SOUTHERN RAILWAY OFFICERS ASSN. AND ANR. A

v.

UNION OF INDIA AND ORS.

(Civil Appeal Nos. 4835-4839 of 2007)

AUGUST 4, 2009 B

[S.B. SINHA AND CYRIAC JOSEPH, JJ.]

Constitution of India, 1950: Article 311(2), Clause (b) of second proviso – Railway Servants (Discipline and Appeal) Rules, 1968 – Rules 14(ii) – Dispensation from holding of C *disciplinary inquiry – Railway Officer superannuated and was to leave for his native place – Delinquent employees created scene of terrorism, assaulted him and threatened him and others present at station – Matter reported to police and disciplinary authority – Order of dismissal recording that it was* D *not practicable to hold an inquiry – Formality of holding disciplinary proceeding was dispensed with – Subsequent acquittal of delinquent employees from criminal case – High Court allowed reinstatement – Challenged – Held: Disciplinary authority recorded reason for its satisfaction that* E *it was not reasonably practicable to hold inquiry as contemplated by Article 311(2) – High Court was not correct in opining that an immediate action, which was taken, was done in haste – It was a case where an immediate action was absolutely essential – Also, an order of dismissal can be* F *passed even if the delinquent official is acquitted of the criminal charge – Order of reinstatement set aside – Service law – Dismissal from service.*

A disciplinary proceeding was initiated against LA-respondent. On the basis of report of inquiry officer he G **was awarded punishment of dismissal from service. One SM was a disciplinary authority at the relevant time. He superannuated and had to leave for his native place. When he had to board the train for his native place some**

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A of the officers came at the station to see him off. At that time, the delinquent employees including LA-respondent came there and started abusing SM and also assaulted him. He and his family members were threatened to be killed if they go to their native place. Some railway officers
B were also present there and atmosphere of violence, general indiscipline was created at the railway station. The other officers were also threatened, intimidated and terrorized.

The matter was reported to the police station and FIR
C was recorded. The incident was also reported to the disciplinary authority. On the same day notice of dismissal from service was issued against all the delinquent employees. The disciplinary authority recorded in the dismissal letter that it was not practicable
D to hold an inquiry. Appeal was filed thereagainst which was dismissed. Revision applications were thereafter filed by delinquent employees except LA. In the meantime, the delinquent employees were acquitted from the criminal charges. The revisional authority took this fact into
E consideration and while dismissing the revision application of KB allowed in part the revision applications of other 3 delinquent employees. The five delinquent employees filed OA before Tribunal. The Tribunal declined to interfere with the orders passed by revisional authority
F in case of three employees. However, order of dismissal passed against LA and KB were set aside.

Both the parties filed writ applications. Applications of the 3 delinquent employees were allowed and they
G were ordered to be reinstated in service in their original position with all service benefits and backwages from 31.1.2004. Hence the two sets of appeal filed before this Court, one by Union of India and the other by the Officers Association.

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Allowing the appeals, the Court A

HELD: 1. Part XIV of the Constitution of India deals with the services under the Union and the States. Article 309 deals with recruitment and conditions of service of persons serving the Union or a State. Article 311 deals with dismissal, removal or reduction in rank of persons employed in civil capacities under the Union or a State. Indisputably holding of an inquiry, if any misconduct is alleged on the part of the delinquent official, is obligatory wherein the delinquent employee is to be informed of the charges against him and given a reasonable opportunity of being heard in respect thereof. The second proviso appended to Article 311(2), however, makes three exceptions in regard to constitutional requirement to hold an enquiry. Clause (b) whereof provides that in a case where the disciplinary authority is satisfied that it is not reasonably practicable to hold such enquiry, subject of course to the condition that therefor reasons are to be recorded in writing. Recording of reasons, thus, provides adequate protection and safeguard to the employee concerned. It is now well settled that reasons so recorded must be cogent and sufficient. Satisfaction to be arrived at by the disciplinary authority for the aforementioned purpose cannot be arbitrary. It must be based on objectivity. [Paras 20 and 21] [442-G-H; 443-B-D] B C D E F

Union of India and Anr. v. Tulsiram Patel **AIR 1985 SC 1416;** *Satyavir Singh v. Union of India,* **(1985) 4 SCC 252;** *Kuldip Singh v. State of Punjab* **(1996) 10 SCC 659;** *Union of India v. R. Reddappa* **(1993) 4 SCC 269 and** *Indian Rly. Construction Co. Ltd. v. Ajay Kumar* **(2003) 4 SCC 579, referred to.** G

2. The order of disciplinary authority must be judged by a court exercising power of judicial review by placing himself in his arm chair. The disciplinary authority was a H

A man at the spot. He acted on the basis of a report made to him. He also knew about the written poster having been displayed. The atmosphere which was prevailing in the workshop must be known to him. Not only the disciplinary authority but also the appellate authority, B having regard to the materials brought on record, arrived at the said finding. [Para 26] [452-E-G]

