warranted at all. He feels that the Supreme Court's decision in Tulsiram Patel's case does not come in the way of this Tribunal giving justice to the applicants.

8. Mr.Swar adds that applicant in Tr.Application No.225/86 was the son of a retired Railway servant who

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joined service in March,1980 and was dismissed in 1982. He urges that it is not likely that a railway servant's son, so recently employed on special grounds would indulge in rioting.

9. Mr.Chopra for the Respondents contends that the disciplinary authority had received reports that applicants had incited workers to violence were actually seen throwing stones and damaging Railway property. The disciplinary authority had received secret written reports from Officers and Supervisors. He had examined them and on the basis of that evidence of eye witnesses who had pleaded before him that they should not be publicly examined in the interest of their safety and security,he concluded that it would be reasonably impracticable to hold the departmental enquiry in which witnesses could be openly examined and subjected to cross-examination etc. by the applicants.

10. Mr.Chopra discussed the law laid down in the famous Tulsiram Patel's case and said that what is contemplated is that a reasonable man should reasonably hold that the departmental enquiry had to be dispensed with. It is not likely that eye witnesses i.e. Managers and Supervisors in the Workshop would bear any ill will or grudge against these particular workers. There would be no question of victimisation or vendetta. Therefore, a general allegation of mala fides cannot be sustained. Referring to the Judgment given by the Learned High Court Judge Mr.Justice Pendse, Mr.Ghopra argues that what is stated there is not law, and not good law, in any case. He argues that "situation" would include the state of mind of the would be witnesses. Fear is a state of mind which cannot be defined nor can it be questioned by extraneous circumstances. It is not possible to force a witness to give

evidence. Discussing Satyavir's case, Mr.Chopra argues that it is not possible at this late stage to imagine in a detailed manner, the state of mind of the witnesses and of the disciplinary authorities. He produced for the inspection of the Tribunal records which show that a conscious decision was taken by the disciplinary authority in each case not to hold an open departmental enquiry. In each case, against each applicant, the disciplinary authority recorded reasons for the decision to dispense with the departmental enquiry. In each case, there were independent reports by different officers. He therefore, argues that the law in Tulsiram Patel's case had been fully complied with and therefore, there is no cause for the Tribunal to take a view that the action taken by the disciplinary authority is unconstitutional and illegal by any standards. He concedes that the situation referred to in this law is the one as existing not on the date of the enquiry but on the date of the order. He says that the disciplinary authority has to be convinced personally that witnesses being under fear would not appear before him. Once he draws this conclusion, it is not possible for him to go on checking whether the situation and,therefore the state of mind of the witnesses has been undergoing any change towards normalcy. Citing several paragraphs from Satyavir Singh's case reported in A.T.R.1986 SC 78 he argues that the action taken by the disciplinary authority was the right one. He concedes that judicial review is possible, but discussing the law laid down by the Supreme Court in Tulsiram Patel's case as further discussed in Satyavir Singh's case, he argues that even the judicial scrutiny will have to take into account the circumstances which led to the conclusions that a departmental enquiry had to be dispensed with.

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11. My brother Member has observed that the only point arising for consideration in these two cases is :

> "Whether the finding of the Works Manager that it was not reasonably practicable to hold a regular enquiry against the applicantswas proper and justified from the material placed before him ?"

12. It is not necessary here to reproduce Article 311 of the Constitution of India as it stood before it was amended by the Constitution(42nd Amendment)Act,1976 w.e.f. 3rd January,1977. It is also not necessary to reproduce the amended article.

13. Rule 19 of the CCS(CCA) Rules has also been quoted in the judgment in Satyavir Singh's case. Rule 14 of the Railway Service Discipline and Appeal Rules which is analogous to Rule 19 of the CCS(CCA)Rules has been quoted by my brother in his judgment and therefore, that also need not be reproduced. I am relying much on the words and phrases used by the Supreme Court in the cases of Tulsiram Patel and Satyavir Singh for my conclusions.

14. Suffice it to say that the safeguards provided to Civil Servants by Clause (2) of Article 311 are taken away if any of the three clauses of the second proviso to Article 311(2) come into play. The second proviso is unambiguous and it confers on the authority empowered to dismiss or remove a person or to reduce him in rank, the power to hold that it is not reasonably practicable to hold an enquiry, provided that such authority is satisfied that for some reasons to be recorded in writing it so feels. The governing words of the second proviso to article are mandatory and are not directory and are in the nature of Constitutional prohibitory injunction restraining the Disciplinary Authority from holding an enquiry

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under Article 311(2) in special circumstances. There is no scope for introducing into the second proviso, some kind of enquiry or opportunity to show cause by inference or by implication.

