Ram Khilari and Others Vs Union of India (UOI) and Others

Court: Rajasthan High Court

Date of Decision: May 10, 1976

Acts Referred: Constitution of India, 1950 â€" Article 16
Railway Servants (Discipline and Appeal) Rules, 1968 â€" Rule 10, 11, 12, 13, 14

Citation: AIR 1976 Raj 219 : (1976) RLW 320 : (1976) 9 WLN 300

Hon'ble Judges: D.P. Gupta, J

Bench: Single Bench

Advocate: M. Mridul, Calla and R.R. Vyas, for the Appellant; C.L. Agarwal and L.R. Bhansali, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

D.P. Gupta, J.
These 29 writ petitions arise in somewhat similar circumstances and, therefore, it would be proper to dispose them of by a

common order.

2. The petitioners in all these writ petitions were employed in different capacities at various places in Rajasthan in the Indian Railways and they

were removed from service as a sequel to the All India Strike of Railwaymen, which took place in May, 1974. It is common ground that the

Central Government, by virtue of the powers conferred upon it under Rule 118 of the Defence of India Rules, 1971 prohibited any strike in the

Railway Service in India in connection with any industrial dispute for a period of six months with effect from November 26, 1973. Several Unions

representing railway employees gave notices of an All India Strike of employees working on Indian Railways, which was to take effect from May

8, 1974, to ventilate the grievances of the railway employees, in respect of various matters relating to their service conditions. As the attempted

negotiations failed, the strike took place as contemplated. The Disciplinary Authority concerned, in the case of each one of the petitioners, waived

the holding of a disciplinary enquiry in accordance with the provisions of Rules 9 to 13 of the Railway Service (Discipline and Appeal) Rules, 1968

(hereinafter referred to as "the Rules") by passing an order under Clause (ii) of Rule 14 and orders of dismissal or removal were passed by the

concerned Disciplinary Authority, separately in the case of each one of the petitioners. The petitioners have now challenged in these writ petitions

the validity of the aforesaid orders of their removal or dismissal from service and have alleged that the termination of their service was illegal and

arbitrary and was brought about in a mechanical manner, with the sole intention to victimise them.

It has further been alleged that although some of the railway employees, who were also dismissed by the Disciplinary Authorities concerned in the

same manner as the petitioners, have since then been taken back in service and the orders of their dismissal were withdrawn, yet the petitioners

were not given similar treatment and that the petitioners only were picked up and sacked amongst striking railway employees.

3. The Railway Administration has stated in Its replies that an unprecedented and grave situation was brought into existence largely affecting the

economy of the country, as the movement of goods traffic including food-stuffs was brought to a stand-still, on account of the illegal strike resorted

to by the railway employees on an All India basis and that the petitioners played a leading role in organising the said strike and in preventing loyal

staff from attending to their normal duties, by exercising coercive pressure upon them. It is alleged that the petitioners not only resorted to illegal

strike by absenting themselves from their duties, but they exhorted the railway staff to participate in the illegal strike and indulged in aggressive

propoganda for that purpose and threatened the loyal staff of dire consequences if they did not join the strike and thus committed serious

misconduct.

It is also alleged that the railway employees and their leaders were at the relevant time in a turbulent mood and no loyal employee could dare to

give evidence against the petitioners for fear of their lives or of severe bodily injury and as such it was not possible to hold disciplinary enquiries in

accordance with the provisions of the Rules against the erring workmen and, therefore, proceedings under Clause (ii) of Rule 14 were initiated

against the petitioners. It is alleged that the Disciplinary Authorities concerned considered the relevant material which was placed before them and

satisfied themselves about the truth of the allegations made against the petitioners and after applying their mind proceeded to pass orders of

removal or dismissal of the concerned employees and that speaking orders were passed in the case of each one of the petitioners. It is also

submitted that no discrimination was practised and that individual cases were considered on merits while taking back the employees and the orders

of re-instatement were passed on a consideration of the facts and circumstances of each case. The Railway Administration has also submitted that

a remedy by way of appeal was open to the petitioners which was duly availed of by them and that appeals were dismissed in all cases as the

orders of removal or dismissal of the petitioners were based on serious misconduct committed by them.

4. The cases of the petitioners can be broadly divided into two categories. In the cases of petitioners, which have been included in Schedule ''A''

annexed to the order, a cryptic order was conveyed to the respective petitioner. The order conveyed to Shri Ram Khilari, the petitioner in S. B.

Civil Writ Petition No. 2577 of 1974, was in the following terms:--

WESTERN RAILWAY

Works Manager''s Office,

Kota.

No. E. 1082/8/7/(74)(iii) D/- 9-5-1974

To,

Shri Ram Khilari, Fitter, T. No. 6373

Body Repair Shop, Wagon Repair Shop,

Kota.

You are hereby informed that in exercise of the powers vested in me by Rule 14 (ii) of the Railway Service (Discipline and Appeal) Rules 1968,

you are dismissed from Railway service with effect from 9-5-1974.

You are required to acknowledge receipt of this letter on the form subjoined below.

Signature sd/-

Designation of Works Manager,

the competent Western Railway,

authority Kota.

Instructions:--

(a) You are relieved of your duties on 9-5-1974.

(b) Settlement of your dues will be paid at the office of A. A. O. (W & S)--Kota.

(c) Under Rule 18 of the Railway Service (Discipline and Appeal) Rules, 1968 an appeal against these orders lies to the Addl. CME (W)-CCG.

provided:--

(i) the appeal is preferred within 45 days of the receipt of this notice.

(ii) the appeal contains no disrespectful or improper language.

5. The other petitioners, whose cases have been included in Schedule ''A'', were served with similar orders except that the difference in the date

with effect from which the dismissal of the concerned petitioner became effective. In the cases of some of the petitioners, included in this category,

the words ""for serious misconduct"" were also added after the date with effect from which the orders of dismissal became operative, although in all

other respects the orders conveyed to such petitioners were identical to the one quoted above. In the cases of petitioners included in Schedule ''B''

appended to this order, the orders conveyed to the respective petitioners contained particulars relating to the alleged misconduct, although the

reasons for the satisfaction of the concerned Disciplinary Authority as to why it was not reasonably practicable to hold an enquiry in case of such

petitioners were not communicated to some of them.

6. Mr. Agarwal, appearing for the Railway Administration in some of the cases, argued that the writ petitions, particularly the one filed by Shri

Mahesh Chandra (S. B. Civil Writ Petition No. 2576 of 1974) should be dismissed on the ground that the petitioners were guilty of suppression of

material and relevant facts relating to the occurrence of the All India Railway Employees'' strike and the participation of the petitioners therein.

Having considered the averments made in the writ petitions and the replies, I do not feel impressed with the submission that the writ petitions suffer

from the vice of suppression of material facts. The preliminary objection raised by Shri Agarwal on this score is, therefore, repelled.