3. In terms of Rules 18 and 19 of the Railway Servants (Discipline and Appeal) Rules, 1968 the delinquent employees were entitled to prefer an appeal. C The appellate authority was entitled to consider the entire fact situation. The appeal provides for a post-decisional hearing to the employee concerned. All defences must be taken by them. While, thus, considering as to whether there was enough material before the disciplinary D authority for the purpose of arriving at its satisfaction that it was not reasonably practicable to hold departmental proceedings, the appellate authority was entitled to consider the situation prevailing from the confidential reports submitted by the other employees. They were not E relied upon for the purpose of proving misconduct but for the purpose that in the situation, which was prevailing, whether it was reasonably practicable to hold an enquiry. There is no dispute that the protection accorded to an employee by reason of the constitutional provision of F mandate of recording of reasons is of great significance. Such reasons in the instant case, have been recorded. The High Court was also not correct in opining that an immediate action, which was taken, was done in haste. It was, in fact, a case where an immediate action was G absolutely essential. [Paras 27, 28 and 29] [452-H; 453-A; 453-E-G]

Ram Chander v. Union of India and Ors. (1986) 3 SCC 103; *Ajit Kumar Nag v. General Manager (P.J.) Indian Oil Corporation Ltd., Haldia and Ors* (2005) 7 SCC 764, referred H

to. A

4. So far as the finding of the High Court that the orders of dismissal suffer from want of material, is concerned, the orders of the disciplinary authority themselves disclose existence of sufficient materials. B Before the statutory authorities, the incident was not denied. Lodging of the first report was also not denied. The fact that one of the delinquent officials was arrested on the same day was not denied. Arrest of others after a period of two weeks also stood admitted. Display of C handwritten poster both at the workshop and at the railway station was also not denied. No mala fide on the part of the disciplinary authority was attributed. It is not the case of the delinquent employees that the disciplinary authority in passing the said order took into consideration any irrelevant fact not germane therefor or D failed to take into consideration any relevant fact. [Paras 31 and 32] [454-D-F; 454-G]

5. Acquittal in a criminal case by itself cannot be a ground for interfering with an order of punishment E imposed by the disciplinary authority. The High Court did not say that the said fact was not taken into consideration. The revisional authority did so. It is now a well settled principle of law that the order of dismissal can be passed even if the delinquent official had been F acquitted of the criminal charge. [Para 33] [454-H; 455-A-B]

Prithipal Singh v. State of Punjab (2006) 13 SCC 314; *Tarsem Singh v. State of Punjab* (2006) 13 SCC 581 – relied G on.

Sahadeo Singh v. Union of India (2003) 9 SCC 75; *Thacker Hariram Motiram v. Balkrishan Chatrabhu Thacker* 1989 Supp (2) SCC 655; *P.R. Deshpande v. Maruti Balaram Haibatti* (1998) 6 SCC 507, referred to. H

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Case Law Reference:

AIR 1985 SC 1416	**referred to**	**Para 22**
(1985) 4 SCC 252	**referred to**	**Para 22**
B **(1996) 10 SCC 659**	**referred to**	**Para 22**
(1993) 4 SCC 269	**referred to**	**Para 22**
(2003) 4 SCC 579	**referred to**	**Para 22**
(1986) 3 SCC 103	**referred to**	**Para 27**
C **(2005) 7 SCC 764**	**referred to**	**Para 30**
(2003) 9 SCC 75	**referred to**	**Para 33**
(2006) 13 SCC 314	**relied on**	**Para 35**
D **(2006) 13 SCC 581**	**relied on**	**Para 35**
1989 Supp (2) SCC 655	**referred to**	**Para 36**
(1998) 6 SCC 507	**referred to**	**Para 37**

E CIVIL APPELLATE JURISDICTION : Civil Appeal No. 4835-4839 of 2007.

From the Judgment & Order dated 20.06.2007 of the High Court of Judicature at Madras in W.P. Nos. 25606, 25607, 28392, 28393 & 28394 of 2006.

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WITH

C.A. No. 5094 of 2009.

G C.A. No. 4894, 4895, 5074, 5075 of 2007.

A. Sharan, ASG, A.K. Ganguly, Asha G. Nair, Subhash Kaushik, Gargi Khanna, Anita Sahani, Varuna Bhandari Gugnani, Singh, Sushma Suri, K.V. Viswanathan, B. Ragunath, Vijay Kumar, Amit Anand Tiwari, A.K. Singh, Sanchit, G.

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Umapathy, Pradeep Ranjan Tiwary, P.N. Ramalingam for the appearing parties. A

The Judgment of the Court was delivered by

S.B. SINHA, J. 1. Leave granted in SLP (C) No.18948 of 2007. B

2. Application of the second proviso appended to clause (2) of Article 311 of the Constitution of India and Rule 14 (ii) of the Railway Servants (Discipline and Appeal) Rules, 1968 (hereinafter referred to, for the sake of brevity, as the "said rules") is involved in these appeals. C

3. K. Babu Rajendran, L. Arputharaj, G. Lakshmanan, V.S. Chandran and P. Manoharan, had been working in Carriage and Wagon Workshop of the South Eastern Railway Administration of Union of India. D

4. One S.M. Krishnan was a Deputy Chief Mechanical Engineer, Carriage and Wagon, Golden Rock Workshop in the South Eastern Railway Administration. He was the disciplinary authority of the workmen working in the said workshop. He superannuated on 31st January, 2004. He was to go to his native place. He was to board Train No. 6128 from Tiruchirappalli Railway station for Chennai. Some officers had come to platform No.4 of the said Railway station to see him off. E F

