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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, HYDERABAD BENCH
AT HYDERABAD.

O.A.462 of 1987.

Date forwarde^s 3.5.90

Between:

M. David Carey. .. Applicant.

Vs.

General Manager, South Central
Railway, Secunderabad and two
others. .. Respondents.

Shri G. Vedantha Rao, Counsel for Applicant.

Shri N.R. Devaraj, Standing Counsel for Railways.

CORAM:

Hon'ble Sri B.N. Jayasimha, Vice-Chairman.
Hon'ble Sri J. Narasimhamurty, Member (Judicial).

Judgment of the Bench delivered by
Hon'ble Sri J. Narasimhamurty,
Member (Judicial).

- :-

This application is filed for quashing the Order No.P.90/D&A/SC/MDC/435 dated 9-4-1987 of the General Manager, South Central Railway, Secunderabad confirming the Appellate Order No.P.90/D&A/SC/MDC/435 dated 1-8-1986 of the Chief Commercial Superintendent, South Central Railway and confirming the original order No. CON/SC/PC/61/85 dated 9-9-1985 of the Divisional Railway Manager/Broad Gauge, Secunderabad Division, Secunderabad.

2. The averments in the application are as follows:

The applicant joined the service of the then Central Railway on selection by the Service Commission by direct recruitment as Assistant Catering Manager on 1-4-1961 and he was promoted as Catering Manager in the year 1966, as Senior Catering Inspector in 1979 and as Chief Catering Inspector on 1--1--1984. The applicant got his promotions by integrity, industry and loyalty.

3. The applicant was served with the order of dismissal on 9-9-1985 from the 3rd respondent on the allegations of callous and indifferent working of the applicant and due to the continued irregularities considerable loss was sustained by Railway Administration. A surprise check carried out by the Senior Divisional Commercial Superintendent and SOR at 5-00A.M., on 13--7--1985 revealed a number of serious irregularities including running of a parallel Catering arrangement at Kazipet in connivance with the Supervisors and staff misusing the facilities provided in the Catering Unit at Kazipet. ~~am~~

4. The applicant preferred an appeal to the Chief Commercial Superintendent, South Central Railway on 10--10--1985 stating in detail that he is a Divisional Catering Inspector of Secunderabad Division with Headquarters at Secunderabad but not with Headquarters at Kazipet (as alleged in the impugned order) with the duties (i) to Inspect the contract catering Units (3 VRRs, 2 NVRRs and 55 platform Tea Stalls etc.,) stretched from Secunderabad to Kazipet, Secunderabad to Wadi, Vikarabad to Parli Vaijnath, Bibinagar to Nalgonda, Kazipet to Balharsha,

Kazipet to Vijayawada and Dornakal to Bhadrachalam Road over about 1450 K.Ms., functioning on the entire division and attend to connected policy matters, (ii) to check up whether licence fee, electrical charges, water charges etc., are being paid by the Contractors promptly or not, (iii) to exercise supervision over the functioning of Departmental Catering Units of the Division, (iv) to look after the Special Catering arrangements whenever any VIPs., travel over the Division (v) to make catering arrangements during the DRMs inspection specials (vi) to arrange catering arrangements at the sites during breaches etc. to breakdown staff and passengers (vii) to carry out the instructions of Commercial Officers with regard to the catering matters. The applicant states that the charge is indefinite and vague incapable of submitting any representation and further states that Kazipet Unit Establishment is controlled by two Supervisory staff in the grade of Rs.560--700 and Rs.425--640 who are stationed at Kazipet itself and whose duties are to ensure effective supervision and qualitative service to the public and that the staff who are in-charge of raw-materials are under their direct control and they are directly responsible for running the catering Unit at Kazipet and that the Divisional Catering Inspector only exercises surprise and periodical checks as and when time permits, that the applicant cannot remain at one place and that in the normal course of his duties, he was disturbed very often to attend VIPs, to man the Divisional Railway Manager (Special) for renovation of Kazipet Unit where he had to travel from place to place for procurement of equipments etc. The applicant further states that when Base Kitchen was opened at Kazipet on 1--10--1982 he was specially