7. The first ground on which the orders of removal or dismissal of the petitioners have been challenged by the learned counsel for the petitioners is

that the Railway Administration discriminated between its employees and although the orders of dismissal and removal were withdrawn in cases of

some of such employees, a like treatment was not afforded to the petitioners, Learned counsel argued that the petitioners were similarly situated to

other persons whose details have been furnished by the petitioners in their writ petitions and it is submitted that although those persons were

detained under the Maintenance of Internal Security Act for organising the aforesaid strike of railway employees and that they were dismissed in

like manner as the petitioners by identical orders of dismissal, but the orders of their dismissal were later on revoked by the concerned Disciplinary

Authorities. It is argued that similar treatment was not accorded to the petitioners in respect of the withdrawal of orders of dismissal or removal.

Learned counsel submitted that the petitioners were deliberately picked up and chosen for discriminatory treatment and that the respondents have

not justified even in their replies as to why a distinction was made in the cases of the petitioners and other persons, who were similarly situated to

them and were dismissed or removed from employment in like manner. Mr. Mridul, learned counsel appearing for some of the petitioners relied

upon the following observations of their Lordships of the Bombay High Court in Pandurang Kashinath More Vs. Union of India, in support of the

aforesaid contention:--

These considerations apply not merely at the initial stage that is when any citizen is engaged in service or appointed to any office by the State. All

along during the continuance of the engagement or office the citizen is assured of that equality of opportunity. Here also there can be no

discrimination between one employee and another on any ground of prejudice or bias or one which is extraneous. The discretion is of course there

and the court would be wary and extremely slow in saying that equal opportunity has not been afforded to any individual citizen. And the same

fundamental principle of equality and equable treatment must, in our judgment, apply and govern the case when the employment or appointment is

sought to be terminated. .....

Learned counsel further submitted that the aforesaid decision of the Bombay High Court was approved by their Lordships of the Supreme Court in

The General Manager, Southern Railway Vs. Rangachari, and was followed with approval by this court in Sudama Prashad Vs. Divisional Supdt.

W. Rly. and Others, wherein it was observed that the basic guarantee of equal treatment assured by the Constitution is applicable to every citizen

who is seeking employment or appointment to an office under the State and to all stages of such employment. The following observation in the

decision of Pandurang More''s case was quoted with approval in Sudama Prashad''s case:--

If the termination of service was on grounds extraneous, the order of termination would be without competence and jurisdiction and order must be

treated as if it had not been made at all.

Learned counsel also placed reliance upon the decisions of the Allahabad High Court in Abdul Ahad Vs. The Inspector General of Police and

Others, and of the Patna High Court in Sukhnandan Thakur v. State of Bihar AIR 1957 Pat 617, wherein similar observations were made.

8. There can be no doubt that ""matters relating to employment or appointment to any office"" occurring in Article 16 of the Constitution refer not

only to the matters relating to the commencement of employment or appointment but also to its continuity and the termination thereof. The

guarantee enshrined in Article 16 of the Constitution ensures similar and equable treatment to persons similarly situated at all stages of such

employment--at the commencement, during the continuance and at the termination of such employment or engagement. Its primary purpose is to

prevent any person or class of persons from being subjected to invidious or purposeful discrimination or hostile treatment in the matter of

employment under the State. As Ss well known, discrimination is a double edged weapon and the the guarantee of equality in matters of

employment en-visages equable treatment in similar circumstances and forbids on the one hand the imposition of any impediment or unfair burden

or disadvantage upon some while others similarly situated are not subjected to the same and on the other hand it also forbids the conferment of

special privilege upon any individual or class of persons in an unreasonable or arbitrary manner or based upon extraneous considerations. The

guarantee extends to employment or appointment whether it is temporary or permanent. In the cases before me, it is not contended by learned

counsel for the petitioners that any discrimination was practised by the concerned Disciplinary Authorities in the matter of awarding punishments to

the petitioners and other persons who were similarly situated.

It is common ground that all persons who were similarly situated were subjected to similar treatment in the matter of imposition of penalty of

dismissal or removal from service. However, what is contended is that while the orders of dismissal of some of such employees were withdrawn,

but the petitioners were not given similar treatment in the matter of withdrawal of the orders of their dismissal or removal from service. It may be

true that all persons, who were dismissed or removed from service by the Railway Administration, might have taken part in the illegal strike and

might have also taken part in organising the aforesaid strike or in instigating persons to go on strike, yet the part played by each individual

employee in such matters might not be similar. The case of the Railway Administration is that in the matter of taking back some of the employees,

who were dismissed or removed from service, concession was shown to them after considering the merits of each individual case. Some of the

erring workmen requested the competent Authorities for sympathetic review of their cases and some of such employees were taken back in

employment by the concerned Disciplinary Authorities.

The argument of the learned counsel for the petitioners is that the respondents have failed to supply the basis for the difference in treatment in this

respect between the cases of the petitioners and the others, to whom concession is alleged to have been shown and who were taken back in

employment, although it was alleged at the time of their dismissal or removal from service that they also took leading part in organising the strike. It

may be that the Railway Administration did not furnish detailed reasons on account of which some other dismissed employees were taken back in

employment and were shown some leniency or concession, inasmuch as the orders of their removal or dismissal from service were withdrawn, yet

it can very well be considered that the part which might have been played by any two individual employees in organising the strike or in exhorting

other railway employees to participate in that strike or in threatening them in case they failed to join the aforesaid strike could not be similar and

each case had to be considered and reviewed by the concerned Disciplinary Authority on its own facts and circumstances. When a junior person is

retained in service while the service of a person senior to him is terminated, a case of discrimination may arise in the matter of termination of

employment, if the two persons are similarly situated. But the matter of withdrawal of order of removal or dismissal of a railway employee, who

took part in the illegal strike, must depend upon the role played by each individual employee in connection with the aforesaid strike and in the very

nature of things there could be no general order of withdrawal of termination merely on the ground that all such employees had taken part in the

illegal strike or in organising the same and had earlier been dismissed or removed by similar orders passed by competent authorities. It was for the

concerned disciplinary Authority to consider the facts and circumstances in the case of each individual employee and to decide for itself as to

whether it would be proper to afford any concession to the concerned employee or as to whether there were any mitigating or extenuating

circumstances which could have justified a review of the case of that individual employee for his continued retention in service. Merely because the

petitioners and other employees, whose orders of dismissal were withdrawn by competent authorities were permanent employees of the railways

and were alleged to have taken leading part in organising the strike, it could not be concluded therefrom that they were similarly situated in the

matter of termination of their services inasmuch as such termination in essence depended upon the part played by each individual employee in

connection with the illegal strike. In these circumstances, it is not possible to uphold the contention of the learned counsel for the petitioners that the

orders of dismissal or removal from service in the case of the petitioners or any one of them suffered from the vice of discrimination.

9. The second submission which has been vehemently urged by the learned counsel for the petitioners was that although the orders of dismissal or

removal of all the petitioners were alleged to have been passed by the concerned Disciplinary Authorities under Rule 14 of the Rules, yet the

provisions of Clause (ii) of Rule 14 were not complied with and as such the orders of dismissal or removal of the petitioners from service were bad

in law.

10. Rule 14, which is relevant for a consideration of this submission reads as under:--

Rule 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 Commission shall be consulted, where such consultation is necessary, before any orders are made in any case under this rule.