5. A disciplinary proceeding was initiated against L. Arputharaj. On the basis of a report submitted by the enquiry officer, he was imposed a punishment of dismissal from service against him. It is, however, stated that although an appeal from the said order was dismissed, on a revision preferred by the said delinquent official punishment of dismissal was set aside and he was directed to be posted as Technician Grade III at the bottom of the scale with non recurring effect for a period of three years. G H

A 6. The delinquent employees came to the railway station. They started abusing Shri S.M. Krishnan with filthy language. He was said to have been assaulted. He and his family members were threatened to be killed if he goes to Chennai. Other railway officers were also present at the same place. The B delinquent employees allegedly created ugly scene at the platform which was witnessed by several railway officers, staff and passengers who were waiting at the platform. An atmosphere of violence, general indiscipline and insubordination was prevailing at the railway station. The other C officers were also threatened, intimidated and terrorized. The matter was reported to the Trichy Police station. On the basis of a statement made in this behalf, a First Information Report being No. 50 of 2004 was recorded.

7. K. Babu Rajendran was arrested on the same day while D others were arrested after two weeks.

8. The incident was reported to the disciplinary authority. On the same day a notice of dismissal from service had been issued against all the delinquent employees, the material E portion whereof read as under:-

> "Officers and staff who were present at the station to see him off tried to protect him and for this all the offices were badly abused by you and others. Further, you threatened that you will kill Shri S.M. Krishnan and his family in his F house even if he goes to Chennai. It was a pre-planned attempt by you to assault and cause bodily harm to Sri S.M. Krishnan. That this was preplanned is substantiated by the fact that a handwritten poster was displayed in the Workshop as well as at the Railway Station, wherein it was G stated that Shri S.M. Krishnan will die on 31.1.2004 and cremation will be done at 14.30 hrs. Knowing that Shri S.M. Krishnan is to travel by train No.6128 at 14.30 hrs., you along with a mob assaulted Shri S.M. Krishnan in broad day light in presence of several Railway Officers, H staff and passengers. Therefore, it is proved beyond doubt

that you conspired and assaulted Shri S.M. Krishnan. Because of this incident, Shri S.M. Krishnan could not undertake the journey as planned because of threat to his life and was forced to undertake the journey by road with escorts.

You have deliberately assaulted Shri S.M. Krishnan. You threatened to kill Shri S.M. Krishnan and his family members. In addition you threatened to cause bodily harm to the officers present at the platform if they tried to associate with Shri S.M. Krishnan. Thus, you intimidated all the officers present causing insecurity and fear amongst officers.

You along with other associates threatened, intimidated and terrorized all the officers. The atmosphere of violence, general indiscipline and insubordination is prevailing. In view of this situation I am convinced that it is not reasonably practicable to hold an enquiry."

9. Appeals were preferred thereagainst. By separate orders, the appellate authority dismissed the said appeals not only upon taking into consideration the documents which were available with the disciplinary authority but also the newspaper clippings and the confidential reports of the employees of GOC shop. The said documents were kept confidential on their request as leaking thereof might endanger their lives as also security of their family members.

The appellate authority held :-

"... It indicates that you and your associates had created an atmosphere of fear and terror in the minds of all the Railway men of GOC shop so much that they were afraid to comment and name the persons who assaulted Mr. S.M. Krishnan on 31.1.2004 at platform-4."

Dealing with the defence taken by the respondents that GOC shop closes at 1130 hours on every Saturday followed

A by the weekly off period, they were entitled to be at the railway station, it was observed :-

> "The disciplinary action against you for the incident of Mr. S.M. Krishnan which has taken place outside the work spot is in order as per rules 3-1(iii) of RS (Conduct) Rules, 1966. I also find that in your appeal, you did not deny the incident of Mr. S.M. Krishnan at platform-4 of Trichy railway station around 14.30 hours on 31.1.2004, but mentioned that you were not involved in the incident and to this effect you have not substantiated your stand with evidence.
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> 13. Railway is passing through a very difficult phase for providing safe, better and economic services to the passengers for which in all the workshops including GOC shop, discipline of high order is required for peaceful working. The Railway men who create terror, indiscipline, insubordination, violence etc. have to be dealt drastically in the broader interest of society as well as Railway so that the common and sincere workmen remain free from fear of undisciplined co-worker and do the job peacefully. The indiscipline displayed by you and your associates at Platform-4 has demoralized the entire hierarchy of Railway-men including officers of the workshop...."

10. Revision applications were filed thereagainst by the delinquent employees except L. Arputharaj before the General Manager, Southern Railway.

11. In the meantime the delinquent employees were acquitted from the criminal charges. The revisional authority took the said fact into consideration to hold :-

> "As regards the judgment delivered by the Honourable Judicial Magistrate Court IV/ Tiruchirapalli, you have been acquitted and released from the criminal case No.287/ 2004 because of extending the benefit of doubt raised in the case, in your favour and not on merit of the case or on

technical reasons, hence there is no scope to review the penalty of dismissal from service, consequent on the above judgment."