instructed to look after its functioning till it comes to normal stage and in obedience to the instructions he carried out his duties to the best of his ability. In regard to second charge of alleged indifferent working of the applicant resulting into considerable loss to the Railway Administration, he states that the Railway Catering Unit at Kazipet consecutively earned profits and that there was no loss, that in the year 1983-84 it earned a profit of Rs.19,000/- in 1984-85 it earned a profit of Rs. one lakh and from April 1985 to August 1985, a profit of Rs.28,000/- and the applicant also states that it is fictitious to hold that there were losses in Kazipet Unit but on the other hand there has been considerable improvement and that the complaints recorded at Kazipet Unit were negligible, while there was more appreciation from the Members of the Parliament and the V.I.Ps. The applicant states that on every second day, some officer used to visit Kazipet for inspection and no one has ever pointed out any lapse in the catering Unit at Kazipet.

5. In regard to Charge No.3 he states that for running and maintaining the Catering Unit lies with the Inspector and Manager who directly control men and material in regard to functioning of the Catering establishment and that the applicant who is stationed at Secunderabad cannot be made responsible for any such alleged irregularities unless it is the case that there is collusion and connivance of this applicant with the Manager and Inspector.

6. In regard to Charge No.4 he states that the check was carried out at 5--00 hrs., in the early morning on 13--7--1985 when the applicant was not

present, that ~~it is~~ running of a parallel catering arrangement is absolutely false and that the applicant never noticed any such irregularities and the applicant never remained a silent spectator for any such things and if he had noticed in any of his surprise checks in the discharge of his duties, he would have certainly brought the same to the notice of the higher authorities and taken action against the concerned officials and that this charge is fictitious charge.

7. In regard to 5th charge the applicant states that it is vague incapable of offering any explanation. Without holding a regular enquiry while imposing the major penalty of dismissal from service, the applicant's services were dismissed without giving him an opportunity purporting to act under Rule 14(ii) of the Discipline and Appeal Rules, 1968.

8. The applicant states that he has mentioned in his representation apart from refuting the factual allegations made therein, how he was in-charge of the Dining Car during the President's Special in 1971, how the President complimented the applicant, how the applicant received the G.M. Award during the Railway Week Celebrations in 1975 for improvement in Catering Unit at Kazipet and how the applicant received the CCS Award during the Railway Week Celebrations in the year 1978 for bringing good sales in Dining Cars, how the applicant was given promotion as Senior Catering Inspector in 1981 and the Chief Inspector in January, 1984 based on his confidential reports and how there was never any adverse confidential reports against the applicant.

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The applicant states that the appellate Authority passed a bald order which is liable to be set aside. He made a revision/review petition before the General Manager which was also dismissed. Hence this application.

9. The respondents filed their counter contending as follows:

Sri M.D.Carey was Divisional Catering Inspector, Secunderabad in Grade Rs.700--900(RS) Before he was dismissed from service under DAR Rule 14(II) of Railway Servants (Discipline and Appeal)Rules,1968. Sri Carey DCRI/SC was to supervise the Catering Units on Secunderabad Division especially the Catering Unit at Kazipet because it is a very important unit on Secunderabad Division. The catering Unit at Kazipet consists of Cafeteria and base kitchen and it caters to the needs of hundreds of passengers of important trains which pass through Kazipet daily. The catering and Vending services at Kazipet run departmentally because the Railway has the responsibility to serve food stuffs according to the prescribed quantity and quality. It is also required to ensure supply of tasty and wholesome food at reasonable price, combined with efficient and courteous service. But the manner in which this Unit was supervised by Shri M.D.Carey was not only detrimental to the interest of Railway but also sullied image of Railways as public utility services. Shri Carey was catering manager at the Departmental Catering Unit at Kazipet since his appointment on 1--4--1961 and he worked there during his entire service except for a period from 1969 to 1973. He was promoted to the grade of Rs.700--900(RS) in October,1984 as Divisional Catering Inspector. He was usually residing at Kazipet and

with his proximity and vast experience as a Senior Catering Inspector he would not have found it difficult to notice the irregularities and exercise effective control over the functioning of this Unit.