11. It is undisputed that in the cases of all the petitioners, orders regarding termination of their services were passed without holding any inquiry as

contemplated in Rules 9 to 13 of the Rules. It is the common case of the parties that in the cases of each one of the petitioners, the concerned

Disciplinary Authorities purported to act under the provisions of Clause (ii) of Rule 14. As already mentioned earlier, the stand taken by the

Railway Administration in this respect is that on account of the unprecedented and grave situation, which was created due to the wide-spread

illegal strike resorted to by large number of railway employees at the relevant time, it was not reasonably practicable to hold an enquiry in the

manner provided in the Rules, in respect of the misconduct of the petitioners and as such proceedings under Clause (ii) of Rule 14 of the Rules

were resorted to. However, the submission of the learned counsel for the petitioners in this respect was that Rule 14 did not altogether dispense

with an enquiry envisaged under Rules 9 to 13 in its entirety and that so much of the enquiry should have been held as might have been found

reasonably practicable in the case of each individual employee and that the recording of the order under Clause (ii) of Rule 14 did not totally wipe

out an enquiry in accordance with Rules 9 to 13 of the Rules.

12. It may be observed in this connection, the Rule 14 begins with a non obstante clause and if the concerned Disciplinary Authority was satisfied

in any case that it was not reasonably practicable to hold an enquiry in the manner provided for in Rules 9 to 13, then the application of the

procedure presecribed under the aforesaid Rules 9 to 13 was completely excluded. There is no basis for the submission advanced by the learned

counsel for the petitioners that some sort of an enquiry, as may have been found practicable in the case of each individual employee, should have

been held in accordance with the procedure prescribed under Rules 9 to 13 or in any other manner, even after the concerned Disciplinary

Authority felt satisfied that in the case of such employee it would not be expedient or reasonably practicable to hold an enquiry in the manner

prescribed in Rules 9 to 13 and duly recorded his satisfaction to that effect along with the reasons therefor. The procedure prescribed in Rules 9 to

13 of the Rules is an elaborate and integrated procedure, containing various steps which are required to be taken in seriatim, in case a disciplinary

enquiry is held against a railway employee, who is alleged to be guilty of serious misconduct, which might result in the imposition of any one of the

major penalties specified in the Rules upon him. In case an elaborate enquiry as prescribed in Rules 9 to 13 could not be held in the case of any

individual employee, because it was not reasonably practicable to hold such an elaborate enquiry in the circumstances of his case and if the

concerned Disciplinary Authority has recorded its satisfaction in this respect with reasons therefor, as he was required to do under Clause (ii) of

Rule 14, then on account of the non obstante clause, with which Rule 14 begins, the provisions of Rules 9 to 13 could not at all be made applicable

and in such circumstances there is no basis for holding that an enquiry as might have been found feasible in the circumstances of each case should

have still been held by the concerned Disciplinary Authority.

Learned counsel for the petitioners strongly relied upon the decision of a learned Single Judge of the Gujarat High Court in Bholanath Khanna v.

Union of India (1975) 1 SLR 277 in support of their contention that even in cases where Clause (ii) of Rule 14 applied, such enquiry as might be

feasible in the circumstances of each case should be held and further that an enquiry should also be held by the concerned Disciplinary Authority

for coming to the conclusion that it was not reasonably practicable to hold an enquiry in the manner prescribed in Rules 9 to 13, before recording

its satisfaction under Clause (ii) of Rule 14. With great respect to the learned Judge, I am unable to agree with the aforesaid decision, because the

significance of the non obstante clause with which Rule 14 begins has been completely overlooked by the learned Judge while deciding the

aforesaid case. It may be mentioned here that a Division Bench of the Gujarat High Court, which heard the appeal filed against the aforesaid

decision of the learned Single Judge, did not also agree with him in respect of the aforesaid matters. The Division Bench of the Gujarat High Court

which decided the Letters Patent Appeal No. 217 of 1974 filed against the decision of the learned Single Judge of that Court, made the following

observations in its order dated April 1, 1975 :--

But if the two conditions required by Clause (ii) of Rule 14 are satisfied, the disciplinary authority is not bound to follow any of the provisions

contained in Rules 9 to 1''3. We find that our learned brother M. P. Thakkar, J. has by a process of interpretation brought in by the backdoor,

what the non obstante clause at the opening words of Rule 14 specifically rules out, namely, the provisions contained in Rules 9 to 13. The

requirement about giving opportunity to show cause against the proposed punishment is part of the procedure laid down by Rules 9 to 13.

Similarly, the words ""inquiry in the manner"" go with the requirement of the subjective satisfaction of the disciplinary authority, namely, that it is not

reasonably practicable to hold an inquiry in the manner provided in these rules. By necessary implication it does not follow that some other manner

of holding the inquiry is contemplated by Rule 14 (ii) ..... What the Rule permits the disciplinary authority to do is that if the case falls

within Rule 14 (ii) and the conditions of Rule 14 (ii) as we have set out hereinabove are satisfied, the disciplinary authority can then proceed to

consider the circumstances of the case and make such orders thereon as it deems fit.

I am in respectful agreement with the aforesaid observations.

13. Learned counsel for the petitioners also placed reliance upon a decision of this Court in Jagdish Narain Purohit v. State of Rajasthan, (S. B.

Civil Writ Petn. No. 541 of 1968, decided on November 5, 1971 (Raj)). However, the decision in that case is clearly distinguishable, as there was

no order passed in that case under Rule 19 (ii) of the Rajasthan Civil Services (Classification, Control and Appeal) Rules, 1958, which is

analogous to Clause (ii) of Rule 14 of the Rules holding that it was not reasonably practicable to hold an enquiry. It was observed by the learned

single Judge in that case :--

On the other hand, it appears that the inquiry was dispensed with for the reason that the petitioner was deliberately trying to avoid the inquiry and

no useful purpose would be served by keeping it pending. That was far from spying that the State Government was satisfied that it was not

reasonably practicable to follow the procedure which had been prescribed for the inquiry by Rule 16 of the Rules. It is therefore futile to contend

that the impugned order should be upheld because of the provisions of Rule 19.

As there was no order passed under Rule 19 (ii) of the relevant rules in that case, the decision has no application to the cases before me, wherein

the competent Disciplinary Authorities have passed orders under Rule 14 (ii) of the Rules recording their satisfaction that it was not reasonably

practicable to follow the procedure prescribed in the Rules for holding a departmental enquiry against the petitioners in the circumstances of each

case.

14. I may also refer in this connection to the decision of the Division Bench of the Calcutta High Court in Chief Mechanical Engineer, E. Railway v.