The revisional authority, however, while dismissing the revision application of K. Babu Rajendran, allowed in part the revision applications of other three delinquents stating :-

"However, by considering the case purely on humanitarian grounds, I take a lenient view and set aside the penalty of Dismissal from Service and reinstate you in service with the penalty of reduction to the lower post of Helper Gr.II in scale Rs.2550-3200 on pay Rs.2550/ for a period of ten years with cumulative effect and on reinstatement you are posed to ..... Department of .... Division.

The intervening period of your absence from duty i.e. from the date of Dismissal from Service (31.01.2004) to the date of joining for duty on reinstatement in service after the receipt of this advice will be treated as 'Non-Duty'."

12. All the five delinquent employees filed Original Applications before the Central Administrative Tribunal, Madras Bench against the said orders.

13. The Tribunal framed the following three issues for determination :-

"(i) Whether the order of dismissal was approved and issued by the competent authority?

(ii) Whether the decision not to hold the enquiry under the relevant rules are valid or not? and

(iii) Whether on receiving representations from the applicants for reinstatement after the criminal case filed against them had ended in acquittal was properly considered or not?"

A 14. It was held that the orders of dismissal were passed by a competent authority. A finding of fact was also arrived at that there was no infirmity in the action of the authority for dispensing with the enquiry leading to the dismissal of the delinquent employees. While upholding the exceptional B jurisdiction exercised by the disciplinary authority, it was observed that the appellate as also the revisional authority failed to consider the aspect of acquittal of the accused in the criminal case. It was furthermore observed that there was no reason as to why the cases of L. Arputharaj and K. Babu C Rajendran should not have been considered at par with the other three delinquent employees. The Tribunal passed a peculiar order inasmuch as while declining to interfere with the orders passed by the revisional authority in the cases of three employees, namely - P. Manoharan, G. Lakshmanan and V .S. Chandran. the orders of dismissal passed against L. Arputharaj D and K. Babu Rajendran were set aside.

15. Both the parties preferred writ applications thereagainst. By reason of a common judgment and order dated 20th June, 2007, the writ applications filed by Union of India E were dismissed and those of the aforementioned three delinquent employees were allowed.

16. All the delinquent employees were ordered to be reinstated in service in their original position, with all service F benefits and back wages, from 31.1.2004, as if they were continuing in their respective positions without any break.

17. Two sets of appeals have been preferred before us – one by the Union of India and the other by Southern Railway Officers Association and others.

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18. The leaned Additional Solicitor General Mr. Amarendra Sharan, appearing on behalf of the Union of India, and Mr. K.V. Viswanathan, learned counsel appearing on behalf of the Association, inter alia contended:-

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(i) That the High Court committed a serious error in passing the impugned judgment in so far as it failed to take into consideration that the disciplinary authority, the appellate authority and the revisional authority assigned sufficient and cogent reasons for dispensing with the holding of the disciplinary inquiry.

(ii) The judgment of acquittal passed in favour of the delinquent employees by itself could not be a ground for interfering with the disciplinary proceedings particularly when the conditions precedent therefor were satisfied.

(iii) The orders of dismissal, having not been passed on any irrelevant or extraneous considerations and exceptional situations found to be obtaining at the relevant time and in view of the fact that the officers who worked as Enquiry Officer and the disciplinary authority were required to be granted due protection so as to inspire confidence in them that the workmen would not take law in their own hands, it was a case where Rule 14 of the said Rules could have been invoked.

19. Mr. A.K. Ganguli, learned senior counsel appearing on behalf of the respondents, on the other hand, submitted:-

(i) That the matter should be considered on the touchstone of the order of the disciplinary authority dated 31st January, 2004 and not on the basis of any subsequent evidence which had been collected by the appellate or the revisional authority.

(ii) In view of the second proviso appended to clause (2) of Article 311 of the Constitution of India and Rule 14 of the said Rules, providing for exception to the general rules that a disciplinary proceeding

A should ordinarily be held for the purpose of punishing a delinquent officer, the constitutional protection granted in favour of the employees must be held to have been fulfilled.

B (iii) As the incident had taken place in a public place in broad day light, there was absolutely no reason as to why a disciplinary proceeding could not have been held keeping in view the fact that the passengers travelling in the train and the other officers of the railway administration could have C been examined at the disciplinary proceeding.

(iv) The delinquent employees having been acquitted by the criminal court on the self same charges wherein the complainant Shri S.M. Krishnan D examined himself as PW-1, the impugned judgment does not suffer from any legal infirmity.

(v) The reasons recorded by the disciplinary authority are self-contradictory and there being no material in support of the conclusion that it was not E reasonably practicable to hold a disciplinary proceeding, the finding of fact having been arrived at by the High Court that it was possible to hold a disciplinary proceeding, the impugned judgment does not warrant any interference. F

(vi) Union of India having given an undertaking before the High Court to comply with the directions issued by it, has waived its right to prefer the appeals.

G 20. Part XIV of the Constitution of India deals with the services under the Union and the States. Article 309 deals with recruitment and conditions of service of persons serving the Union or a State. Article 310 deals with tenure of office of persons serving the Union or a State. Article 311 deals with H dismissal, removal or reduction in rank of persons employed

in civil capacities under the Union or a State. Clause (1) of Article 311 provides that an order of dismissal or removal from service shall not be passed by an authority subordinate to that by which the employee was appointed. Clause (2) of Article 311 of the Constitution of India and the second proviso appended thereto reads as under :-

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

(1) ....