10. In the months of December 1984 and January, 1985 Sr.DCS/SC inspected the catering unit at Kazipet and noticed a number of irregularities. These irregularities were brought to the notice of Shri Carey who was issued with a charge-sheet by Sr.DCS/SC vide Memorandum No.C/C/65/F/Staff/85 dated 18--1--1985. In his explanation to the charge-sheet Shri Carey stated "I request your goodself to kindly excuse me for my past lapses and I assure you Sir, that I shall not give any room for any such recurrence and will be devoting more time on Kazipet Unit. Again on 28--1--1985 in reply to Sr.DCS's/SC letter No. Con/SC/PC/57/84 dated 18-1-1985 expressed his explanation in the same manner. On that he was warned severely and the explanation was kept on record and the applicant was informed that if such lapses were noticed he will be dealt with severely.

11. Again on 13--7--1985 the Catering Unit at Kazipet as inspected by Sr.DCS/SC with Security Officer, Secunderabad at 5-00A.M., number of serious irregularities were noticed during the surprise check. 15 unauthorised persons were found in the room where tea and coffee are prepared and these unauthorised persons were apprehended and prosecuted by the Railway Magistrate who imposed a fine of Rs.250/- on each of them. It has come to light that the unauthorised persons have been running a parallel catering establishment at Kazipet with the full knowledge of the staff and Sri Carey, Divisional Catering Inspector.

12. There was another incident at Kazipet on 13-7-1985 which was not an isolated case. A number of passengers travelling by Train No.140 Ganga Kaveri Express produced stamped meal tickets which were sold on train. In view of the inspection of Sr.DCS and SOR at Kazipet on 13-7-1985 these fake tickets were not honoured. It is, therefore, very clear that such fake tickets were being produced and honoured on other days. However, the persons who sold the fake tickets could not be apprehended.

13. Inspite of assurances given by Shri Carey the Divisional Catering Inspector, the irregularities continued. It is clear that the unauthorised persons were running parallel catering establishment at Kazipet with their raw materials but were also misusing other facilities like kitchen including fuel provided by the Railway. Shri Malla Reddy, Commission Vendor of Kazipet Unit ~~xx~~ in his statement dated 23-7-1985 stated that Mamools are being given to Sri Carey. According to him he was in the know of things at Kazipet Catering Unit. Sri Malla Reddy, Commission Vendor did not appear before the Enquiry Officer stating that Sri Carey being a local man he expressed his apprehension to Sr.DCS and requested the authorities to avoid his presence for the enquiry.

14. The Divisional Railway Manager, Secunderabad the competent authority after carefully considering all aspects and convincing that it is not reasonably practicable to conduct a DAR enquiry against Shri Carey decided to impose the penalty of dismissal from service on Shri M.D.Carey, Divisional Catering Inspector under Rule 14(ii) on 5-8-1985. His appeal to CCS/SC the appellate Authority and the review appeal to G.M., the reviewing authority were subsequently rejected.



15. There is nothing uncommon for a Railway servant to get 4 promotions during the span of 2 decades whenever he is due and promotions are not given on out of turn basis.

16. The Disciplinary Authority has elaborately explained the reasons to invoke the rule 14(ii) for imposing the penalty of dismissal from service against the petitioner.