Jyoti Prasad Banerjee, (1975) 2 SLR 437 ; (1975 Lab IC 1283) (Cal). Their Lordships of the Calcutta High Court also disagreed with the view

taken by Thakkar, J. of the Gujarat High Court in Bholanath Khanna"s case (1975) 1 SLR 277. Salil Kumar Datta J., speaking for the Division

Bench of the Calcutta High Court, made the following observations in this respect :--

It was suggested that Rule 14 only precludes an inquiry in the manner provided in these Rules namely Rules 9 to 13, a shorter inquiry giving at

least an opportunity to a railway servant to state his case before passing an order of penalty is not precluded and such order can be passed only

for good and sufficient reasons as enjoined in Rule 6. Such inquiry as contended cannot but affect and curtail the pleasure of the President, which in

respect of the tenure of office of public servants subject to express provisions of Article 311 and other articles we have noted, is under the

Constitution admits of no limitation. Accordingly whenever the protection under Clause (2) of Article 311 is taken away by reason of the operation

of any of its provisions, the departmental inquiry thereby contemplated cannot be held and the orders must necessarily be passed ex parte as may

be deemed fit by the disciplinary authority on the facts placed before it.

It was further observed in the aforesaid case :--

But the importation of the operation of other rules of the said rules or the principles of natural justice even after the application of the proviso (b)

of Article 311(2) or conditions referred to in Clauses (i), (ii) and (iii) of Rule 14 will, in our opinion, amount to insertion of rules or principles which

are contrary to express provisions of the Constitution and the Rules affecting the pleasure of the President or the Governor and will amount to

setting up a parallel inquiry which is not warranted by law.

15. I am, therefore, of the view that once the competent Disciplinary Authority was satisfied that in the facts and circumstances of a particular case,

it was not reasonably practicable to hold an enquiry in the manner prescribed by Rules 9 to 13 and recorded its satisfaction to that effect in writing

with reasons for coming to such a conclusion, then an enquiry in the manner provided in Rules 9 to 13 or in any other manner, based on the

principles of natural justice, was completely excluded and the competent Disciplinary Authority was duly authorised to make an ex parte enquiry in

respect of the misconduct of the concerned railway employee under Clause (ii) of Rule 14.

16. It was next argued by learned counsel for the petitioners that the reasons for coming to the conclusion that it was not reasonably practicable to

hold an enquiry as envisaged by the provisions of Rules 9 to 13 and for taking recourse to the provisions of Clause (ii) of Rule 14 should not only

be recorded by the concerned Disciplinary Authority but should also be communicated to the concerned railway employee. It was submitted in this

connection that although the petitioners made a grievance on this score in the appeals preferred by them against the orders imposing penalty of

dismissal or removal upon them, yet even the appellate order did not contain the reasons for dispensing with the enquiry in accordance with the

Rules. It was thus contended that in the absence of communication of the reasons recorded by the concerned Disciplinary Authorities, the

petitioners were not able to effectively exercise their right of appeal.

17. There can be no doubt that reasons are required to be recorded by the concerned Disciplinary Authority in respect of dispensing with an

enquiry in accordance with the procedure prescribed in Rules 9 to 13 and for holding that it was not reasonably practicable to hold an enquiry in

the manner prescribed in those Rules. The provisions of Clause (ii) of Rule 14 enjoins upon the Disciplinary Authority concerned the duty of

recording reasons in writing if the said Authority is of the view that it was not reasonably practicable to hold an enquiry in the manner provided in

the rules. As the concerned employee would otherwise be entitled to get the benefit of an elaborate enquiry in accordance with the procedure

prescribed in Rules 9 to 13, it is of utmost importance that the Disciplinary Authority concerned, while dispensing with such an enquiry, should

record the reasons on the basis of which it feels satisfied in each case that it is not reasonably practicable to hold an enquiry in that case. Even if the

order passed by the Disciplinary Authority under Clause (ii) of Rule 14 is considered to be a matter of subjective satisfaction of the concerned

Disciplinary Authority, yet the recording of reasons for dispensing with the elaborate enquiry as prescribed under the Rules appears to be

mandatory, by the very provisions of Clause (ii) of Rule 14.

18. A reference may be made in this connection to the decision by their Lordships of the Supreme Court in The Collector of Monghyr and Others

Vs. Keshav Prasad Goenka and Others, In that case the question of construction of Section 5-A of the Bihar Private Irrigation Works Act, 1922

came up for consideration before their Lordships, which provided that ""notwithstanding anything to the contrary contained in the Act"", whenever

the Collector ""for reasons to be recorded by him"" was of the opinion that the ordinary procedure prescribed in the Act could not be followed, he

may cause the repair of the Irrigation Works done by such agency as he might think proper. Interpreting the aforesaid provision, their Lordships of

the Supreme Court observed that even if it be assumed that the Collector was exercising merely an administrative jurisdiction and was not

functioning as a quasi-judicial authority while taking recourse to the provisions of Section 5-A of the aforesaid Act and that the matters which

conferred jurisdiction upon him to act u/s 5-A were of his subjective satisfaction, yet the requirement of the words ''for the reasons to be recorded

by him'' could not be held to be otherwise than mandatory. Their Lordships were further pleased to hold that on the texture of the aforesaid

provision, the recording of the reasons by the Collector was a condition precedent for the emergence of the power to make the order under that

provision and that the statute required what was termed as a ''speaking order''. Their Lordships expressed the view that the object with which the

provision was inserted could be wholly defeated and the protection afforded by it would be nullified, if it were held that the requirement of

recording reasons was anything but mandatory.

In my view, the principle of the aforesaid case is fully applicable to the provisions of Sub-clause (ii) of Rule 14 of the Rules and it must be held that

the recording of reasons by the competent Disciplinary Authority for dispensing with an enquiry in accordance with the provisions of Rules 9 to 13

was mandatory and the same provided a protection for safeguarding the rights of the delinquent railway employees, in cases where the Disciplinary

Authority concerned decided to deviate from the normal procedure of a departmental enquiry, as envisaged in the Rules 9 to 13 of the Rules.

19. Then the further question which arises for consideration is as to whether the reasons which are to be recorded by the concerned Disciplinary

Authority under Clause (ii) of Rule 14 for dispensing with an enquiry in accordance with the provisions of Rules 9 to 13 should also be

communicated to the concerned railway employee. While learned counsel for the petitioners emphatically argued that communication of such

reasons was imperative, Mr. Agarwal and Mr. Bhansali appearing on behalf of the Railway Administration submitted that the recording of such

reasons on the file by the concerned Disciplinary Authority was sufficient as it was a matter of subjective satisfaction of that authority and such

reasons need not be communicated to the concerned railway employee. Learned counsel for the petitioners relied upon the decision of the Gujarat

High Court in Testeels Ltd. v. N. M. Desai AIR 1970 Guj 1 in support of their contention. It was held in the aforesaid case that both on principle

and on authority, every administrative officer exercising quasi-judicial functions is bound to give reasons in support of the order he makes. It was

emphasised that the giving of reasons is necessary to check arbitrariness in the decision of administrative authorities, who are expected to take

decisions in accordance with principles and rules and further in the absence of recording of reasons, the right of judicial review by the High Court

and the Supreme Court would otherwise be stultified and no redress would be available to the persons concerned, if the reasons for the order are

not recorded. There can be no dispute with the aforesaid proposition of law, which is firmly established. The right to know the reasons for a

decision which adversely affects one''s person or property is a basic right of every litigant either in judicial proceedings or in quasi-judicial

proceedings conducted by administrative officers. There can be no doubt that the obligation to give a reasoned decision imposes a substantial

check upon the misuse of power. Reasons are after all links between the material to be considered by the concerned authority and the conclusion

to which it arrives after such consideration and as such the giving of reasons would no doubt exclude arbitrariness and caprice in the discharge of

functions by administrative officers having duty to act judicially.

