IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

Original Application No: 598/93

4.11.99
Date of Decision:

J.J.Sequeirs ---------- Applicant.

Shri D.V.Gangal ---------- Advocate for Applicant.

Versus

Union of India & Ors. ---------- Respondent(s)

Shri S.C.Dhawan ---------- Advocate for Respondent(s)

CORAM:

Hon'ble Shri. D.S.Baweja, Member (A)

Hon'ble Shri. S.L.Jain, Member (J)

(1) To be referred to the Reporter or not? ✓

(2) Whether it needs to be circulated to other Benches of the Tribunal? ✗

(3) Library ✓

(D.S.BAWEJA)
MEMBER (A)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI

10

OA.NO.598.93

Dated this the 4th day of November 1999.

CORAM : Hon'ble Shri D.S.Baweja, Member (A)

Hon'ble Shri S.L.Jain, Member (J)

John Jerome Sequeirs,
Machine Man
T.No.319, Machine Section,
Printing Press,Central Railway,
Byculla, Bombay. ... Applicant

By Advocate Shri D.V.Gangal

V/S.

1. Union of India
through the General Manager,
Central Railway, Bombay V.T.

2. Superintendent,
Printing & Stationary,
Central Railway,
Byculla, Bombay. ... Respondents

By Advocate Shri S.C.Dhawan

ORDER

{Per : Shri D.S.Baweja, Member (A)}

The applicant while working as 'Binder' skilled in the Printing Press, Byculla, Central Railway was imposed punishment of dismissal from service as per order dated 27.5.1989 exercising power under Rule 14 (ii) of Railway Servants (Discipline & Appeal) Rules,1968. The charge was that the applicant along with 3 other employees had assaulted and beaten physically Shri R.A.Singhal, Deputy Controller of Stores on 10.5.1989. The

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BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI

OA.NO.598.93

Dated this the ___ day of ___ 1999.

CORAM : Hon'ble Shri D.S.Baweja, Member (A)

Hon'ble Shri S.L.Jain, Member (J)

John [illegible] Dsouza,
Machine Man,
No.C19, Machine Section,
Printing Press, Central Railway,
Byculla, Bombay.

... Applicant

Advocate Shri [illegible] Gangal

V/S.

1. Union of India
through the General Manager,
Central Railway, Bombay V.T.

2. Superintendent,
Printing & Stationery,
Central Railway,
Byculla, Bombay.

... Respondents

Advocate Shri [illegible]

O R D E R

Per : Shri D.S.Baweja, Member (A)

The applicant while working as 'Binder' skilled in the Printing Press, Byculla, Central Railway was imposed punishment of dismissal from service as per order dated [illegible] exercising power under Rule 14 (ii) of Railway Servants (Discipline & Appeal) Rules. The charge was that the applicant [illegible] the [illegible] and [illegible] Controller of Stores on [illegible]. The

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applicant made an appeal on 1.7.1989 against this punishment order but the same was rejected as per order dated 21.11.1989. Thereafter, he submitted revision application on 31.7.1990 and this also was rejected through order dated 18.11.1991 by the revision authority and conveyed to the applicant as per letter dated 18.6.1992. As per order dated 21.2.1990, the applicant , however, was given fresh appointment as a Group 'D' as Khalasi with the stipulation that the past service will not count for any purpose. The applicant accepted this appointment and joined on the same. The applicant submits that along with him, 3 more employees were also imposed same punishment on allegation of being involved in the same incident of 10.5.1989. However, considering their appeal, the punsihment has been modified from dismissal to that of reduction to the lower grade for a period of 12 months. Feeling aggrieved by the punishment order, the present OA. has been filed on 16.6.1993 praying for setting aside the orders dated 18.6.1992 (Annexure-A) and 21.2.1990 (Annexure-B).

2. In the original application, the only ground taken by the applicant in assailing the impugned order is that the applicant has been discriminated as he has been imposed severe punishment of dismissal from service while his co-employees have been let off with minor punishment.