17. Rule 14 lays down the conditions whereby the normal procedure of holding an enquiry can be dispensed with under special circumstances i.e., there is no likely hood of witnesses turning up for enquiry and the Disciplinary Authority can pass suitable orders. DRM the Disciplinary Authority in this case has recorded that in the circumstances prevalent at Kazipet it was not reasonably practicable to hold an enquiry against Shri Carey, DCRI

18. In regard to the duties of Divisional Catering Inspector, Secunderabad, the petitioner was never over-burdened and his performance was unsatisfactory. His main duty was to inspect Departmental catering Units at Kazipet and Hyderabad. As the petitioner was normally residing at Kazipet there was no difficulty in exercising effective supervision over Kazipet Unit. All other duties mentioned in this para are occasional and they cannot be treated as normal duties of DCRI since except the above said 2 units remaining catering establishments were under contractors authorised by Railway Administration.

19. The averment of the applicant that parallel catering arrangement at Kazipet was not there and it is a false charge cannot be accepted. The plea that nothing has come to his notice in his surprise check is also untenable when it has come to notice that Sri Carey has not

reported any irregularity which was subsequently noticed by Sr.DCS/SC and when it was brought to his notice by Sr.DCS, Shri Carey has not reported any irregularity which was subsequently noticed by Sr.DCS/SC and it was brought to his notice by Sr.DCS. Shri Carey stated that he could devote more time on Kazipet and Hyderabad Units and the lapses of not conducting thorough checks may kindly be condoned sympathetically. The feasibility of conducting an enquiry was thought over by the Disciplinary authority and it came to the conclusion that no useful purpose would be served if an enquiry is ordered in view of the situation prevailing at Kazipet. He has, therefore, recorded this fact in his order dated 5--8--1985.

20. The applicant has not made out any case and the application is liable to be dismissed.

21. We have heard Sri G.Vedantha Rao, learned counsel for the Applicant and Shri N.R.Devaraj, learned Standing Counsel for Railways.

22. The applicant joined the service of the then Central Railway on selection by the Service Commission as Assistant Catering Manager on 1--4--1961 and he was promoted from the Post of Assistant Catering Manager by stages to the post of Chief Catering Inspector on 1-1-1984. He was removed from service alleging serious irregularities in the functioning of Catering Unit, Kazipet .

23. The applicant contends that without conducting any enquiry the respondents taking shelter under Rule 14(ii) ¹ of the Railway Servants Discipline and Appeal Rules, 1968.

The charges levelled against him are that he failed to exercise adequate supervision on the catering Unit at Kazipet Station resulting in mismanagement at all levels of functioning of the Unit, that the indifferent working resulted into considerable loss to the Railway Administration. These are all vague charges. To arrive at a correct decision, the applicant should have been given an opportunity to hear him and conduct an enquiry. This was not done. Further that Kazipet Unit Establishment is controlled by two supervisory staff in the grade of Rs.550--700 and Rs.425--640 who are stationed at Kazipet and whose duties are to ensure effective supervision and qualitative service to the public and that the staff who are in-charge of raw-materials are under direct control and they are directly responsible for running the catering Unit at Kazipet, that the Divisional Catering Inspector only exercises surprise and periodical checks as and when time permits, that the applicant cannot remain at one place and that in the normal course of his duties, he was disturbed very often to attend VIPs, to man the Divisional Railway Manager for renovation of Kazipet Unit where he had to travel from place to place for procurement of equipment etc. ✓ The applicant has got ~~very big~~ ^{best} jurisdiction covering nearly 1450 K.Ms., functioning on the entire Division. There are two Supervisory Staff to

to control the Kazipet Unit. The respondents have not called for any explanation from them nor any charge memo was issued to them and no disciplinary action was taken against them up till now.

24. The applicant states that he has got a clean record. Because of his clean record, he got successive promotions in a short span of time on account of his efficiency in discharging his duties.