20. In Jyoti Prasad Banerjee''s case 1975 LIC 1288 their Lordships of the Calcutta High Court, while dealing with this aspect of the matter,

observed that the decision of the concerned Disciplinary Authority dispensing with an enquiry under Clause (ii) of Rule 14 cannot be called as an

exercise of judicial power by such authorities as there is no scope in such matters for affording to the respective parties opportunities of stating their

respective cases. Even so, there is no doubt that such order should give reasons to indicate the basis on which the concerned Disciplinary

Authority comes to record its satisfaction for dispensing with a regular disciplinary enquiry. However, it was held in the aforesaid case that there

was no basis for the further submission that the reasons recorded for dispensing with an enquiry under Rule 14 (ii) should also be communicated to

the concerned employee. The Division Bench of the Gujarat High Court (in Letters Patent Appeal No. 217 of 1974, decided on April 1, 1975)

(Guj) made the following observations in this respect :--

It is well settled that when subjective satisfaction of this kind is to be reached, for reasons to be recorded in writing, those reasons may be noted

in the file and when judicial scrutiny is being held, those reasons in writing may be looked at by the Court so that the Court may be satisfied that the

requirements of the statutory rules or the statute are satisfied. The delinquent railway servant has not to be given these reasons which the

disciplinary authority must record in writing for arriving at its satisfaction that it is not reasonably practicable to hold an inquiry in the manner

provided in Rules 9 to 13. Non-supplying of these reasons to the Government servant concerned does not in any manner violate any principle of

natural justice because if at all any principles of natural justice are to be brought into the picture, they are to be only for the purpose of calling upon

the Government servant concerned to give his version regarding the allegations made against him. The reasons in writing contemplated by Rules 14

(ii) are to be placed on record so that the requirements of statutory Rule 14 (ii) are satisfied and if materials from the files in the form of an affidavit

or in any other manner are brought before the Court which is considering the question whether the satisfaction contemplated by Rule 14 (ii) was or

was not reached, the Court can look into the files and decide for itself whether the subjective satisfaction contemplated by Rule 14 (ii) was or was

not reached by the disciplinary authority before it passed the order against a railway servant without following the procedure laid down in Rules 9

to 13 and without holding the inquiry provided in those Rules.

It may also be mentioned here that no appeal is maintainable under the Rules against an order passed by the concerned Disciplinary Authority

under Clause (ii) of Rule 14 dispensing with a regular disciplinary enquiry in accordance with the Rules. The orders against which an appeal lies

have been enumerated in Rule 18 and the order dispensing with an enquiry under Clause (ii) of Rule 14 is not one of such orders against Which an

appeal could be preferred by the delinquent railway employee. Thus the communication of the reasons recorded by the competent Disciplinary

Authority under Rule 14 (ii) does not appear to be necessary, although they can always be examined by a Court when the question is raised that

no reasons were recorded for dispensing with the enquiry or that the reasons so recorded were insufficient to dispense with such an enquiry in

accordance with the procedure prescribed under the Rules. In this connection reference may be made to the decision of their Lordships of the

Supreme Court in S. Narayanappa and Others Vs. Commissioner of Income Tax, Bangalore, . In that case the question which came up for

consideration was as to whether it was necessary for the Income Tax Officer to communicate the reasons recorded by him for initiating

proceedings u/s 34 of the Indian Income Tax Act, 1922. It was held by their Lordships of the Supreme Court that although in Section 34 of the

aforesaid Act the expression ''reason to believe'' does not mean a purely subjective satisfaction on the part of the Income Tax Officer and the belief

must be held in good faith and must not be merely a pretence and that the reasons for such belief must have a rational connection or relevant

bearing to the matter in issue and should not be extraneous or irrelevant for the purposes of that section, but the recording of reasons by the

Income Tax Officer was certainly administrative in character and there was no requirement in any of the provisions of the Income Tax Act laying

down as a condition for the initiation of the proceedings u/s 34 of that Act that the reasons which induced the Income Tax Officer to initiate

proceedings and the Commissioner to accord sanction must also be communicated to the assessee. The principle of the aforesaid decision is

equally applicable to the communication of the reasons to be recorded by the campetent Disciplinary Authorities under Clause (ii) of Rule 14 of the

Rules for dispensing with a regular enquiry in accordance with the provisions of Rules 9 to 13. I, therefore, hold that although recording of reasons,

which induced competent Disciplinary Authority to hold that it was not reasonably practicable to conduct an enquiry in the manner provided in the

Rules in respect of the misconduct of a railway employee, is mandatory for the initiation of the proceedings under Rule 14 and for dispensing with

the enquiry contemplated under Rules 9 to 13, yet it is not incumbent upon the competent Disciplinary Authority to communicate such reasons to

the delinquent railway employee.

21. It was then argued by learned counsel for the petitioners that the concerned Disciplinary Authorities dispensed with the regular enquiry

contemplated under the Rules without adequate reasons for doing so and in an arbitrary manner. The respondents have submitted before this Court

copies of the reasons recorded by the concerned Disciplinary Authorities under Clause (ii) of Rule 14 for dispensing with the enquiry under Rules 9

to 13. In the fact of the reasons which have been recorded by the concerned Disciplinary Authorities and which have been placed on record by the

Railway Administration in these writ petitions, it cannot be held that either no reasons were recorded or that there were no reasonable grounds on

the basis of which the concerned Disciplinary Authorities could satisfy itself that it was necessary in the cases of the petitioners to dispense with the

enquiry in accordance with the Rules. Similar reasons were recorded by the concerned Disciplinary Authorities in the cases which came up for

consideration before their Lordships of the Calcutta High Court in Jyoti Prasad Banerjee''s case 1975 Lab IC 1288 which also arose in connection

with the very same railway strike and their Lordships of the Calcutta High Court in para. 63 of their aforesaid decision after an elaborate

consideration of the matter, made the following observation in the aforesaid case:--

We shall have to view the situation in the context of the all India strike observed throughout the country in all railways by a considerable section of

the railway employees which was unprecedented in its extent and magnitude. While it may be permissible for the railwaymen to start movement

and strike for securing their legitimate demands, which, however, in this case was declared illegal, the petitioners, according to the appellants,

resorted to the uniform pattern of activities in their attempt to make the strike a success. This included, according to the appellants, intimidation of

loyal workers of bodily threat, inciting them to join the strike and preventing them from joining the duties. Here was not the case of only a number

of persons being involved but the strike was on a gigantic scale with large number of persons joining the strike and, as we have indicated, the

activities of the petitioners were of uniform pattern ..... If in this situation the administration decided to take immediate steps to tackle a

situation which posed a threat to the national economy and to the supply of food stuffs and essential commodities throughout the country, it was

only inevitable that the reports and orders would also be of the same uniform pattern in the context of such circumstances. One could have

accepted the contention that the relevant steps were taken by the administrative authorities mechanically if it were shown that allegations had not

factual basis even in respect of a particular person, or, persons were selected for penalty even if they did not commit the questionable acts. The

relevant factor for consideration is about the factual existence of the circumstances which stare on the face as being true in the absence of any

effective denial. It has not been stated by the petitioners that they did not incite other railway servants not to join their works or they did not

intimidate or incite workers who wanted to join the works with bodily harm and injury.