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3. Subsequently, the applicant has filed an amendment application taking additional grounds for challenge of the punishment. This amendment application was allowed. The applicant has also impugned the punishment order dated 27.5.1989. The additional grounds taken are as under :-

(a) The power under Rule 14(ii) has been exercised stating that it is not reasonably practicable to hold inquiry as the railway employees were afraid due to intimidation to give any evidence if the enquiry is conducted. Applicant contends that this reason is not tenable as a criminal case was also filed against the applicant for the same alleged incident and witnesses were willing to give evidence. Therefore, the action of the disciplinary authority under Rule 14 (ii) was arbitrary, malafide without the authority of law and thus amounts to abuse and misuse of power.

(b) Exercise of power under Rule 14 (ii) requires detailed reasons to be recorded for dispensing with the inquiry. This has not been done as no reasons have been advised to the applicant. The disciplinary authority has only made a mechanical statement in terms of Rule14 (ii) that it is not reasonably practicable to hold inquiry without application of mind.

(c) The applicant denies any involvement in the incident on 10.5.1989 in which Shri R.A.Singhal is alleged to have been asaulted by the applicant along with other employees.

4. The respondents in the written statement at the out set have opposed the application stating that the same is barred by limitation as the applicant has challenged the order dated 18.11.1991 by filing the present OA. on 16.6.1993. On merits, the respondents submit that the applicant along with his co-workers was involved in physical assault on Shri R.A.Singhal, Deputy Controller of Stores on 18.5.1989. On the basis of the statement of Shri R.A.Singhal, the Controller of Stores who is the Head of the Department under whose control the Printing Press is working directed one of his officers Shri C.G.Bijlani, Chief Materials Manager to investigate into the incident and give his assessment of the prevailing situation. Shri Bijlani gave his report on 22.5.1989. The Controller of Stores after careful consideration of assessment of report of Shri Bijlani came to the conclusion that a normal enquiry under Rule 9 is not applicable for taking disciplinary action against the applicant and his co-workers and therefore exercised power under Rule 14 (ii) of Railway Servants (Discipline & Appeal) Rules and passed an order dated 27.5.1989 imposing punishment of dismissal from service. The applicant thereafter filed an appeal and the same was rejected by the appellate authority as per order dated 21.11.1989

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by modifying the punishment from dismissal to that of removal from service. Thereafter, the applicant filed a Mercy Appeal before the General Manager and considering the same, the General Manager allowed fresh appointment to the applicant as a Khalasi without counting his past service and the applicant accepted the same and joined on the post. The applicant thereafter filed a revision application and the same had also been rejected as per order dated 18.11.1991. As regards the allegation of discrimination in imposing punishment on the co-workers of the applicant in reduction to two scales, the punishment has been modified from dismissal to that of reductionto lower grade in the appeal, the respondents contend that each case has to be viewed on its own facts and circumstances and applicant cannot allege any discrimination by imposing different punishment to his co-workers. The respondents further add that the applicant was the main person who instigated his co-workers to physical assault on Shri R.A.Singhal. As regards the criminal case pending against the applicant, the respondents take a stand that the same has nothing to do with the disciplinary proceedings as per the rules. With these pleadings, the respondents submit that the action taken against the applicant is as per the extant rules after due satisfaction of the disciplinary authority that it was not reasonably practicable to hold an enquiry and the applicant has no case and the OA. deserves to be dismissed.

5. The applicant has not filed any rejoinder reply controverting the submissions of the respondents and stating that OA. filed against the order dated 18.6.1992 is within limitation.

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6. We have heard the arguments of Shri D.V.Gangal, learned counsel for the applicant and Shri S.C.Dhawan, learned counsel for the respondents. The respondents have made available the relevant file dealing with the disciplinary action under challenge taken against the applicant.