25. The respondents state that on prior occasion in 1984 ~~xxx~~ when some irregularities were brought to the notice of the Applicant, he admitted them and assured the Authorities that he would rectify those irregularities. It is natural that whenever superiors pointed out some irregularities against the subordinates, most of the subordinates in order to avoid displeasure of ~~his~~ & their superiors admit those alleged irregularities and assure them that they would be more careful in future.

might have
The applicant in this case ~~has~~ admitted the irregularities
↓ *×*
and assured the Authorities that he would be more careful
↓ *long back*
in future. This admission ~~cannot~~ *can* be made use of for
↓ *×*
framing the charges & and removing him from service.

26. The respondents stated that on 13--7--1985 a check was carried out at 5-00 hrs., in the early morning ~~when the applicant was not~~ and noticed irregularities such as running of a parallel catering arrangement. The

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applicant states that he was not present at that time and he never noticed such parallel running of a catering unit at Kazipet. The respondents state that when a check was conducted on 13-7-1985, 15 unauthorised persons were found in the room where tea and coffee are prepared and these unauthorised persons were apprehended and prosecuted by the Railway Magistrate who imposed a fine of Rs.250/- on each of them. At that time the petitioner states that he was not present. The officers in-charge of the Unit at that particular time are held responsible for such incidents. Proper action should have also been taken against the Officers who were on duty at that particular point of time.

The allegation that in the Khazipet Unit a parallel catering Unit was being run is not supported by any evidence. It is only an allegation made to that effect. They did not produce any evidence to that effect. They did not record any statements and they did not take any action against the local officers who are in-charge of the Catering Unit. The charges are vague. On the basis of the vague allegations, he was removed from service without conducting any enquiry applying the provisions of Rule 14(ii) of the Railway Servants Discipline and Appeal Rules, 1968. If the respondents feel that it is not possible to hold any enquiry

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they might have stated the circumstances and reasons under which they could not able to conduct an enquiry.

Did they take any steps to conduct an enquiry?

Did they give summons to the witnesses?

They cannot say simply that it is not possible to conduct an enquiry especially when a major punishment is imposed against the Applicant.

In UNION OF INDIA V. TULSIRAM PATEL (A.I.R.1985 S.C. 1416) the Supreme Court held:

In the context of an all India Strike where a very large number of railway servants had struck work, the railway services paralysed, loyal workers and superior officers assaulted and intimidated, the country held to ransom, the economy of the country and public interest and public-good prejudicially affected, prompt and immediate action was called for to bring the situation to normal. In these circumstances, it cannot be said that an inquiry was reasonably practicable.

In the above decision the Supreme Court has clearly laid down ~~why~~ the circumstances and reasons ~~why~~ under which an enquiry was not reasonably practicable. In the instant case it cannot be said that the respondents have taken proper and effective steps for holding an enquiry.

In S.SINGH V. U.O.I. (1985)(2) SCALE 488 the Supreme Court held:

"Where the disciplinary authority feels that crucial and material evidence will not be available in an inquiry because the witnesses who could give such evidence are intimidated and would not come forward and the only evidence which would be available, namely in this case, of

policemen, police officers and senior officers, would only be peripheral and cannot relate to all the charges and that, therefore, leading only such evidence may be assailed in a court of law as being a mere farce of an inquiry and a deliberate attempt to keep back material witnesses, the disciplinary authority would be justified in coming to the conclusion that an inquiry is not reasonably practicable.

The Respondents have not given summons to the witnesses to appear before the Enquiry Officer and only on the mere statement of the Commission Vendor who gave his statement on the prior occasion had expressed his apprehension to Sr.DCS and requested him to avoid his presence for the enquiry is a not a reasonable ground to dispense with the enquiry.

27. In WORKMEN, HINDUSTAN STEEL LTD. V. HINDUSTAN STEEL LTD., (A.I.R.1985 S.C. 251) the Supreme Court held:

"When the decision of the employer to dispense with enquiry is questioned, the employer must be in a position to satisfy the Court that holding of the enquiry will be either counter-productive or may cause such irreparable and irreversible damage which in the facts and circumstances of the case need not be suffered. This minimum requirement cannot and should not be dispensed with to control wide discretionary power and to guard against the drastic power to inflict such a heavy punishment as denial of livelihood and casting a stigma without giving the slightest opportunity to the employee to controvert the allegation and even without letting him know what is his misconduct."