22. As the reasons recorded in the cases before me are of identical nature and were recorded in similar circumstances, I am unable to hold that

there was no valid basis for the Disciplinary Authorities concerned in these cases to feel satisfied that it was not reasonably practicable to hold an

enquiry in accordance with the provisions of the Rules and to resort to the special procedure prescribed in Rule 14 of the Rules or to hold that the

concerned Disciplinary Authorities acted arbitrarily in the matter without adequate reasons for doing so.

23. It was next urged by the learned counsel for the petitioners that even if the concerned Disciplinary Authorities were satisfied, for reasons

recorded by them, that an enquiry as envisaged under the Rules should have been dispensed with in the cases of the petitioners as it was not

reasonably practicable to do so, yet in view of the further direction contained in Rule 14 of the Rules, the concerned Disciplinary Authority was

bound to ''consider the circumstances of the case'' before passing the order inflicting punishment upon the concerned railway employees for their

alleged misconduct and that in doing so, the concerned Disciplinary Authorities should have afforded the delinquent railway employees an

opportunity of being heard in the matter, so that the concerned Disciplinary Authorities could objectively consider both the sides of the picture

before proceeding to impose punishment upon such employees. In support of this submission reliance has been placed upon the decision of this

Court in Kuldeep Singh v. Union of India 1974 Raj LW 171 and the decision of their Lordships of the Supreme Court in the The Divisional

Personnel Officer, Southern Railway and Another Vs. T.R. Chellappan and Others, passed on appeal preferred against the decision of this Court

referred to above. The aforesaid two cases relate to Clause (i) of Rule 14 of the Rules as a disciplinary enquiry in accordance with the provisions

of the Rules 9 to 13 was dispensed with on the ground that the conduct of the railway employee concerned led to his conviction on a criminal

charge.

24. In Kuldeep Singh''s case 1974 Raj LW 171 this Court following the decision of their Lordships of the Supreme Court in M. Gopala Krishna

Naidu Vs. State of Madhya Pradesh, held as under :--

The Government servant although he is denied the benefit of an enquiry and a notice of the proposed penalty he can nevertheless be given an

opportunity of showing his side of the case if he is told that an action was proposed to be taken against him under Rule 1719. Any objective

consideration necessarily implies the examination of the two sides of the matter and the duty conferred on the punishing authority under Rule 1719

postulates that he must have both sides of the picture before he can adequately discharge the onerous duty of reaching the conclusion which to the

Government servant concerned is a matter of vital importance.

The aforesaid view expressed by this Court in Kuldeep Singh''s case 1974 Raj LW 171 was substantially approved by their Lordships of the

Supreme Court in The Divisional Personnel Officer, Southern Railway and Another Vs. T.R. Chellappan and Others, . Their Lordships were

pleased to hold in the last mentioned case that the matter of imposition of penalty was left completely to the discretion of the Disciplinary Authority

and the only reservation made was that departmental enquiry contemplated by Article 311(2) of the Constitution as well as by the departmental

rules was dispensed with. The following observations made by their Lordships in Challappan''s case may be quoted in this connection:--

The word ''consider'' merely connotes that there should be active application of the mind by the disciplinary authority after considering the entire

circumstances of the case in order to decide the nature and extent of the penalty to be imposed on the delinquent employee on his conviction on a

criminal charge. This matter can be objectively determined only if the delinquent employee is heard and is given a chance to satisfy the authority

regarding the final orders that may be passed by the said authority. In other words, the term "consider" postulates consideration of all the aspects,

the pros and cons of the matter after hearing the aggrieved person. Such an inquiry would be a summary inquiry to be held by the disciplinary

authority after hearing the delinquent employee. It is not at all necessary for the disciplinary authority to hold a fresh departmental inquiry which is

dispensed with under Rule 14 of the Rules of 1968, which incorporates the principle contained in Article 311(2) proviso (a). This provision confers

power on the disciplinary authority to decide whether in the fads and circumstances of a particular case what penalty, if at all, should be imposed

on the delinquent employee. It is obvious that in considering this matter the disciplinary authority will have to take into account the entire conduct of

the delinquent employee, the gravity of the misconduct committed by him the impact which his misconduct is likely to have on the administration

and other extenuating circumstances or redeeming features if any present in the case and so on and so forth ... ... The position is that the

conviction of the delinquent employee would be taken as sufficient proof of misconduct and then the authority will have to embark upon a summary

inquiry as to the nature and extent of the penalty to be imposed on the delinquent employee ... ... The statutory provision referred to

above merely imports a rule of natural justice in enjoining that before taking final action in the matter the delinquent employee should be heard and

the circumstances of the case may be objectively considered. This is in keeping with the sense of justice and fair-play.

The submission of the learned counsel for the petitioners is that the aforesaid rule of natural justice which has been applied by their Lordships of the

Supreme Court in the aforesaid decision to the cases of railway employees coming within Clause (i) of Rule 14, should equally be made applicable

to the cases coming under Clause (ii) of the aforesaid Rules.

25. It may be observed in this respect that it would not be feasible in the circumstances, when the concerned Disciplinary Authority comes to the

conclusion that it was not reasonably practicable to hold an enquiry in the manner provided in the Rules in the case of a particular railway

employee, to afford such an employee an opportunity of being heard in the matter and to hold a summary inquiry as to the nature and extent of the

punishment to be imposed on the delinquent employee, as envisaged by their Lordships of the Supreme Court in The Divisional Personnel Officer,

Southern Railway and Another Vs. T.R. Chellappan and Others, There can be no doubt that the holding of a regular departmental enquiry is

dispensed with in cases coming in Clause (ii) of Rule 14 on account of a practical difficulty as it is found by the competent Disciplinary Authority in

such cases that it is not reasonably practicable to hold such an enquiry. Thus the utter impracticability of the enquiry is the very: basis for dispensing

with an enquiry in cases coming under Clause (ii) of Rule 14 of the Rules and it would therefore be extremely difficult in such circumstances to hold

that the rule still postulates the holding of a summary enquiry or giving the delinquent employee an opportunity of being heard in the matter relating

to the nature and quantum of punishment to be imposed upon him.

26. In Karam Singh v. Transport Commissioner AIR 1965 J & K 53 while interpreting a similar provision it was observed :--

In our opinion, before the aforesaid proviso applies so as to deprive an employee of the constitutional protection afforded to him by Section 1"26

of the State Constitution, it must be shown that it was not possible or feasible with due diligence to afford him a reasonable opportunity of showing

cause against the action proposed to be taken against him. Impracticability for not giving such an opportunity may arise out of various

circumstances. For instance an employee may be at such a place that it would not be reasonably possible to ensure his attendance or such other

similar cases.