7. The impugned punishment has been imposed on the applicant dispensing with the enquiry exercising power under Rule 14 (ii) of Railway Servants (Discipline & Appeal) Rules as covered by Article 311 (2) (b). The Hon'ble Supreme Court has gone into the issue with regard to exercise of power under Article 311 (2) (b) in the case of Union of India vs. Tulsiram Patel, 1985 SCC (L&S) 672. Both counsel for applicant as well as counsel for respondents have relied upon this judgement to support their respective contentions. The applicant has also cited the judgement in the case of Satyavir Singh & Ors. vs. Union of India & Ors. (1985) 4 SCC 252, which is based on the law laid down in the case of Tulsiram. In this judgement, their Lordships of the Hon'ble Supreme Court have summarised topic-wise conclusions reached by the majority in Tulsi Ram's case. For going into the merits of the present case, the relevant decisions arrived at in the case of judgement of Tulsiram Patel are extracted below from the judgement in case of Satyavir Singh & Ors. as under :-

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" (55) There are two conditions precedent which must be satisfied before clause (b) of the second proviso to Article 311(2) can be applied. These conditions are :

(i) there must exist a situation which makes the holding of an inquiry contemplated by Article 311 (2) not reasonably practicable, and
(ii) the disciplinary authority should record in writing its reason for its satisfaction that it is not reasonably practicable to hold such inquiry.

(56) Whether it was practicable to hold the inquiry or not must be judged in the context of whether it was reasonably practicable to do so.

(57) 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.

(58) 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. It is because the disciplinary authority is the best judge of the prevailing situation that clause (3) of Article 311 makes the decision of the disciplinary authority on this question final.

(60) 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.

(63) The recording of the reason for dispensing with the inquiry is a condition precedent to the application of clause (b) of the second proviso. This is a constitutional obligation and if such reason is not recorded in wiriting, the order dispensing with the inquiry and the order of penalty following thereupon would both be void and unconstitutional. It is,

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however, not necessary that the reason should find a place in the final order but it would be advisable to record it in the final order in order to avoid an allegation that the reason was not recorded in writing before passing the final order but was subsequently fabricated.

(64) The reason for dispensing with the inquiry need not contain detailed particulars but it cannot be vague or just a repetition of the language of clause (b) of the second proviso.

(65) It is also not necessary to communicate the reason for dispensing with the inquiry to the concerned civil servant but it would be better to do so in order to eliminate the possibility of an allegation being made that the reason was subsequently fabricated.

(66) The obligation to record the reason in writing is provided in clause (b) of the second proviso so that the superiors of the disciplinary authority may be able to judge whether such authority had exercised its power under clause (b) properly or not with a view to judge the performance and capacity of that officer for the purposes pf promotion etc.

(67) It is, however, better for the disciplinary authority to communicate to the concerned civil servant its reason for dispensing with the inquiry because such communication would eliminate the possibility of an allegation being made that the reason had been subsequently fabricated. It would also enable the civil servant to approach the High Court under Article 226 or, in a fit case, the Supreme Court under Article 32.

(108) In examining the relevancy of the reasons given for dispensing with the inquiry, the court will consider the circumstances which, according to the disciplinary authority, made it come to the conclusion that it was not reasonably practicable to hold the inquiry. If the court finds that the reasons are irrelevant, the order dispensing with the inquiry and the order of penalty following upon it would be void and the court will strike them down. In considering the relevancy of the reasons given by the disciplinary authority, the court will not, however, sit in judgement over 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.

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> 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 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.
>
> (110) If the reasons for dispensing with the inquiry are not communicated to the concerned civil servant and the matter comes to court, the court can direct the reasons to be produced and furnished to the civil servant and if still not produced, a presumption should be drawn that the reasons were not recorded in writing and the impugned order would then stand invalidated. Such presumption can, however, be rebutted by a satisfactory explanation for the non-production of the written reasons."