(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;

A or

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

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21. Indisputably holding of an inquiry, if any misconduct is alleged on the part of the delinquent official, is obligatory wherein the delinquent employee is to be informed of the charges against him and given a reasonable opportunity of C being heard in respect thereof. The second proviso appended thereto, however, makes three exceptions in regard to constitutional requirement to hold an enquiry. clause (b) whereof provides that in a case where the disciplinary authority is satisfied that it is not reasonably practicable to hold such D enquiry, subject of course to the condition that therefor reasons are to be recorded in writing. Recording of reasons, thus, provides adequate protection and safeguard to the employee concerned.

E It is now well settled that reasons so recorded must be cogent and sufficient. Satisfaction to be arrived at by the disciplinary authority for the aforementioned purpose cannot be arbitrary. It must be based on objectivity.

22. The question came up for consideration before a F Bench of this Court in *Union of India and another v. Tulsiram Patel* [AIR 1985 SC 1416] wherein this Court opined that the reasonable practicability of holding an inquiry is a matter of assessment to be made by the disciplinary authority. The concerned authority is generally on the spot and knows what G has been happening. It was observed:-

"It is because the disciplinary authority is the best judge of this that clause (3) of Article 311 makes the decision of the disciplinary authority on this question final. A disciplinary authority is not expected to dispense with a

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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 government servant is weak and must fail. The finality given to the decision of the disciplinary authority by Article 311(3) is not binding upon the court so far as its power of judicial review is concerned and in such a case the court will strike down the order dispensing with the inquiry as also the order imposing penalty."

It was furthermore held

"**133.** The second condition necessary for the valid application of clause (b) of the second proviso is that the disciplinary authority should record in writing its reason for its satisfaction that it was not reasonably practicable to hold the inquiry contemplated by Article 311(2). This is a constitutional obligation and if such reason is not recorded in writing, the order dispensing with the inquiry and the order of penalty following thereupon would both be void and unconstitutional.

134. It is obvious that the recording in writing of the reason for dispensing with the inquiry must precede the order imposing the penalty. The reason for dispensing with the inquiry need not, therefore, find a place in the final order. It would be usual to record the reason separately and then consider the question of the penalty to be imposed and pass the order imposing the penalty. It would, however, be better to record the reason in the final order in order to avoid the allegation that the reason was not recorded in writing before passing the final order but was subsequently fabricated. The reason for dispensing with the inquiry need not contain detailed particulars, but the reason must not be vague or just a repetition of the language of clause (b) of the second proviso. For instance, it would be no compliance with the requirement of clause (b) for the disciplinary authority simply to state that he was satisfied

A that it was not reasonably practicable to hold any inquiry....."

The said principles have been reiterated in a large number of subsequent decisions. We may notice some of them.

B In *Satyavir Singh v. Union of India,* [(1985) 4 SCC 252], this Court held :-

"21. The point which was next urged in support of the contention that the impugned orders were passed mala C fide was that even though co-workers may not have been available as witnesses, there were policemen and police officers posted inside and outside the building and they were available to give evidence and that superior officers were also available to give evidence. The crucial and D material evidence against the appellants would be that of their co-workers for these co-workers were directly concerned in and were eyewitnesses to the various incidents. Where the disciplinary authority feels that crucial and material evidence will not be available in an inquiry E 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 F 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 affidavit filed by the Joint Director, Research and G Analysis Wing, Cabinet Secretariat, Hari Narain Kak, who had passed the impugned orders, sets out in detail the various acts of intimidation, violence and incitement committed by each of the appellants. Copies of the written reasons for dispensing with the inquiry in the case of the H appellants have also been annexed to the said affidavit. It

is clear from a perusal of the said affidavit and its annexures that the police officers, policemen and senior officers could not have possibly given evidence with respect to all these acts. The said affidavit further states that the senior officers were also intimidated and were threatened with dire consequences if they gave evidence. Further, grievances were made against the senior officers of the RAW in the said charter of demands submitted by the said Association and the evidence of senior officers would have been attacked as being biased and partisan. There is thus no substance in this point also." A B C

In *Kuldip Singh v. State of Punjab,* [(1996) 10 SCC 659], this Court held :-

"7. At our direction made on 22-4-1996 in this matter, the learned counsel for the State has produced the original record relating to the appellant's dismissal along with translated copies of the relevant documents. The first document placed before us by the learned counsel for the State is the copy of the FIR No. 219 of 1990 dated 24-11-1990. It is based upon the statement of Head Constable Hardev Singh, who was posted as gunman with Shri Harjit Singh, Superintendent of Police (SP) (Operations). The FIR speaks of the jeep (in which the said SP was travelling along with certain police personnel) being blown up killing the said SP and few other police officials. The next document placed before us is the case diary pertaining to the said crime containing the statement of the appellant, Kuldip Singh. In his statement, Kuldip Singh did clearly state about his association with certain named militants, the plot laid by them to kill Shri Harjit Singh, Superintendent of Police, Tarn Taran by placing a bomb and the manner in which they carried out the said plot. He also stated that he and his militant companions planned to plant a bomb in the office of SSP, Tarn Taran but that the police officers came to know of the said plan, D E F G H

A thus foiling their plan. The learned counsel for the State of Punjab did concede that except the aforesaid statement of admission/confession of the appellant, there was no other material on which the appellant could be held guilty of conduct warranting dismissal from service."

