

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.13116 of 2005

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1. The Union of India through the General Manager, East Central Railway, Hazipur.
 2. The General Manager, East Central Railway, Hazipur.
 3. The Divisional Mechanical Engineer, East Central Railway, Samastipur.
 4. The Divisional Railway Manager, East Central Railway, Samastipur.
 5. The Senior Divisional Personnel Officer, East Central Railway, Samastipur.

... .. Petitioner/s

Versus

1. The Central Administrative Tribunal, Patna Bench through its Registrar.
2. Ashok Kumar Raut, son of Late Rajendra Raut, resident of village- Pratapganj Railway Colony, P.O-Pratabganj, District- Saharsha, at present Engine Cleaner at East Central Railway, Samastipur Loco Shed.

... .. Respondent/s

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Appearance:

For the Petitioner/s : Mr. D. K. Sinha, Senior Advocate
Mr. Abhinay Raj, Advocate

For the Respondent/s : Mr. Abdul Hakim, Advocate

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CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE S. KUMAR
ORAL JUDGMENT
(Per: HONOURABLE THE CHIEF JUSTICE)

Date: 13-08-2020

Vide impugned order dated 13.01.2005, the Central Administrative Tribunal has quashed and set aside the Employer's action of passing an order dated 21.10.1997, dismissing the delinquent employee from service by invoking powers under Rule 14(ii) of the Railway Servants (Discipline and Appeal) Rules,



1968 read with Article 311 (2) of the Constitution of India. Consequently, such order as affirmed by the appellate authority vide order dated 18.02.1998, and the revisional authority vide order dated 17.03.2003 also stands quashed.

2. Following questions of law arise for determination in the present case:

- (i) Whether the impugned order under Rule 14(ii) of the Railway Servants (Discipline and Appeal) Rules, 1968 read with Article 311 (2) of the Constitution of India falls within the exception necessarily dispensing with the requirement for an inquiry?
- (ii) Whether the adequate reasons emanate satisfying condition for applicability of the said exception?
- (iii) Whether the order under Rule 14(ii) of the Railway Servants (Discipline and Appeal) Rules, 1968 read with Article 311 (2) of the Constitution of India is bad in law due to non-observance of principles of natural justice?
- (iv) Whether voice of an office bearer of the Trade Union protesting against the demand of an illegal gratification for clearance of medical bills of a co-employee, can be stifled by passing an order of dismissal, by taking recourse to the exception clause contained in the relevant provisions of the Constitution of India and the Rules?



3. The order of dismissal dated 21.10.1997 reads as under:

“I, the undersigned being the authority empowered to dismiss or remove you from service as Disciplinary Authority, am fully satisfied that for the reasons which have been recorded in writing, it is not reasonably practicable to hold an inquiry in the manner provided under the rules, and in exercise of powers vested in me as Disciplinary Authority under the Rule 14(ii) of the Railway Servants (Discipline and Appeal) Rules, 1968 (read with Proviso (b) to Article 311(2) of the Indian Constitution) and considering the circumstances of the act of violence and indiscipline by you on 16.10.1997 in the premises of Sr. DAO's/SPO's office under DRM building I have decided to dismiss you from service from the post of Engine Cleaner in Scale 775-1025 with immediate effect.”

4. The Disciplinary Authority justified passing such order for the reason that it was reasonably impracticable to hold a regular enquiry, for the terror of the delinquent employee, was so “severe”, that not only the witnesses stood threatened but also intimidated, in coming forward for conducting a regular enquiry. Also, acts of the delinquent employee were intended to disturb the discipline of the Railway Organization.

5. Noticeably, the Tribunal quashed such actions on four



counts:- (a) principles of natural justice stood violated since the fact-finding report leading to the passing of the order of dismissal was never supplied to the delinquent employee; (b) on the very same set of facts, the delinquent employee stood acquitted in a criminal case; (c) the Disciplinary Authority had not recorded its independent finding, assigning reasons for dispensing with the holding of a regular enquiry. Such action was based only on a fact-finding report prepared without associating the delinquent employee; (d) the action taken was disproportionate to the alleged acts of violence and indiscipline.

6. Having heard learned counsel for the parties as also perused the record, we find no reason to interfere with the impugned order, more so when the Tribunal itself granted liberty to the Disciplinary Authority for taking appropriate action, if so required and desired, under the provisions of the Railway Servants (Discipline & Appeal) Rules, 1968 (referred to as the Rules).

7. The delinquent employee, namely Ashok Kumar Raut, was appointed on a compassionate basis as a Khalsi w.e.f. 02.03.1990. After completion of the requisite training and passing of the psychological test, he stood posted as an Engine Cleaner w.e.f. 14.06.1991 and on 04.03.1992 promoted on the higher scale but on the very same post.