8. Keeping in view the law laid down by the Hon'ble Supreme Court in the case of Tulsiram Patel, we will now take up the grounds advanced by the applicant in assailing the impugned orders. The first ground is that for exercise of power under Rule 14 (ii), the disciplinary authority is required to record detailed reasons as to how it was not practicable to hold enquiry and the same has not been done in the present case as no reasons have been advised to the applicant. In this connection, we refer to the law laid down by the Hon'ble Supreme Court in Tulsiram Patel's case and summary of the decision extracted at paras 65,66,67 and 110 above from the judgement in the case of Satyaveer Singh (supra). As held in the case of Tulsiram Patel by the Hon'ble Supreme Court, it is better to convey the reasons to the delinquent employee but if the reasons are not conveyed, the punishment order does not get vitiated provided the reasons

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8. Keeping in view the law laid down by the Hon'ble Supreme Court in the case of Tulsiram Patel, we will now take up the grounds advanced by the applicant in assailing the impugned orders. The first ground is that for exercise of power under Rule 14 (11), the disciplinary authority is required to record detailed reasons as to how it was not practicable to hold enquiry and the same has not been done in the present case as no reasons have been advised to the applicant. In this connection, we refer to the law laid down by the Hon'ble Supreme Court in Tulsiram Patel's case and summary of the decision extracted at paras 85,86,87 and 110 above from the judgement in the case of Satyaveer Singh (supra). As held in the case of Tulsiram Patel by the Hon'ble Supreme Court, it is better to convey the reasons to the delinquent employee but if the reasons are not conveyed, the punishment order does not get vitiated provided the reasons

are recorded by the disciplinary authority on the file. If such a punishment order is challenged, then the Court can direct the concerned authority to produce the reasons recorded. In the present case, it is accepted that the detailed reasons for dispensing with the enquiry have not been eloborated in the order of the disciplinary authority. In view of this, the respondents were directed to produce the relevant file dealing with the issue of the punishment order to the applicant and the material available on the record based on which the disciplinary authority came to the conclusion that conducting of the enquiry was not reasonably practicable. The respondents have complied with this direction and have produced the relevant file. In view of this position of the law, the contention raised by the applicant does not have any merit.

9. The second ground taken by the applicant is that the action of the disciplinary authority in exercising power under Rule 14 (ii) is arbitrary and malafide as the conditions warranting dispensation ~~with~~ of the holding of the enquiry were not existing and further the applicant was not at all involved in the said incident. In a challenge of the punishment order passed under Article 311(2) (b) of the Constitution of India and covered under Rule 14 (ii) in case of a Railway Servant, the judicial review is to be directed to ascertain whether there existed a situation which made the holding of the enquiry reasonably not practicable and the disciplinary authority has recorded its satisfaction for the same in writing based on the material on the record.

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However, the Court or Tribunal could not sit in judgement over the reasons recorded by the disciplinary authority like the Court of first appeal in order to decide whether or not the reasons are germane to Article 311 (2)(b). In this connection, we refer to what is held in the paras 55,60 and 108 extracted above. For this purpose, we have carefully gone through the relevent file made available by the respondents. We note that one Shri R.A.Singhal, Deputy Controller of Stores is alleged to have been physically assaulted on 18.5.1989 in the Byculla Hospital of Central Railway by the applicant and some other co-workers. Earlier, on the same day there was some trouble in the Printing Press, Byculla, Central Railway where Shri Singhal had come for inspection when the staff objected to entry of the truck loaded with the printed tickets. The staff had agitated on feeling aggrieved for giving the printing work of tickets to an outside agency. Shri Singhal intervened in the matter but staff did not listen to him and misbehaved with him. Sensing the tense situation prevailing, Shri Singhal left the Printing Press and came to the Hospital which is situated adjoining the Printing Press to get in touch with Controller of Stores (CoS) to seek his guidance for handling the situation. It is alleged that the applicant along with the others followed Shri Singhal and physically assaulted him in the Hospital. Shri Singhal had to be hospitalised. This incident was reported by Shri R.A.Singhal to Controller of Stores. The Controller of Stores deputed Shri