B This Court in *Union of India v. R. Reddappa*, [(1993) 4 SCC 269] held as under:-

"**5.** More than a decade has gone by since these employees were dismissed for participating in strike called C by the Union recognised by the Railways. But end has not reached. Barring appellate and revisional authority whose discretion too was attempted to be curtailed by issuing circular no court or tribunal has found the orders to be well founded on merits. True the jurisdiction exercised by the D High Court under Article 226 or the tribunal is not as wide as it is in appeal or revision but once the court is satisfied of injustice or arbitrariness then the restriction, self-imposed or statutory, stands removed and no rule or technicality on exercise of power, can stand in way of E rendering justice. We are not impressed by the vehement submission of the learned Additional Solicitor General that the CAT, Hyderabad exceeded its jurisdiction in recording the finding that there was no material in support of the finding that it was not reasonably practicable to hold an F enquiry. The jurisdiction to exercise the power under Rule 14(ii) was dependent on existence of this primary fact. If there was no material on which any reasonable person could have come to the conclusion as is envisaged in the rule then the action was vitiated due to erroneous assumption of jurisdictional fact therefore the Tribunal was G well within its jurisdiction to set aside the orders on this ground. An illegal order passed by the disciplinary authority does not assume the character of legality only because it has been affirmed in appeal or revision unless the higher authority is found to have applied its mind to the basic

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infirmities in the order. Mere reiteration or repetition instead of adding strength to the order renders it weaker and more vulnerable as even the higher authority constituted under the Act or the rules for proper appraisal shall be deemed to have failed in discharge of its statutory obligation." A B

In *Indian Rly. Construction Co. Ltd. v. Ajay Kumar,* [(2003) 4 SCC 579], this Court held :-

"12. It is fairly well settled that the power to dismiss an employee by dispensing with an enquiry is not to be exercised so as to circumvent the prescribed rules. The satisfaction as to whether the facts exist to justify dispensing with enquiry has to be of the disciplinary authority. Where two views are possible as to whether holding of an enquiry would have been proper or not, it would not be within the domain of the court to substitute its view for that of the disciplinary authority as if the court is sitting as an appellate authority over the disciplinary authority. The contemporaneous circumstances can be duly taken note of in arriving at a decision whether to dispense with an enquiry or not. What the High Court was required to do was to see whether there was any scope for judicial review of the disciplinary authority's order dispensing with the enquiry. The focus was required to be on the impracticability or otherwise of holding the enquiry." C D E F

23. The law laid down by this Court being clear and explicit, the question which would arise for our consideration is whether in then prevailing situation, what a reasonable man taking a reasonable view would have done. G

24. The High Court in its judgment opined :-

(i) That the statement of the disciplinary authority that "I am convinced that it is not reasonably practicable to hold an inquiry" is against the dicta laid down by H

A this Court in *Tulsiram Patel* (supra).

(ii) In the absence of any reason, much less recorded, as has been mandated under the Rule, to show that it was not reasonably practicable to hold a B disciplinary inquiry, we are of the opinion that the discretionary power was exercised for extraneous purpose to dismiss the delinquents and that the same is arbitrary and perverse since no reasonable person could form such an opinion on the given material and thus the impugned orders of C dismissal are hit by malice also. The alleged incident and the impugned orders of dismissal were all dated 31.1.2004 which shows the haste in which the disciplinary authority has acted.

D (iii) While invoking the stringent extraordinary provisions like Rule 14(ii), principles of natural justice require every care to be taken by the concerned authorities. Any haste in invoking such stringent provisions, without even complying with the mandatory E requirements of the provision, would make such decision of the disciplinary authority illegal, being an abuse of power conferred upon it.

(iv) It can very well be held that the impugned orders of dismissal suffer from want of materials and in the F absence of any material to substantiate the mere oral stand of the Department that holding an inquiry was not reasonably practicable, without offering any reasons, much less in writing, as mandated by law, the impugned orders of dismissal are liable to be G quashed.

(v) In the case in hand, since the authorities have invoked the extraordinary power under Rule 14(ii) dispensing with the inquiry, and further since the H alleged incident was held to be not proved by the

criminal court, after thorough trial, the appellate and revisional authorities ought to have considered the said aspect of acquittal while imposing the punishment. Therefore, we are of the view that the fact of acquittal is a circumstance to be considered while awarding punishment in this case.

25. We with respect are unable to agree therewith.

The disciplinary authority in its order dated 31st January, 2004 categorically stated :-

(i) That the delinquent employees attempted to cause bodily harm to Shri S.M. Krishnan ; created an ugly scene which brought a bad name to the railway ; officers who tried to protect Shri S.M. Krishnan were badly abused ; Shri S.M. Krishnan and his family were threatened to be killed if he goes to Chennai ; it was a pre-planned attempt as a handwritten poster was displayed in the workshop as well as at the railway station wherein it was stated that Shri S.M. Krishnan will die on 31.1.2004 and his cremation will be done at 1430 hours when train No.6128 leaves the railway station.