Thus, if on account of the non-availability of the delinquent employee or of some such similar reason it may not be possible or feasible to give an

opportunity to the delinquent employee of showing cause against the action proposed to be taken against him, it would also be almost improbable

in such cases to afford the delinquent employee concerned an opportunity of hearing in respect of the nature and extent of the penalty to be

imposed upon him, in case either the delinquent employee is not available or where it is not possible or feasible for some other similar reason to

give an opportunity of hearing to him. In such circumstances, the concerned Disciplinary Authority, although still enjoined by the provisions of Rule

14 to consider objectively the circumstances of the case before passing an order imposing punishment upon the delinquent employee is not bound

to afford an opportunity of hearing to the delinquent employee even in respect of the nature and extent of the penalty he imposed upon him, on

account of the utter impracticability of holding even such a summary inquiry.

In the cases coming under Clause (iii) of Rule 14 where in the interest of the security of the State it is not expedient to hold an enquiry in the

manner provided in the Rules, it may involve a grave security risk to afford an opportunity of tearing to such a delinquent employee or to hold an

enquiry even in respect of the nature and extent of punishment to be imposed upon him, howsoever summary it might be, and the question of

expediency relating to the security of the State may be involved therein. Thus, the holding of a summary enquiry and the giving of an opportunity of

hearing to the delinquent employee, even in respect of the nature and extent of punishment to be imposed upon him, before taking final decision in

the matter of imposition of punishment upon him, which has been made applicable as a rule of natural justice in cases falling under Clause (i) of

Rule 14, cannot be applicable to the cases falling under Clauses (ii) and (iii) of the aforesaid rule. Of course, the Disciplinary Authority, would still

be duty bound to objectively consider the circumstances of each case, with the sense of justice and fair-play, before imposing penalty upon the

concerned employee.

27. In the cases before me, as already observed above, a grave and unprecedented situation had arisen on account of the All India strike of

railway employees and the competent Disciplinary Authorities felt that the whole situation was very disturbing and the railway employees were in a

turbulent mood and if an opportunity of hearing was afforded to the concerned employees, there was apprehension that it may lead to great

disorder, particularly in view of the agitated mind of the union leaders and other workmen. Thus the concerned Disciplinary Authorities came to the

conclusion that in the situation which prevailed at the time it was utterly impracticable to hold any enquiry whatsoever or to afford an opportunity of

hearing to the delinquent workmen and in these circumstances it was not considered expedient to afford the employees concerned even a chance

of furnishing their explanation on the limited question relating to the nature and extent of the penalty imposed upon them. I am, therefore, of the

opinion that in the circumstances prevailing at the relevant time even the holding of a summary enquiry was also not reasonably practicable and was

as such excluded in such circumstances.

28. Then it was urged by the learned counsel for the petitioners that even while the holding of a disciplinary enquiry was dispensed with under the

provisions of Clause (ii) of Rule 14, yet it was incumbent upon the concerned Disciplinary Authorities to record reasons for holding the misconduct

of the petitioners proved and for imposing punishment upon them and further that the orders containing such reasons should have been duly

communicated to the petitioners. It was argued that the communication of reasons was essential so that the railway employees concerned could

have effectively exercised their right of appeal and that in the cases included in Schedule ''A'' no reasons at all were communicated by the

Disciplinary Authorities to the concerned petitioners. In some of those cases even this much has not been mentioned in the orders of dismissal

communicated to the concerned railway employees that they were punished for some misconduct on their part. On behalf of the Railway

Administration it has been argued that in each and every case the competent Disciplinary Authority has duly recorded reasons for holding that the

misconduct of the concerned railway employee was proved and that the employee concerned could have asked the competent Disciplinary

Authority to supply the reasons recorded in his case, if he required the same for the purposes of filing an appeal. The contention of the learned

counsel for the respondents in this respect was that it was not necessary for the Disciplinary Authority to supply the reasons for dismissal or

removal unless the same were demanded by the railway employee concerned.

29. Mr. Agarwal, appearing on behalf of the respondents, submitted that there was nothing in Rule 14 to show either that the reasons should be

recorded or that they should be communicated. It was argued by him that the order passed under Rule 14 dispensed with the requirement of Rules

9 to 13, which included Rule 12 of the Rules and according to the learned counsel it was only Rule 12, which required the order of the Disciplinary

Authority to be communicated to the railway servants along with the copy of his findings on each charge and a copy of the report of the enquiring

authority, if the Disciplinary Authority was not himself the enquiring authority. Thus the contention of the learned counsel was that reasons were

neither required to be recorded nor to be communicated in cases where an order was passed by the Disciplinary Authority under Rule 14.

30. Mr. Agarwal placed reliance upon the decision of the Supreme Court in Express Newspapers (Private) Ltd. and Another Vs. The Union of

India (UOI) and Others, . In that case, dealing with the provisions of the Working Journalists (Conditions of Service) and Miscellaneous Provisions

Act, 1955 it was observed by their Lordships of the Supreme Court that the Wage Board constituted under the provisions of the aforesaid Act

need not give reasons for its decision. It was observed that the Act made no provision in that behalf and the Wage Board was perfectly within its

rights, if it chose not to give its reasons for its decision. However, their Lordships made the following further observations :--

Prudence should, however, have dictated that it gave reasons for the decision which it ultimately reached because if it had done so, we would

have been spared the necessity of trying to probe into its mind and find out whether any particular circumstance received due consideration at its

hands in arriving at its decision.

It was, no doubt, observed in that case that the absence of giving reasons did not vitiate the decision of the Wage Board.

Learned counsel also placed reliance upon the decision of their Lordships of the Supreme Court in Som Datt Datta Vs. Union of India (UOI) and

Others, wherein their Lordships while dealing with the provisions of the Army Act observed that :--

There is no express obligation imposed by Section 164 or by Section 165 of the Army Act on the confirming authority or upon the Central

Government to give reasons in support of its decision to confirm the proceedings of the Court Martial- Mr. Dutta has been unable to point out any

other section of the Act or any of the rules made therein from which necessary implication can be drawn that such a duty is cast upon the Central

Government or upon the confirming authority. Apart from any requirement imposed by the statute or statutory rule expressly or by necessary

implication, we are unable to accept the contention of Mr. Dutta that there is any general principle or any rule of natural justice that a statutory

tribunal should always and in every case give reasons in support of its decision.

It may be pointed out that the aforesaid observations were made by their Lordships in connection with the proceedings of the confirming authority

in matters relating to Court Martial and of the Central Government to which a petition could thereafter be made by the delinquent military

personnel. So far as the proceedings of Court martial are concerned, the Rules omit "all" mention of the evidence or the reasons by which the

finding is arrived at by the Court martial and it is provided that the finding shall simply be recorded as that of guilty or not guilty. Thus in cases

where matters of security of State are involved, it may not be incumbent upon the concerned Disciplinary Authority to give reasons for its decision

or to communicate the same to the delinquent employee, but the aforesaid decision would not be applicable in the case of imposition of punishment

by Disciplinary Authorities upon civil employees of the State.