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C.J.Bijalani, Chief Materials Manager who was incharge of the Printing Press at Headquarter to enquire into the incident and to give his assessment of the prevailing situation. Shri Bijlani had submitted his report on 22.5.1989. Based on his investigation and assessment of the situation, he gave opinion that situation prevailing in the Printing Press was such that any enquiry would not be practicable as no witnesses may come forward to give any statement in view of the fear in ~~the premises~~ psychosis prevailing in the Printing Press. He also referred to the disturbed condition in the Printing Press since the earlier incident on 31.3.1988 when there was a fight between two groups of staff and fact finding enquiry did not bring out anything conclusively as the witnesses refused to come forward inspite of being present on the site of the incident. Based to this assessment report and other material on the record, the disciplinary authority concluded that it would not be practicable to hold enquiry and passed the impugned punishment order. Therefore, the issue which requires to be examined is whether the assessment made by the disciplinary authority to come to the conclusion that it was not practicable to hold an enquiry is supported by the adequate material on the record. On going through the relevant file, we note that there was a serious incident on the night of 31.3.1988 when there was a scuffle between two different groups which resulted in serious injuries to some of the staff. The fact finding enquiry was conducted but nothing could come out of the same. Subsequently, a confronted enquiry was conducted but

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the same also did not reveal anything as none of the witnesses from the staff side who were on duty at the time of incident came forward to give evidence. We also find from the fact finding report submitted by the officer who was nominated that the applicant was involved in the said incident had taken a prominent part in the same. Thereafter, on 27.3.1989 again a serious situation had developed in the Printing Press when the result of the recruitment for Group 'D' was to be notified for which police bandobast had been arranged. It is noted that the result could not be announced as there was serious objection from the staff and even the City police did not give any assurance to control the situation. Situation developed to a stage when the officer incharge of the Printing Press had to be escorted out from the premises by the Railway Protection Force as the workers were objecting to his presence in the Printing Press. The declaration of the result had to be postponed. Thereafter, there is a report dated 30.3.1989 indicating that the workers had resorted "to work to rule" for their various grievances particularly with regard to panel of Group 'D' which the workers wanted to be cancelled. It appears that the tense situation in the Printing Press continued even thereafter as there is a note dated 10.4.1989 prepared by Controller of Stores (who is the disciplinary authority in the present case) and sent to the Chief Personnel Officer detailing the prevailing situation in the Printing Press and the various steps required to be taken to control the same. Thereafter, the incident of 18.5.1989 took place. From these details emerging

from the material on the record, it is quite clear that situation prevailing with regard to discipline and working of the Printing Press was far from satisfactory. The officer incharge of the Printing Press was not able to exercise control over the staff and the officers were afraid to take any action against the staff. Judging the order of the punishment passed by the disciplinary authority exercising power under Rule 14 (ii) in the background of the situation prevailing, we are of the considered opinion that assessment of the disciplinary authority that holding of inquiry was not practicable cannot be faulted. As held in para 58 above, whether it is reasonably practicable to hold inquiry is a matter of assessment to be made by the disciplinary authority at that time as he is the best judge of the prevailing situation. In the present case, we find that the disciplinary authority had adequate material before him to exercise his power under Rule 14 (ii) to dispense with the inquiry for taking immediate action against the staff who had physically assaulted one of the senior officers. We do not consider that the action of the disciplinary authority was arbitrary or activated by malafides. Keeping in view what is held in para 108 above and the perusal of the material on record which formed the basis for exercising power under Rule 14 (ii), we are not inclined to accept the contention of the applicant.

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10. The applicant has cited the judgement in the case of Jaswant Singh vs. State of Punjab & Ors., AIR 1991 SC 385 to support his contention that there was no material on the record for the disciplinary authority to satisfy himself that it was not reasonably practicable to hold enquiry. We have carefully gone through this judgement. The Hon'ble Supreme Court in this judgement has observed that subjective satisfaction of concerned authority must be fortified by independant material. The Hon'ble Supreme Court has gone into facts and circumstances of the case under challenge and came to the conclusion that the satisfaction recorded by the disciplinary authority is not fortified by independant material on the record to dispense with the enquiry. Ratio of what is held in this judgement is not applicable to the present case in a straight jacket formula as the subjective satisfaction of the concerned authority is to be tested in each case based on the material on record to support the satisfaction. In the present case, as we have deliberated above, we find that there was adequate material available before the disciplinary authority to justify his satisfaction that dispensing with the enquiry was called for and exercise power under Rule 14 (ii) and immediate action was imperative to control the situation prevailing in the Printing Press. In view of this, we are of the considered view that the judgement cited by the applicant does not come to the rescue of the applicant as the same has been decided based on the facts and situation obtaining in that particular case.