8. Over time, the delinquent employee stood elected as Secretary of the Indian Railway Loco Mechanical Staff Association, a Trade Union, registered under the Trade Union Act, 1926. It appears in a capacity as a secretary he had been pursuing matters of the Union with the Employer. Concerning one such incident dated 18.08.1997, an altercation took place which resulted in lodging of counter cases, both against the delinquent employee and the Medical Officer. However, such action resulted in an acquittal of both sides. Yet, about another incident, the matter against the delinquent employee stood closed. However, concerning a third incident, resulting into the passing of the order of dismissal, the delinquent employee had to intervene for clearance of the medical bills of a co-worker, protesting against allegedly illegal gratification sought for processing the file. As Secretary of the Union, the delinquent employee was required to intervene in espousing the cause of a co-employee.

9. Rule 14 of the Railway Servants (Discipline and Appeal) Rules, 1968 reads 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
- (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 manner 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 Railway servant may be given an opportunity of making representation on the penalty proposed to be imposed before any order is made in a case falling under Clause (i) above:

Provided further that the Commission shall be consulted where such consultation is necessary, before any orders are made in any case under this rule.”

10. Article 311 of the Constitution of India reads as under:-

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.

(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.”

11. The Hon’ble Apex Court in **Union of India Versus Tulsiram Patel, (1985) 3 SCC 398**, while interpreting Article 311 of the Constitution of India has culled out several principles. Clause (2) of Article 311 contains a constitutional mandate of observance of principles of natural justice, specifically, *Audi alteram partem* rule. It provides - a civil servant shall not be dismissed or removed from service or



reduced in rank until after an inquiry, in which he is informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges. Further, the governing words of the second proviso to Article 311(2) - "this clause shall not apply", are mandatory and not a directory and are in the nature of a constitutional prohibitory injunction restraining the disciplinary authority from holding an inquiry under Article 311(2) or from giving any kind of opportunity to the concerned civil servant in a case where one of the three clauses of the second proviso becomes applicable. Relying on **Maneka Gandhi case, (1978) 1 SCC 248** and **Liberty Oil Mills v. Union of India, (1984) 3 SCC 465**, the Court concluded that the right of making a representation after an action is taken against a person had been held to be sufficient compliance with the requirements of natural justice. It further held that in the case of a civil servant to whom the provisions of the second proviso to Article 311(2) applied, has the right of a departmental appeal in which he can show that the charges made against him are not correct, and an appeal is a broader and more effective remedy than a right of making a representation. 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 not reasonably practicable, and (ii) the disciplinary authority should record, in writing, reasons of its satisfaction, of no reasonable practicability of holding such inquiry. 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 an objective view of the prevailing situation.

12. The reasonable practicability of holding an inquiry is a matter of assessment to be made by the disciplinary authority. It 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.

13. The decision above stands subsequently followed by the Hon'ble Apex Court wherein it observed that:-

- (i) Failure to record reasons for dispensing with departmental enquiry can be interfered. [**Haris Niwas Gupta v. State of Bihar, (2020) 3 SCC 153**].



- (ii) Non-ascribing of reason while passing an order dispensing with an enquiry, which otherwise is a must, definitely invalidates such an action. [**Risal Singh v. State of Haryana, (2014) 13 SCC 244**]
- (iii) Factors to be taken into consideration for determining the propriety of initiation of disciplinary proceedings after a long delay for misconduct which led to conviction at criminal trial will depend upon factual matrix in each case, and there's no general law. [**Punjab Water Supply Sewage v. Ram Sajivan, (2007) 9 SCC 86**]
- (iv) The holding of Departmental enquiry is the rule. The second proviso to Art.311(2) of Constitution provides for an exception. In an appeal, it's obligatory on the part of disciplinary authority to produce all records to show that there were enough materials before the authority to arrive at a definite and categorical finding that in the proceedings, witnesses were not likely to depose. If not so done, the entire processes would become vitiated in law. [**Prithipal Singh v. State of Punjab, (2006) 13 SCC 314**]
- (v) Non-Observance of principles of Natural Justice vitiates the order only when real prejudice is caused to the complainant by such omission. [**P.D.Agarwal v. SBI & Ors., (2006) 8 SCC 776**]
- (vi) In the absence of any material to show that it was



necessary to dispense with a formal enquiry in terms of proviso (b) of Art. 311 (2) order of dismissal dispensing with formal enquiry cannot be sustained. [**Tarsem Singh v. State of Punjab, (2006) 13 SCC 581**]

