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* IN THE HIGH COURT OF DELHI AT NEW DELHI

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Date of Decision: 16.08.2024+ W.P.(C) 11335/2024 & CM APPL. 47245/2024

UNION OF INDIA AND ORS

.....Petitioners

Through: Mr. Subhash Tanwar (CGSC) With
Mr. Sandeep Mishra, Advocates for
Union of India

versus

PRADEEP KUMAR

.....Respondent

Through: None.

CORAM:**HON'BLE MR. JUSTICE SURESH KUMAR KAIT****HON'BLE MR. JUSTICE GIRISH KATHPALIA****J U D G M E N T (O R A L)****CM APPL. 47246/2024 (exemption)**

1. Exemption allowed, subject to all just exceptions.
2. Application stands disposed of.

W.P.(C) 11335/2024 & CM APPL. 47245/2024

3. The present writ petition has been filed by the petitioners under Articles 226 and 227 of the Constitution of India seeking the following prayers:

“(i) Pass The Direction(S), Order (S) To Setting Aside the Order/ judgment Passed By Ld. Central Administrative Tribunal In Original Application No. 816/2019 vide judgment dated 04.09.2023;

(ii) Any other relief or order deemed fit by this Honorable Court in the interest of justice may also be kindly passed in favor of the petitioner.



(iii) *Cost of petition may also be awarded in favor of the petitioner.*”

4. The present petition has been filed mainly on two grounds i.e., “B” and “C” which are reproduced as under:

“B. BECAUSE the act of respondent shown irresponsibility, irregularity and crime against the society and damage the image of Government institutions. Due to the negligence of respondent on 19.08.2017, the Train no. 18477 Puri-Haridwar Utkal Exp travelling from Puri to Haridwar at Km.101/3-4 derailed at the site of repair, leading to 22 casualties, 40 persons being grievously injured and 66 persons sustaining simple injuries in addition to the financial loss incurred by the petitioner department.

C. BECAUSE the Learned Tribunal failed to appreciate the fact that the Petitioner department acted well in accordance with the rules and instructions prescribed under then Employment notification. The candidature of the Respondent was rejected based on violation conducted by him during the written examination.”

5. The respondent was appointed and working as a Junior Engineer under the petitioners. On 19.08.2017, there was an accident of Train No.18477, which resulted in derailment of 13 coaches. Accordingly, a preliminary inquiry was conducted in the said derailment matter and on the basis of the preliminary inquiry report, the petitioners removed the respondent from service with immediate effect under the provisions of Rule 14 (ii) of the Railway Servants (Discipline & Appeal) Rules, 1968, (“Rules”) i.e., Article 311 (2)(b) of the Constitution of India vide the impugned order dated 28.08.2017.

6. Being aggrieved, the respondent submitted his detailed appeal dated 09.10.2017 to the appellate authority but instead of considering the said appeal, the petitioners vide letter dated 21.05.2018 supplied a copy of the primary/preliminary report in which it has been stated that the respondent was held responsible for the said accident.



7. After receipt of the said letter, the respondent submitted a further petition vide letter dated 01.06.2018 to the appellate authority but the same had also been rejected by the ADRM vide order dated 08.06.2018.

8. Thereafter, against the aforesaid orders of the disciplinary and appellate authorities, the respondent submitted a revision petition to the petitioner no.2 vide letter dated 17.09.2018 but no reply on the same was received. Hence, the respondent preferred an O.A. No. 816/2019 before the learned Central Administrative Tribunal, Principal Bench, New Delhi (“CAT”).

9. The case of the respondent before the learned CAT was that the impugned order passed by the disciplinary authority under Rule 14 (ii) of the Rules *ibid* is not sustainable in the eyes of law, as the same had not been passed after satisfying the two conditions, which read as under:-

“(i) There must exist a situation which made the holding of an inquiry contemplated by Article 311(2) not reasonably practicable; and

(ii) The disciplinary authority should record in writing the reason or reasons for its satisfaction that it was not reasonably practicable to hold the inquiry.”

10. It was argued by counsel for the respondent before the learned CAT that there was no such situation in this case which made the holding of Departmental inquiry not reasonably practicable and there were no reasons stated by the disciplinary authority that why it was not reasonably practicable to hold the inquiry.

11. It was further submitted by counsel for the respondent before the learned CAT that sub-rule (ii) of Rule 14 of the Rules does not give any unbridled power to the disciplinary authority to dispense with the inquiry as provided under Rules 9 to 11 of the Rules. In order to invoke the said



provision, the disciplinary authority has to satisfy itself that it is not reasonably practicable to hold an inquiry in the manner provided in those Rules and before arriving at such a conclusion, the disciplinary authority is required to record the reasons in writing. However, in the impugned order passed by the disciplinary authority, no such reason(s) whatsoever had been recorded to substantiate that it was not practicable possible to hold an inquiry on the allegations levelled against the respondent.