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11. As brought out earlier, the applicant had submitted a mercy appeal to the General Manager and based on the same, he had been given fresh appointment in a lower grade without any benefit of his earlier service. The applicant joined on the post. The applicant therefore contends that the applicant on duty may be on a lower post signified that his conduct was such that his continuing in the Printing Press was no threat to the discipline and working in the Printing Press. Therefore, the disciplinary enquiry could be easily conducted and the assessment of the disciplinary authority that no witnesses were likely to come forward is not sustainable. We have carefully considered this contention and are not persuaded to find any merit in the same. The applicant had been taken back on duty in a lower post as a fresh appointee much after the incident and much after the appeal of the applicant had been disposed of. We will deal with the mercy appeal separately later on but the mere posting of the applicant back does not bring out that the situation prevailing earlier when the disciplinary authority took a decision to dispense with the enquiry was not valid. We have gone through the order of the appellate authority and disciplinary authority had specifically gone into this aspect while considering the appeal that the situation is such but the appellate authority has to come to the conclusion that the prevailing situation in the Printing Press is not conducive to hold any enquiry at that stage. In view of these facts, we are unable to find merit in the contention of the applicant.

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12. As indicated earlier, a criminal case was also instituted against the applicant for the same incident. The applicant through a Misc.Application subsequently has brought on record a copy of the judgement dated 24.7.1996 in the case No.1383/p/89 stating that the applicant has been acquitted. Relying on the judgement of the Hon'ble Supreme Court in the case of Capt.M.Paul Anthony vs. Bharat Gold Mines Ltd. & Anr., 1999(2) SLR 338, the applicant has made a plea that since the criminal case and the disciplinary proceedings were for the same incident and for the same charges, on acquittal in the criminal case, the punishment order does not survive and the same deserves to be quashed. This plea has been advanced by the applicant during the hearing only as no such pleading has been made neither in the OA. nor in the Misc.Petition filed to bring the copy of the judgement on the record. The counsel for the respondents has however strongly contested this submission of the applicant stating that in a criminal case the evidence has to be led to prove beyond doubt but that is not the situation in case of disciplinary proceedings where preponderance of probability is the critaria to establish the charges. The counsel for the respondents has cited the judgement of the Hon'ble Supreme Court in the case of Senior Supdt. of Post Offices,Pathananthitta & Ors. vs. A.Gopalan, AIR 1999 SC 1514. We have carefully considered the rival contentions and also carefully gone through the cited judgements of the Hon'ble Supreme Court. We note that in the case of Capt.M.Paul Anthony vs. Bharat Gold Mines Ltd. & Anr., both the

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criminal case and the departmental enquiry were for the identical incident. The findings of the enquiry officer in the disciplinary proceedings and the charges framed against the appellant sought to be proved based on the same witnesses who were also examined in the criminal case. Based on the consideration of the entire evidence, the court came to the conclusion that no such raid was conducted nor any recovery was made. In view of these facts and circumstances, the Hon'ble Supreme Court has held that the ex parte departmental proceedings could not be allowed to stand. On going through the judgement in the criminal case under reference, we find that the situation is entirely different. The applicant had been acquitted by the Criminal Court holding that there is no reliable witness to hold the accused in the incident that the applicant had been acquitted on account of benefit of doubt. With this basis of acquittal in the criminal case, we are of the considered view that what is held by the Hon'ble Supreme Court in the case of Senior Superintendent of Post Offices and relied upon by the respondents would apply to the present case. In this case, the Hon'ble Supreme Court has held that acquittal in the criminal case does not imply conclusion of the departmental proceedings in respect of the same charge. In this case the respondents, i.e. the petitioner was acquitted in the criminal case as the evidence was not proved beyond reasonable doubt. The Hon'ble Supreme Court set aside the o rder of the Tribunal which had held that after