(vii) There's no straitjacket formula to apply principles of Natural justice and their applicability depends on the context and facts and circumstances of each case. [**Ganesh Santa Ram v. SBI & Ors., (2005) 1 SCC 13**]

(viii) A pre-decisional hearing was excluded by the second proviso to Art. 311 (2) of Constitution. [**United Planters Association v. K G Sangameswaran (1997) 4 SCC 741**]

(ix) The relevance, importance and significance of compliance of principles of natural justice in an Administrative law. [**Ravi S. Naik v. Union of India, 1994 Supp (2) SCC 641**]

(x) To hold that the Court is not to sit in judgment over the relevancy of reasons given in dismissal order. [**Ikramuddin Ahmed Borah v. Supdt. of Police, Darrang and Ors, 1988 Supp SCC 663**].

14. In **Union of India (UOI) and Ors. vs. R. Reddappa and Ors. (05.08.1993 - SC) : 1993 (4) SCC 269**, the Hon'ble Apex held that under Rule 14 (ii) jurisdiction based on the existence of a primary fact and decision without inquiry of



existence of a fact, suffers from fundamental legal infirmity. An illegal order passed by the disciplinary committee does not assume the character of legality only because it has been affirmed in appeal.

15. In *Satyavir Singh v. Union of India*, (1985) 4 SCC 252, the Hon'ble Apex Court summarised the findings. It emphasised on the essential rights conferred therein on civil servants in terms of remedies available to them in appeals and revision. Prompt and urgent action was held to be necessary in some instances to prevent worsening of the situation or to avoid the authorities from seeming weak and 'trouble-makers' increasing the extent of their agitation thereby. If disciplinary authority feels that testimony of the material witnesses has become unavailable, for being threatened or intimidated, such that, an inquiry if conducted could lead to being assailed as incomplete, for non-production of material witnesses - then, the inquiry can be held to be reasonably impracticable. Judgments in *Tulsiram* and *Challapan* case were distinguished thus:

“It is important to note that the majority judgment in Tulsiram Patel case is more beneficial to civil servants and confers greater rights upon them than Challappan case did. According to Challappan case, a civil servant to whom a service rule analogous to the second proviso to Article 311(2) is sought to be



applied has only the right to be heard with respect to the penalty proposed to be imposed upon him. The majority judgment in Tulsiram Patel case has, however, conferred upon the civil servants who have been dismissed or removed from service or reduced in rank by applying the second proviso to Article 311(2) or an analogous service rule, the right to a full and complete inquiry in an appeal or revision unless a situation envisaged by the second proviso is prevailing at the time of the hearing of the appeal or revision application. Even in such a case under the majority judgment the hearing of the appeal or revision application is to be postponed for a reasonable length of time for the situation to become normal.”

16. In **Ram Chander v. UOI (1986) 3 SCC 103**, the Hon’ble Apex Court held that “There is no general principle or any rule of natural justice that a statutory Tribunal shall always support of its decision.”

17. Exercising the power under Article 310 read with proviso (c) of Article 311(2) of the Constitution it is for the President or the Governor, as the case may be, to examine the case of an individual to satisfy himself whether his removal from service is called for, for the reasons mentioned in said proviso. Any order passed purporting to be under said proviso without such personal application of the mind by the President or the Governor and recording his satisfaction thereof would be



not authorised under Article 311 (2), and therefore it will be invalid. [**Sardari Lal v. Union of India, AIR 1971 SC 1547**].

18. We notice that except for making bald assertion, reproducing language of the Statute, the order of dismissal does not record any reasons, self explanatory, for not holding a regular enquiry. Also, we notice that the order is as vague and unspecific as it can be with regard to the alleged acts of violence and indiscipline. What transpired on 16.10.1997, in the office of Sr. DAO's/SPJ's is not born out from the order. The alleged fact finding report forming basis of the order is not an independent application of mind of the authority, assigning independent reason. In fact, it was never supplied to the delinquent employee, nor was he ever associated in its preparation. At best, it is an internal document prepared for ascertaining as to what actually stood transpired. But then it cannot be said that the said document *per se* eliciting any circumstances precipitating any reasonable practicability of holding a regular enquiry.

19. Dismissal of an employee from his service only on account of pursuing affairs or an activity of a Trade Union, as permissible in law, cannot be a reason sufficient enough for dispensing an enquiry or taking a draconian step of dismissing and removing an employee from service, particularly, in the



absence of any complaint, of his work performance.

20. In the criminal complaint filed either in the past or in relation to the incident in question, the delinquent employee stands acquitted. It is not the case of the Employer that such acquittal was, as a result of non-appearance of either of the witnesses or their not supporting the prosecution, on account of any threat, fear or intimidation emanating from the delinquent employee.