12. On the other hand, case of the petitioners before the learned CAT was that the punishment was imposed upon the respondent on the basis of an inquiry conducted by the Commissioner of Railway Safety (“CRS”), which is a statutory authority constituted under Chapter II of the Railways Act, 1989. Further in all cases, where there are accidents involving loss of human life and property, the competent authority can constitute an inquiry by the CRS. The CRS is vested with the responsibility to submit a report containing the cause of railway accident, the erring negligent personnel who are responsible for such incidents and his recommendations to prevent such accidents in future. In the course of its inquiry, the Commissioner of Railway Safety is empowered under the Act to summon all persons alleged to be involved in the said accident as also examine witnesses leading to the incident. The present case also involved an accident in which there was huge loss of life and property and accordingly, the CRS in the course of the inquiry had examined the respondent and others. In the said inquiry, the respondent was given all opportunities to adduce his defence and submit before the statutory authority his innocence in the entire matter. The said inquiry was akin to an inquiry conducted under Rule 14 of the CCS (CCA) Rules. As a matter of fact, the scope and purpose of the inquiry was over and



above the inquiry conducted under the CCS (CCA) Rules and being statutory in nature was held on a higher pedestal.

13. For the convenience of this Court, we deem it appropriate to peruse the impugned order passed by the disciplinary authority, the contents of which are reproduced below:-

“On 19.08.2017, you were deputed to replace broken glued joint at Km 101/3-4, between KATMSP. You along with other staff cut the rail at both ends of glued joint in track without traffic block and without ensuring protection of site with banner flags and detonators. You as overall Supervisor of work site, failed to ensure that fish plates are properly fixed before permitting the trains on the track which resulted in derailment of 13 coaches of 18477 Express train leading to several casualties & injury of a large number of passengers besides huge losses to Railways. After the accident, instead of performing your duties towards assisting in restoration at the accident site you fled from the site and went into hiding. Your negligence and callous attitude towards safety lead to such a serious mishap on railways.

*This is such a serious and clear safety lapse by you that even the need to conduct an enquiry is not warranted. In the light of gross negligence by you it is felt that your continuation in Railway Service is a safety hazard. I therefore hold you guilty for negligence in duty as described above which lead to such a serious accident of Train No.18477. **I therefore decide to impose upon you the penalty of “Removal from Service” with immediate effect under Rule 14(ii) of the Railway Servants (D&A) Rules, 1968 by taking into the account the gravity of the accident.***

You are hereby advised that under rules 18 & 19 of the Railway Servants(Discipline & Appeal) rules 1968, you can appeal against these orders to ADRM/T, Northern Railway, New Delhi provided that:

(i) The appeal is preferred within a period of 45 days from the date on which a copy of this memorandum is delivered to you.

(ii) The appeal is preferred in your own name and presented to the authorities to whom the appeal lies and does not contain any disrespected and improper language.”

14. From the plain reading of the said order of the disciplinary authority, it is apparent, as observed by the learned CAT, that serious allegations were levelled against the respondent in relation to the said accident and the



disciplinary authority held that *“This is such a serious and clear safety lapse by you that even the need to conduct an enquiry is not warranted. In the light of gross negligence by you it is felt that your continuation in Railway Service is a safety hazard. I therefore hold you guilty for negligence in duty as described above which lead to such a serious accident of Train No.18477.”*

15. However, there is no reason in the said order of the disciplinary authority as to why it is not reasonably practicable to hold an inquiry and the facts of the case were such that there existed a situation under which the Departmental inquiry was not reasonably practicable having regard to the contents of the order of the disciplinary authority.

16. Even during the proceedings before the learned CAT and before this Court, nothing had been brought to demonstrate that because of such reasons, a regular inquiry was not possible or practicable before inflicting the penalty. As such the conditions precedent, which are required to be fulfilled by the disciplinary authority before invoking the provisions of Rule 14 (ii) of the Rules, have not been complied with before passing the order by the disciplinary authority.

17. It is not in dispute that in catena of judgments, the Hon’ble Supreme Court, and the High Court as well as different Benches of learned Tribunal have already ruled that before invoking the provisions of Rule 14 (ii) of the Rules, which is akin to the provisions of Article 311(2)(b) of the Constitution of India, the concerned authority is required to see where there exists a situation which warrants that the holding of an inquiry as contemplated by Article 311(2) is not reasonably practicable and that the concerned authority should record in writing the reason(s) for its satisfaction



that it was not reasonably practicable to hold the inquiry.

18. Further, the reasons recorded for invoking the provisions of Rule 14(ii) of the Rules by the disciplinary authority are not sustainable in the eyes of law, as observed by learned CAT.

19. So far as the contention of learned counsel for the petitioners is concerned, the order passed by the disciplinary authority is basically based on the report of the Commissioner of Railway Safety and the same is akin to an inquiry initiated under CCS (CCA) Rules. Be that as it may, then there would have been no question of dismissing the respondent by invoking the provisions of Rule 14(ii) of the Rules. Once the authorities have decided to dismiss the respondent by invoking the provisions of Rule 14(ii) of the Rules *ibid*, then the prerequisite of the said Rule as well as the R.B.E. No.53/92 have to be complied with in true letter and spirit, which the disciplinary authority failed to comply before passing the impugned order.

20. In view of the above discussion and the facts of the present case, we find no error or perversity in the order passed by the learned CAT. Accordingly, we find no merit in the present petition and same stands dismissed along with pending application.

(SURESH KUMAR KAIT)
JUDGE

(GIRISH KATHPALIA)
JUDGE

AUGUST 16, 2024/riya