The second proviso was retained as a matter of public policy and as being in thepublic interest and for public good by the members of the Constituent Assembly who had fought for freedon and suffered imprisonment in the cause of liberty. Thus the decision of the disciplinary authority has been given certain finality by this proviso.

15. This is of course not to suggest that judicial scrutiny of action taken by a Disciplinary Authority in departmental proceedings is ruled out.

The principles of natural justice cannot be ignored. They apply to quasi judicial as well as administrative enquiries but they can change in the exigencies of different situations and do not apply in the same manner to situations which are not alike. They are neither cast in a rigid mould nor can they be put in a legal strait jacket. They are not immutable, but flexible.....

It has further been observed by the Supreme Court that legislation and the necessities of a situation can exclude principles of natural justice; so can a provision of the Constitution such as the second proviso to Article 311(2). There is no scope for reinterpreting it by a side door to provide once again the same enquiry which the Constitutional provision has expressly prohibited.

Again it has been observed that in the case of a Civil Servant his right of a departmental appeal in which he can show that the charges made against him are not true, still remains intact and an appeal is a wider and more effective remedy than a right of making a representation.

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It has further been observed by the Supreme Court that a well settled ruling of construction of statutes is that where two intrepretations are possible one of which would preserve and save constitutionality of the particular statutory provision, while the other would render it unconstitutional and void, the one which saves and preserves constitutionality should be adopted.

16. This discussion, first of all, leads me to hold that the power of disciplinary authority in the case before us to dispense with the enquiry is unfettered and final; and it would be adequate for me to see if the requirements of rule 14(ii) i.e. equivalent to Article 311(2) Clause'b' of the second proviso thereto has been substantially complied with.

17. In the instant case the disciplinary authority has, on the reports of Supervisory and other Officers who were present in the Workshop, concluded that a situation then existed and continued to exist which would render holding of a normal enquiry impracticable.

18. Another question arises is whether such a decision to dispense with the enquiry was taken in advance and reasons therefor were recorded in writing.

19. From the details discussed by my brother Member, it is clear that such a decision was in fact taken to precede the disciplinary order. Therefore, it is not as if these records or the reasons for dispensing with the enquiry have been fabricated at a later date.

20. The final order does contain a paragraph to the effect that holding of an enquiry was considered reasonably impracticable.

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A question might arise as to whether omission to mention in an order of dismissal the relevant clause of the second proviso or the relevant service rules will have any adverse effect. It has been held by the Supreme Court that such omission will not have the effect of invalidating the orders imposing such penalty.

It is significant that the Supreme Court have now clearly overruled the earlier view in Chellappa's case namely that consideration of circumstances of the case cannot be unilateral, but must be after hearing the delinquent Civil Servant. The Supreme Court has observed now that such a view would render that part of Rule 14 unconstitutional as restricting the full exclusionary operation of the second proviso to Article 311(2). This view lends support to the contention that such decision has necessarily to be taken ex parte.

21. The three clauses of the second proviso to Article 311 are not intended to be applied in normal and ordinary situations. Where such a situation as is envisaged in one of the clauses of the second proviso to Article 311(2) exists, it is not mandatory that the punishment of dismissal, removal or reduction in rank should be imposed upon the Civil Servant. The disciplinary authority will first have to decide what punishment is warranted by the facts and circumstances of the case. Such consideration would be ex parte and without hearing the concerned civil servant. If the disciplinary authority comes to the conclusion that the punishment which is called for is that of dismissal, removal or reduction in rank, it must dispense with an enquiry and then decide for itself which of the aforesaid three penalties should be imposed. In operation of clause 'b' of the second proviso two conditions precedent must be satisfied; these are

(i) there must exist a situation as envisaged in article 311(2) not rendering the holding of an enquiry reasonably practicable;

(ii) the disciplinary authority should record its satisfaction that it is not reasonably practicable to hold such enquiry.

Now this is a matter which can be judged by the disciplinary authority alone.