21. Noticeably, at every stage, notwithstanding his dismissal, the delinquent employee had been requesting the authorities of holding a regular enquiry and all this regardless of his acquittal in a criminal trial.

22. The Hon'ble Apex Court in **Tulsiram Patel (Supra)** has already held that the twin conditions leading to the action of dismissal must satisfactorily be born out from the record- (a) where holding an enquiry contemplated under the Rules or the Constitution is not reasonably practicable; (b) the Disciplinary Authority for reasons in writing has recorded, its satisfaction, that it is not reasonably practicable to hold such an enquiry.

23. Of course, such opinion has to be adjudged as that of a reasonable mind accounting for a reasonable view on the prevalent fact situations. If the order fails to meet any one of



the carved out exceptions, it needs to be judicially reviewed.

24. As already noticed, copy of the reasons or the fact finding report were not supplied to the petitioner along with the order of dismissal which has resulted into grave miscarriage of justice. Also there is no finding recorded with regard to the condition not being normal or atmosphere not conducive for holding a regular enquiry.

25. In our considered view, the Tribunal rightly held the alleged incident was not of such grave nature, warranting exercise of action under the exception contained in the Rules. In passing the impugned orders, the authorities did not account for delinquent employee's previous actions, which even otherwise, in the attending facts and circumstances, could not be done, for the employee was only pursuing the cause of his co-worker. Record is conspicuous of any person expressing apprehension on the part of the delinquent employee, either terrorising or intimidating preventing from deposing or making a statement, revealing the truth about the incident in question. The impugned action appears to be a result of a pre-determined state of mind, intending to stifle the voice raised against an act of corruption in the establishment.

26. It is a settled principle of law that right to form an



Association of a Union is guaranteed under the Constitution. Of course, members of the Union do not have any right to take law in their hand, but then they do have a right of espousing their cause and lawfully protesting against the infectious disease of corruption. [**O.K. Ghosh & another Vs. E.X. Joseph, AIR 1963 SC 812**].

27. The Constitution Bench of the Hon'ble Apex Court in **P. Balakotaiah v. Union of India and others, AIR 1958 SC 232**, while upholding the Rules framed governing the employees of the Railways, enabling the disciplinary authority to take action against a delinquent employee for partaking in any activity, held the order of termination of a delinquent employee cannot be held to be void; in contravention of Article 19(c); for even though such employee has a right to continue to partake in any activity as a trade unionist, but such activity may come under the expression subversive activity consequently affecting the employee's right to continue to be in employment.

28. Yet in another Constitution Bench of the Hon'ble Apex Court in **All India Bank Employees' Association, v. The National Industrial Tribunal (Bank Disputes), Bombay, and others, AIR 1962 SC 171**, while explaining the scope and import of the constitutional right guaranteed under sub-clause



(c) of Clause (1) of Article 19 held such a right not to carry with it a fundamental right in a union formed to achieve, every object for which it was formed. Even a very liberal interpretation of sub-clause (c) of Clause (1) of Article 19 cannot lead to a conclusion that the trade unions have a guaranteed right to effective collective bargaining or to go on strike.

29. The Constitution Bench of the Apex Court in **Kameshwar Prasad and others v. State of Bihar and another, AIR 1962 SC 1166**, held that servants of the Government in common with other persons and other citizens of the country could not be excluded from the protection of the rights guaranteed by Part III by reason merely of their being Government servants and the nature and incidents of the duties which they have to discharge in that capacity might necessarily involve restrictions of certain freedoms in relation to Art. 19 (1)(e) and (g). There are forms of demonstrations which would fall within the freedoms guaranteed by Art. 19 (1) (a) and 19 (1) (b). A violent and disorderly demonstration would not be within Art. 19(1) (a) or (b). But peaceful and orderly demonstration would fall within the freedoms guaranteed under these clauses.

30. Protesting against the demand of illegal gratification for clearance of medical bills is not breaking the law, but only



enforcing it.

31. The action of the authority must instill confidence not only against the employees but also the system accounting for all considerations of fair play and justice, apart from compliance of principles of natural justice. The action cannot be vindictive in nature based on mere *ipse dixit* of an officer. It has to be in consonance with and in compliance with the settled provisions of law and not otherwise.

32. Questions of law are answered accordingly.

33. Hence, for all the reasons above, we dismiss the present writ petition.

34. No order as to costs.

35. Interlocutory Application(s), if any, shall stand disposed of.

(Sanjay Karol, CJ)

(S. Kumar, J)

K.C.Jha/-

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