(ii) That all of them have conspired and assaulted Shri S.M,. Krishnan as a result whereof he could not undertake the journey and had to go by road with escort.

(iii) The formality of holding a disciplinary proceeding was dispensed with stating :-

"You along with other associates threatened, intimidated and terrorized all the officers. The atmosphere of violence, general indiscipline and insubordination is prevailing. In view of this situation I am convinced that it is not reasonably practicable to hold an enquiry."

A It was concluded :-

"I, therefore, in exercise of the powers conferred upon me under rule 14(ii) of RS (D&A) Rules, 1968, hereby dismiss you from Railway Service with effect from 31/1/2004 (A/N). You are required to handover the railway property in your custody. You are also required to vacate the Railway quarters, if in occupation, within one month from the date on which a copy of this notice is delivered. You are hereby advised that under Rule 18 and 19 of the Railway Servants (D&A) Rules 1968, you may prefer an appeal against these orders to CWM/GOC provided that :

i. The appeal is preferred within a period of 45 days from the date on which a copy of this notice is delivered.

ii. The appeal is to be preferred in your own name and presented to the authority to whom the appeal lies and does not contain any disrespectful and improper language."

26. An order of a disciplinary authority in a case of this nature, as laid down by this Court in *Tulsiram* (supra), must be judged by a Court exercising power of judicial review by placing himself in his arm chair. The disciplinary authority was a man at the spot. He acted on the basis of a report made to him. He also knew about the written poster having been displayed. The atmosphere which was prevailing in the workshop must be known to him. Not only the disciplinary authority but also the appellate authority, having regard to the materials brought on record, arrived at the said finding.

27. Submission of Mr. Ganguli that the appellate authority could not rely upon any other material may not be entirely correct. In terms of Rules 18 and 19 of the said Rules, the delinquent employees were entitled to prefer an appeal. The appellate authority was entitled to consider the entire fact situation. The appeal provides for a post-decisional hearing to

the employee concerned. All defences must have been taken by them. In *Ram Chander v. Union of India and others,* [(1986) 3 SCC 103], this Court relying upon *Tulsiram* (supra) opined as under :-

> "In *Satyavir Singh v. Union of India* there is an attempt made to analyse the ratio dicidendi of the majority decision in *Tulsiram Patel* case and the nature of the remedies left to the civil servant at pp. 276-81 of the Report. If that be so, in a case governed by one of the clauses of the second proviso to Article 311(2) or an analogous service rule, there is still all the more reason that in cases not governed by the second proviso, a civil servant subjected to disciplinary punishment of dismissal, removal or reduction in rank under clause (2) of Article 311 would have these remedies left to him. Virtually this is tantamount to a post-decisional hearing."

The appellate order, in our opinion, satisfies the dicta laid down in *Ram Chander* (supra)

28. While, thus, considering as to whether there had been enough material before the disciplinary authority for the purpose of arriving at its satisfaction that it was not reasonably practicable to hold departmental proceedings, the appellate authority, in our opinion, was entitled to consider the situation prevailing from the confidential reports submitted by other employees. They were not relied upon for the purpose of proving misconduct but for the purpose that in the situation, which was prevailing, whether it was reasonably practicable to hold an enquiry. There is no dispute that the protection accorded to an employee by reason of the constitutional provision of mandate of recording of reasons is of great significance. Such reasons, in our opinion, in the instant case, have been recorded.

29. The High Court, in our opinion, was also not correct in opining that an immediate action, which was taken, was done

A in haste. It was, in fact, a case where an immediate action was absolutely essential.

30. This Court in *Ajit Kumar Nag v. General Manager (P.J.), Indian Oil Corporation Ltd., Haldia and Ors* [(2005) 7 SCC 764] noticed the dicta laid down in *Tulsiram Patel* (supra), which reads as under:-

B

> "not taking prompt action may also be construed by the trouble-makers as a sign of weakness on the part of the authorities and thus encourage them to step up their activities or agitation. Where such prompt action is taken in order to prevent this happening, there is an element of deterrence in it but this is an unavoidable and necessary concomitance of such an action resulting from a situation which is not of the creation of the authorities."

C

D

31. So far as the finding of the High Court that the orders of dismissal suffer from want of material, is concerned, the orders of the disciplinary authority themselves disclose existence of sufficient materials. Before the statutory authorities, the incident was not denied. Lodging of the first report was also not denied. The fact that one of the delinquent officials was arrested on the same day was not denied. Arrest of others after a period of two weeks also stood admitted. Display of handwritten poster both at the workshop and at the railway station had also not been denied. We do not find that before the High Court the delinquent employees brought on record any material that the grounds stated in the orders of dismissal were wholly non-existent. No mala fide on the part of the disciplinary authority was attributed.

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G 32. It is not the case of the delinquent employees that the disciplinary authority in passing the said order took into consideration any irrelevant fact not germane therefor or failed to take into consideration any relevant fact.

H 33. Acquittal in a criminal case by itself cannot be a ground

for interfering with an order of punishment imposed by the disciplinary authority. The High Court did not say that the said fact had not been taken into consideration. The revisional authority did so. It is now a well settled principle of law that the order of dismissal can be passed even if the delinquent official had been acquitted of the criminal charge.