As is observed by the Supreme Court it is not total or absolute impracticability which is required by clause 'b' of the second proviso. What is requisite is that the holding of the enquiry is not practicable in the opinion of a reasonable man taking a reasonable view of the prevailing situation. The Disciplinary authority being on the spot and knowing what is happening is the best judge of the prevailing situation that makes the decision of the disciplinary authority final.

22. In the present case the disciplinary authority has assessed the situation.

Taking the illustrative cases discussed by the Supreme Court, it will be sufficient to mention that the situation contemplated would include an atmosphere of violence or of general indiscipline or insubordination, it being immaterial whether the concerned Civil Servant is or is not a party to bringing about such a situation in all these cases. It must be remembered that numbers terrify while an individual may not.

I feel that in the instant case where disturbances broke out in the Workshop, a situation was created which led the disciplinary authority to decide to dispense with the formal enquiry. The applicants in this case have been named as miscreants by the Supervisor staff and that is why ...36/-

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the disciplinary authority has held them guilty.

23. Further, it has been observed by the Supreme Court that it is not necessary that the situation which makes the holding of an enquiry is instituted against the Civil Servant. Such a situation can also come into existence subsequently during the course of the enquiry. This could happen even after the service of the charge sheet and after evidence is led in part.

If this be so then I do not think that the disciplinary authority can be said to be at fault for holding that situation as envisaged in the second proviso existed even at the time of holding the enquiry and passing the final order imposing penalty. Ashas already been seen the recording of the reason for dispensing with such enquiry has been held to be a condition precedent. This has been complied with in the instant case and as such neither the order dispensing with the enquiry nor the order of penalty can be held to be void and unconstitutional. Besides, the reason has found a place even in the final order though it is not mandatory that it should.

24. The Supreme Court has held that it is not necessary to communicate the reasons for dispensing with the enquiry to the concerned Civil Servants. Thus it is not a mandatory provision, it is recommended as a precautionary measure to forstall a charge of fabrication later.

25. According to the Supreme Court, the quantum and extent of penalty would depend upon the gravity of the situation. The fact therefore that in a particular centre certain Civil Servants were dismissed from service while at some other centres they wer only removed from service does not mean that penalties were arbitrarily imposed. In the instant case the penalty of dismissal was imposed upon twelve

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persons. There has been no discrimination. The fact that the High Court set aside the penalty in respect of five persons is discussed further in this judgment, but it cannot possibly permit to hold that the penalty imposed on the six applicants in the two applications before us is arbitrary, or void, or unconstitutional.

26. As is observed earlier, judicial scrutiny or review is available in such cases. If the High Court or a similar Court comes to the conclusion that disciplinary authority has for extraneous reasons or mala fide dispensed with an enquiry, the Court can strike down such a decision and penal action taken by the Disciplinary Authority.

27. In the instant case there seems to be no reason to hold that action was taken against applicants mala fide, arbitrarily or as vendetta or a measure of victimisation.

28. Turning now to the observations of the Learned High Court Judge Justice Pendse in the case of five other delinquents from the same organisation, I agree with respect that as rightly argued by Mr.Chopra the Learned Advocate for the Respondents these observations are not law nor the legal position. The legal position could if at all be confined to the question of making available to the delinquents the reasons for dispensing with the enquiry. But this view has also not been upheld by the Supreme Court in Tulsiram Patel's case and Satyavir Singh's case. It is not therefore mandatory that such reasons must be communicated to the delinquents. It will be significant to note that the decision of the High Court came in the year 1983 in the Writ Petition No.2425 of 1983. The judgments in Tulsiram Patel's case and Satyavir Singh's case have come thereafter. Tulsiram Patel's case has been reported in 1985(ii) CLR 117 and Satyavir Singh's case has been reported in A.T.R. 1986 Supreme Court 78; the latter

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has been decided on 12.9.1985. What is important is that the observations of the Supreme Court in paragraph 108 in Satyavir Singh's case would apply to the cases before us. Only the portion that is relevant to the issue in hand has been reproduced here below :-

> "in considering the relevancy of the reasons given by the disciplinary authority the Court will not however, seek any judgment or the reasons like a Court of first appeal in order to decide whether or not the reasons are germane to Clause'b' of the second proviso or an analogous Service Rule. The Court must put itself in the place of the disciplinary authority and consider what in the then prevailing situation a reasonable man acting in a reasonable manner would have done. It will judge the matter in the light of the then prevailing situation and not as if the disciplinary authority was deciding the question whether the enquiry should be dispensed with or not in the cool and detached atmosphere of a Court Room removed in rime from the situation in question. Where two views are possible, the Court will decline to interfere"