Article 311(2) envisages that no person shall be dismissed or removed or reduced in rank except after an enquiry in which he has been informed of the charges against him and give him a reasonable opportunity of being heard in respect of those charges. In this case, there is no enquiry. No reasonable opportunity of being heard is given to him. Whenever an employee is removed from service, the Administration must follow the Rules and Procedure in imposing major punishments. In this case, the Administration has not followed the procedure but simply took shelter under Rule 14(ii) of the Railway Servants Discipline and Appeal Rules and removed him from service. In between Rule 14(ii) of the Railway Servants Discipline and Appeal Rules and Article 311(2) of the Constitution, Article 311(2) would prevail.

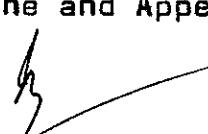
28. In a Full Bench case of Allahabad High Court in MAKSDUDAN PATHAK V. SECURITY OFFICER (1981)(2)SLR 451) it was observed by the learned Judges that mere inability or inefficiency of the Investigating Authority to obtain evidence to prove the charge cannot be a reason for dispensing with the enquiry. In SRI KANT MISRA V. UNION OF INDIA (1987(3)SLR 97 Allahabad Bench of the Central Administrative Tribunal held following the Full Bench decision of the Allahabad High Court that the Departmental enquiry has been arbitrarily and wrongly dispensed with under Rule 14(2) of the Railway Servants

Discipline and Appeal Rules, 1968.

29. In the instant case the respondents have not followed the procedure as laid down under Rule 14(i) and (ii) of the Railway Servants Discipline and Appeal Rules, 1968 and also Article 311(2) of the Constitution. On this ground alone the order of dismissal is liable to be quashed.

30. In the appeal filed by the applicant, he raised a number of pleas. He gave his answers for the various allegations made against him. The Appellate Authority instead of discussing the points raised by the applicant simply stated that "I have gone through the case. I find that the action taken by the DRM (BG)SC is fully justified. Under the circumstances the penalty stands". What are the circumstances that are justified and how the penalty imposed stands; and what are grounds for coming to that conclusion do not find a place in the Appellate Order. Therefore, it is not a speaking order.

31. Relying on the decision of the Full Bench of the Allahabad High Court and the decision of the Allahabad Bench of the Central Administrative Tribunal, we hold that the Departmental Enquiry has been arbitrarily and wrongly dispensed with under Rule 14(ii) of the Railway Servants (Discipline and Appeal Rules, 1968.



32. In the circumstances, the Order No. CON/SC/PC/61/85 dated 9th September, 1985 of the Divisional Railway Manager/SC, the Appellate Order No. P.90/D&A/SC/MDC/435 dated 1--8--1986 of the Chief Personnel Officer and Order No. P.90/D&A/SC/MDC/435 dated 9--4--1987 are liable to be quashed. Accordingly they are quashed. The respondents are directed to reinstate the Applicant into service within three months from the date of receipt of these orders with all consequential benefits. There will be no order as to costs.

B.N.Jayashimha

(B.N.JAYASIMHA)
Vice-Chairman.

M.S

(J.NARASIMHAMURTY)
Member (Judl.)

Date: 3rd May 1990

Dslyp Rama Rao
S.M. DEPUTY REGISTRAR (J). 18/5/90

To

1. The General Manager, S.C.Railway, Secunderabad.
2. Chief Commercial Superintendent, S.C.Railway, Secunderabad.
3. Divisional Railway Manager, Secunderabad Division (B.G.), Secunderabad.
4. One copy to Mr. G. Vedantha Rao, Advocate, 4-3-410, Bank Street, Hyderabad-500001.
5. One copy to Mr. N.R. Devaraj, SC for Rlys, CAT, Hyderabad.
6. One spare copy.