In *Sahadeo Singh v. Union of India,* [(2003) 9 SCC 75], this Court held:-

> **"7.** Learned counsel for the appellants, as stated above, strongly relied upon the judgment of this Court in the case of Singasan Rabi Das. A perusal of this case shows that the observations of this Court in the said case do not apply to the facts of the present case. In that case, the Railways gave an excuse that it is not feasible or desirable to procure the witnesses because they were likely to suffer personal humiliation and may become the targets of acts of violence. This opinion expressed in the said case was held to be not justified as could be seen from the said judgment because of lack of material produced by the Railways, hence, this Court proceeded on the basis that on facts of that case, the Railways were only trying to protect the witnesses and in fact there was no reasonable apprehension that the witnesses will not appear before the inquiry officer. That is not the case in these appeals, as noticed by us hereinabove. The three preliminary enquiries made on the spot, clearly established the fact that though people have witnessed the theft of rice bags in which incident these appellants are involved, they are not willing to come forward because they apprehend danger to their lives. The apprehension of danger to life in this appeal is not that of the inquiry officer but is that of the witnesses themselves. Therefore, we do not think the appellants can take advantage of the observations of this Court in the case of *Singasan Rabi Das.*"

34. This Court upon perusal of the entire record satisfied

A itself that the same was sufficient to dispense with the enquiry.

35. We may also notice a decision of this Court in *Prithipal Singh v. State of Punjab,* [(2006) 13 SCC 314] wherein the delinquent official was exonerated of the charges and the
B departmental proceedings were dropped, but despite the same the department, taking recourse to clause (b) of the second proviso appended to clause (2) of Article 311 of the Constitution of India, dismissed the delinquent employee. It was in the aforementioned situation, this Court opined :-

C "6. It is not in dispute that pursuant thereto or in furtherance of the said order dated 18-10-1988, the appellant was reinstated in service. Thereafter the departmental proceedings were held and therein the charges, having not been proved, were dropped. Once in the disciplinary
D proceedings the appellant was exonerated of the charges framed against him, the question of taking recourse to Clause (b) of the second proviso appended to Clause (2) of Article 311 of the Constitution of India did not and could not arise. It is unfortunate that although, the same had been
E duly noticed by the learned trial Judge, it failed to receive due attention of the appellate court as also of the High Court. The very purpose, for which the said provision was enacted, had lost its relevance once a departmental proceeding was held. The Director General of Police, while
F passing the order dated 5-2-1990, furthermore failed to take into consideration that in an appeal preferred by the delinquent from such an order it was obligatory on the part of the disciplinary authority to produce all records to show that there were enough materials before the disciplinary
G authority to arrive at a positive and categorical finding that in the departmental proceeding the witnesses were not likely to depose. It was not done. Resultantly, the entire proceeding became vitiated in law."

(See also *Tarsem Singh v. State of Punjab,* [(2006) 13
H SCC 581].

36. Regarding submission of the learned senior counsel for the respondents that the Union of India had waived its right to maintain special leave petition by undertaking to comply with the order of the High Court, reliance has been placed on *Thacker Hariram Motiram v. Balkrishan Chatrabhu Thacker,* [1989 Supp (2) SCC 655]. That case related to a rent control matter. It refused to exercise its discretionary jurisdiction under Article 136 of the Constitution of India stating :-

> "It appears that the undertaking was affirmed on November 9, 1984 wherein it was stated that the appellant would vacate and give vacant possession of the suit premises by 31-12-1985 i.e., to say after one year if "by that time no stay order from the Supreme Court is received as I intend to file an appeal in the Supreme Court". This undertaking filed by the appellant in our opinion is in clear variation with the oral undertaking given to the learned Judge which induced him to give one year's time. We do not wish to encourage this kind of practice for obtaining time from the court on one plea of filing the undertaking and taking the different stand, in applications under Article 136 of the Constitution. In that view of the matter the interim order is vacated and we direct that the appellant should hand over possession to the respondents forthwith."

37. The said judgment is not an authority for the proposition that a right of appeal can be waived only because an undertaking had been given to comply with the order.

On the other hand in *P.R. Deshpande v. Maruti Balaram Haibatti,* [(1998) 6 SCC 507], a three Judge Bench of this Court held:-

> "11. A party to a lis can be asked to give an undertaking to the court if he requires stay of operation of the judgment. It is done on the supposition that the order would remain unchanged. By directing the party to give such an undertaking, no court can scuttle or foreclose a statutory

A remedy of appeal or revision, much less a constitutional remedy. If the order is reversed or modified by the superior court or even the same court on a review, the undertaking given by the party will automatically cease to operate. Merely because a party has complied with the directions B to give an undertaking as a condition for obtaining stay, he cannot be presumed to communicate to the other party that he is thereby giving up his statutory remedies to challenge the order. No doubt he is bound to comply with his undertaking so long as the order remains alive and C operative. However, it is open to such superior court to consider whether the operation of the order or judgment challenged before it need be stayed or suspended having regard to the fact that the party concerned has given undertaking in the lower court to abide by the decree or D order within the time fixed by that court."

38. For the reasons aforementioned the impugned judgment cannot be sustained. The same as well as the judgment of the Tribunal are set aside accordingly. The appeals are allowed. No costs.

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D.G. Appeals allowed.