acquittal of the respondent by the criminal court, the punishment imposed through the departmental proceedings could not be sustained. The same view has been held by the Hon'ble Suprme Court in the case of Govind Das vs. State of Bihar & Ors.,1998 SCC (L&S) 148. In this case also the acquittal in the criminal case was based on the view that the charges are not proved beyond a reasonable doubt. The Hon'ble Supreme Court has held that since the standard of proof required to prove a charge of misconduct in departmental proceedings is not the same as that required to prove a criminal charge, the acquittal of the appellant in the criminal case could not be made the basis for setting aside the order for termination of the services of the appellant passed in the disciplinary proceedings. In the present case, however, the situation is entirely different as the punishment has been imposed dispensing with the enquiry exercising power under Rule 14(ii). For exercising power under Rule 14 (ii), the disciplinary authority has to record satisfaction that it is not practicable to hold enquiry. As we have held earlier, the satisfaction recorded by the disciplinary authority based on the material before him is legally sustainable. In view of this, the acquittal in the criminal case does not come in the way of the action taken under the Discipline & Appeal Rules which has to stand on its own legs.

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13. The applicant has also taken a plea that he has been discriminated as his co-workers who were also imposed a punishment of dismissal from service for the same incident have been subsequently given a lesser punishment of reduction to lower stage by the appellate authority while in respect of the applicant, the punishment has been only modified from dismissal from service to removal from service. The respondents, however, have contested this stating that in the matter of disciplinary proceedings, the punishment to be imposed depends on the facts and circumstances of each case and no comparison can be made in respect of quantum of punishment and make out a case of discrimination on this count. We have carefully considered the contention of the applicant with regard to discrimination and inclined to subscribe to the submission of the respondents. Though the applicant and his co-workers had been imposed punishment of dismissal from service, the punishment has been subsequently modified based on their appeals. It is for the appellate authority to consider the points raised in the appeal and form his opinion. In the present case, the applicant and his co-workers had made separate appeals, each one making his own defence. Based on the same, the appellate authority has come to a conclusion of quantum of punishment. We have gone through the orders of the appellate authority in respect of the applicant and the other co-workers as available on the record and find that the applicant had taken a leading part in the incident and therefore the appellate authority has not considered it appropriate to

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13. The applicant has also taken a plea that he has been discriminated as his co-workers who were also imposed a punishment of dismissal from service for the same incident have been subsequently given a lesser punishment of reduction to lower stage by the appellate authority while in respect of the applicant, the punishment has been only modified from dismissal from service to removal from service. The respondents, however, have contested this stating that in the matter of disciplinary proceedings, the punishment to be imposed depends on the facts and circumstances of each case and no comparison can be made in respect of quantum of punishment and make out a case of discrimination on this count. We have carefully considered the contention of the applicant with regard to discrimination and inclined to subscribe to the submission of the respondents. Though the applicant and his co-workers had been imposed punishment of dismissal from service, the punishment has been subsequently modified based on their appeals. It is for the appellate authority to consider the points raised in the appeal and form his opinion. In the present case, the applicant and his co-workers had made separate appeals, each one making his own defence. Based on the same, the appellate authority has come to a conclusion of quantum of punishment. We have gone through the order of the appellate authority in respect of the applicant and the other co-workers as available on the record and find that the applicant had taken a leading part in the incident and therefore the appellate authority has not considered it appropriate to

reduce the punishment in his case as has been done in the case of his co-workers. No case for discrimination can therefore be made in respect of quantum of punishment in case of disciplinary proceedings and each case has to be decided by the disciplinary authority on merits. In view of this, we do not find any substance in this contention of the applicant.