29. I would reiterate that apprehension or fear is a state of mind. Gallantry,bravery or fearlessness cannot be instilled into the mind of an officer, even if he be the topmost man in an organization, by issue of any guidelines or manuals. In the instant case Political parties had given a call for Bharat Bandh. The situation that prevailed in the Workshop in which applicant were working prevailed almost everywhere else in the country. With the calls given by the Rival Unions of Workers in this Workshop, on some pretext or the other riots broke out inside the workshop. The state of mind of co-workers who were by nature not violent or of the Supervisory and Managerial staff can be well imagined by a person who has himself faced mob fury

riotous situations or situations posing a threat to law and order and to the safety and security, and even life of the citizens. Much intense would be the apprehension in the close confines of a workshop premises where as observed by the Supreme Court numbers terrify. The Officers and Supervisors in the workshop who noticed applicants and some others conducting themselves in a violent manner must have at that time kept quiet after their attempts to pacify the workers failed. They must also have withdrawn themselves for fear of their life and bodily safety. It will be a very high expectation indeed that such officers and men should be without apprehension of danger to life, because not only such danger arises during the riots in a prticular place, but the threats would continue even beyond such period when the Officers and Supervisors are identifiable and can be singled out for retaliation and they and their families can be subjected to bodily harm or humiliation. With respect, therefore, I would say that the observations in the judgment of the High Court which set aside the punishment in the cases of five persons cannot be universally applied by all authorities in all circumstances, and specially in the light of what the Supreme Court has observed about the disciplinary authority having to take a decision on the question whether the enquiry should be dispensed with or not,not "sitting in the cool and detached atmosphere of Court Room removed in time from the situation in question" would in my view supercede the observations in the High Court judgment even by way of observations, only. Therefore, the calm and quiet following a riot that has once occurred can be deceptive and illwill created, the apprehensions created, the threats held out would all remain simmering for days to come. In the circumstances I feel that the disciplinary authority was fully

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justified in holding not only at the time of passing the order dispensing with the enquiry that a formal enquiry was reasonably impracticable, but also at the time of passing the final disciplinary order.

30. As is observed by the Supreme Court the contention that the enquiry was not properly dispensed with cannot perhaps be sustained before the appellate authority. Therefore, even if the appellate authority in these cases has come to the conclusion that the enquiry was properly dispensed with, no fault can be found with the appellate authority. It is indeed for this Tribunal to see if the enquiry was dispensed with arbitrarily or mala fide. I have discussed fairly in detail not only the situation that existed or continued to exist but also how the observations in Tulsiram Patel's case and Satyavir Singh's case that the Supreme Court was pleased to make, cover the cases before us.

31. It is for these reasons that I hold firstly that the disciplinary authority has fully complied with the contention precedent that an order in writing to dispense with the enquiry should precede the disciplinary order;

32. The disciplinary authority has adequately mentioned the reasonable impracticability of holding the enquiry in its final disciplinary order and this complied with that recommendatory requirement also.

33. It is clear that a situation had arisen and did exist not only at the time of deciding to dispense with the enquiry but also at the time of passing the disciplinary order which could be described as rendering the holding of and enquiry reasonably impracticable.

34. The decision taken by the authorities on the spot namely the disciplinary authority as confirmed by the appellate authority as confirmed by the appellate authority are neither ..

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arbitrary nor unconstitutional and are not, therefore, vitiated in any way, whatsoever.

35. Therefore, I hold that the applications deserve to be dismissed and the penalty imposed deserves to be confirmed.

36. Accordingly, I order that the applications bearing numbers Tr. Application No. 216/86 and Tr. Application No. 225/86 are dismissed and the penalties imposed by the disciplinary authorities in these two cases are confirmed.

There should be nororder as to costs.

(J.G. Rajadhyaksha)
Member(A)

TRIBUNAL'S ORDERS

In view of the difference of opinion in the judgments above, the following point is referred to the Chairman of the Central Administrative Tribunal for necessary action under section 26 of the Administrative Tribunals Act, 1985.

"whether the finding of the Works Manager that it was not reasonably practicable to hold a regular enquiry against the applicants was proper and justified from the material placed before him ?"

(J.G. Rajadhyaksha)
Member(A)

(M.B. Mujumdar)
Member (J)

Place : New Bombay
Dated : 4.3.1987