14. During the arguments, the learned counsel for the respondents made a plea that since the applicant has accepted a fresh appointment without any benefit of his past service after making a mercy appeal, the applicant cannot challenge the impugned punishment orders now as the acceptance of fresh appointment would imply that the applicant had accepted the punishment. The respondents have relied upon the order of the Ahmedabad Bench in the case of Smt.Jubeda Mohammad Iqbal vs. Union of India & Ors., 1994 (2) ATJ 648. The counsel for the applicant, however, contested this stating that acceptance of fresh appointment cannot take away his right to challenge the impugned orders and seek legal remedy for setting aside the same. We have gone through the order of the Ahmedabad Bench in the case of Jubeda Mohammad Iqbal and note that in this case the husband of the applicant had been imposed a punishment of removal from service. Her husband had filed an appeal which was rejected. Thereafter, her husband filed a mercy petition and her husband died before the mercy petition was decided. After the death, the applicant also filed a mercy petition for compassionate

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appointment. The mercy petition was rejected and thereafter the applicant approached the Tribunal seeking the relief of setting aside the impugned termination order. The Bench in para 10 while considering the issue of rejection of the mercy appeal, has observed that "It is obvious from the wording of the representation of 14.12.1988, that it is a mercy petition and reading the contents therein it is obvious that the applicant had accepted the appellate order but only sought for mercy on the ground of poverty and liability to support six family members." In the present case also the applicant filed a mercy appeal after his statutory appeal had been rejected by the appellate authority. We have gone through the mercy appeal available on the record and note that the applicant had sought reconsideration of his case in view of starvation and financial distress. The wording of the appeal implies that the applicant had accepted the punishment order and the appellate order and only sought some relief from the administration on mercy consideration. Considering what is held by the Ahmedabad Bench, keeping in view the mercy appeal made by the applicant and the fact that he accepted fresh appointment, we find considerable merit in the contention of the respondents. In this connection, we are fortified by the view taken by the Hon'ble Supreme Court in the case of State of Punjab & Ors. vs. Krishan Niwas, 1997 (2) S.C.SLJ 166. In this case, the respondent, i.e. the petitioner was convicted and sentenced to undergo imprisonment for life. Thereafter, proceedings were initiated against him under Article

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311(2) of the Constitution and he was removed from service. Subsequently, against his appeal, conviction was modified and he was directed to undergo rigorous imprisonment for 1-1/2 years. After undergoing punishment, he made an appeal against the order of removal and appellate authority reduced the punishment of removal from service to reduction to lower pay scale of pay without any back wages. As per this order, he joined on the duty. However, subsequently he filed a civil suit challenging the punishment of dismissal from service and reduction to a lower rank with a prayer for entitlement of back wages which were not allowed by the appellate authority. The trial court dismissed the suit. However, on appeal, the Addl.District Judge reversed the judgment of the trial court and decreed the suit. In the second appeal, the High Court also confirmed the order. This order was challenged before the Supreme Court. The Supreme Court has set aside the judgement of the Addl. District Judge which was confirmed by the High Court stating that the respondent having accepted the punishment order of the appellate authority and having joined on the post could not challenge the same order subsequently. By his conduct he has accepted the correctness of the order and then acted upon it. The Hon'ble Supreme Court observed that under these circumstances, the Civil Court would not have gone into the merits and decided the matter against the appellants. In the present case also the appeal of the applicant had been rejected but the punishment has been modified from dismissal to removal. In the mercy appeal, the applicant was

33

offerred a fresh appointment without any benefit of past service and the applicant accepted the same and joined on the post. Thereafter, after several years, the applicant has challenged the order of punishment of removal from service through the present OA. In view of what is held by the Hon'ble Supreme Court cited above, we are of the considered view that the ratio of what is held in this judgement applies to the present case and it is not available to the applicant to challenge the punishment order after having accepted Group 'D' post as a fresh appointee.

15. In the light of the above deliberations, the OA. deserves to be dismissed and is accordingly dismissed with no order as to costs.

(S.L.JAIN)
MEMBER (J)

(D.S.BAWEJA)
MEMBER (A)

mrj.