31. Reliance was also placed on the following observations in Narain Das and Others Vs. The Improvement Trust, Amritsar and Another,

It was not seriously argued before us, and in our opinion, rightly so, that the Trust was bound to give reasons for holding as to why the entire land

of the appellants was necessary for executing the scheme. There is no provision of the Act which imposes such an obligation on the Trust when

corning to a decision u/s 56 and indeed in the High Court this point was conceded by the appellants.

32. It may be pointed out that the aforesaid observations are based upon concession and the provisions of the particular enactment which was

under consideration of their Lordships in the aforesaid case and no serious argument was made before their Lordships regarding the necessity of

recording reasons.

33. Learned counsel for the respondents also relied upon the decision of their Lordships of the Supreme Court in The Union of India v. K.

Rajappa Menon AIR 1970 SC 743 ; 1970 Lab IC 578. In that case, it was observed by their Lordships of the Supreme Court that when the

Enquiry Officer has given his finding in respect of each charge, the Disciplinary Authority, after giving consideration to the record of the

proceedings of the departmental enquiry, if it affirmed the findings of the Enquiry Officer, was not required to discuss the evidence and the facts

and circumstances and write a detailed order like a judgment of a judicial tribunal. Their Lordships were pleased to observe that the Rules, after

all, have to be read not in a pedantic manner but in a reasonable and practical way. There can be no doubt about the aforesaid proposition and in

case the Enquiring Officer, who was not the Disciplinary Authority, has given his finding on each charge after discussing the evidence and the facts

and circumstances established at the departmental enquiry, it would be empty formality and mere repetition to require that the Disciplinary

Authority, even while affirming the findings recorded by the Enquiring Officer, should again deal with the entire record and discuss the evidence and

record finding on each charge and write an elaborate order as if it was a judgment of a judicial tribunal. But all the same it is necessary that at least

one authority, either the Enquiring Authority and in case the Disciplinary Authority is himself the Enquiring Authority, then the latter authority, should

consider the entire material placed before it during the disciplinary enquiry and record reasons for coming to the conclusion that the misconduct of

the delinquent employee was proved.

34. In Calcutta Dock Labour Board Vs. Jaffar Imam and Others, it was observed by their Lordships of the Supreme Court :--

There can be no doubt that when the appellant purports to exercise its authority to terminate the employment of its employees such as the

respondents in the present case, it is exercising authority and power of a quasi-judicial character.

35. In Mahabir Prasad Santosh Kumar Vs. State of Uttar Pradesh and Others, it was observed by their Lordships of the Supreme Court :--

Satisfactory decision of a disputed claim may be reached only if it be supported by the most cogent reasons that appeal to the authority.

Recording of reasons in support of a decision on a disputed claim by a quasi-judicial authority ensures that the decision is reached according to law

and is not the result of caprice, whim or fancy or reached on grounds of policy or expediency. A party to the dispute is ordinarily entitled to know

the grounds on which the authority has rejected his claim. If the order is subject to appeal, the necessity to record reasons is greater, for without

recorded reasons the appellate authority has no material on which it may determine whether the facts were properly ascertained, the relevant law

was correctly applied and the decision was just.

36. The same view was expressed by their Lordships of the Supreme Court in The State of Uttar Pradesh Vs. Madan Mohan Nagar,

37. In Union of India (UOI) Vs. Mohan Lal Capoor and Others, it was held that reasons are to be recorded as it is a safeguard against passible

injustice and arbitrariness. The following observations made by their Lordships in the aforesaid decision may be referred to:--

Reasons are the links between the materials on which certain conclusions are based and the actual conclusions. They disclose how the mind is

applied to the subject-matter for a decision whether it is purely administrative or quasi-judicial. They should reveal a rational nexus between the

facts considered end the conclusions reached. Only in this way can opinions or decisions recorded be shown to be manifestly just and reasonable.

38. In Rajinder Pal Abrol Vs. State of Punjab and Others, which was a case of removal of a Government employee, an argument was advanced

before the Punjab and Haryana High Court that the State Government, as a quasi-judicial authority, was bound to pass a speaking order indicating

the process of reasoning by which it reached its conclusion that the charges against the employee were established. A Division Bench of the

aforesaid High Court accepted this submission and observed that the application of Judicial mind by the Authority concerned must appear from the

order itself and the reasons are not to be guessed or gathered from the scrutiny of the executive file. The order of removal was set aside in that

case on the ground that there was not the least indication in the order as to whether the charges were considered and found established or not. The

aforesaid decision of the Punjab and Haryana High Court was approved by their Lordships of the Supreme Court in The State of Punjab and

Others Vs. Bakhtawar Singh and Others, and their Lordships of the Supreme Court held that as the order removing the delinquent employee did

not disclose that the Disciplinary Authority had applied his mind to the material on record, it could not be said to be a speaking order. It was held

in that case that the order of removal was ''arbitrary to the core'''' and could not be upheld.

39. The aforesaid decision was relied upon by this Court in Kuldeep Singh''s case 1974 Raj LW 171. The Division Bench of this Court while

dealing with a case under Clause (i) of Rule 14 of the Rules, made the following observations :--

We are in entire agreement with the arguments advanced by the learned counsel for the petitioners that the conclusion must be a speaking order,

and the simple reason for this necessity is that there is a right of appeal to the Government servant against the action taken against him under Rule

1719.

40. In Travancore Rayon Ltd. Vs. Union of India (UOI), , their Lordships of the Supreme Court, after reviewing several earlier decisions of that

Court, observed as follows :--

In this case the communication from the Central Government gave no reasons in support of the orders; the appellant Company is merely intimated

thereby that the Government of India did not see any reasons to interfere ""with the order in appeal"". The communication does not disclose the

points"" which were considered, and the reasons for rejecting them. This is a totally unsatisfactory method of disposal of a case in exercise of the

judicial power vested in the Central Government. Necessity to give sufficient reasons which disclose proper appreciation of the problem to be

solved, and the mental process by which the conclusion is reached in cases where a non-judicial authority exercises judicial functions, is obvious.

When judicial power is exercised by an authority normally performing executive or administrative functions, this Court would require to be satisfied

that the decision has been reached after due consideration of the merits of the dispute, uninfluenced by extraneous considerations of policy or

expediency. The Court insists upon disclosure of reasons in support of the order on two grounds : one, that the party aggrieved in a proceeding

before the High Court or this Court, has the opportunity to demonstrate that the reasons which persuaded the authority to reject his case were

erroneous : the other, that the obligation to record reasons operates as a deterrent against possible arbitrary action by the executive authority

invested with the judicial power.

41. It must, therefore, be held that it was incumbent upon the competent Disciplinary Authority to set out the reasons which led it to reach at the

conclusion that the alleged misconduct on the part of the concerned delinquent employee was proved and that the imposition of the penalty of

dismissal from service was justified in the facts and circumstances of each case.

42. On the question as to whether it is necessary to communicate the reasons for imposing penalty to the delinquent officer, a reference may be

made to the decision of the Punjab and Haryana High Court in H. K. Khanna v. The Union of India (1971) 1 SLR 618. In that case the

Disciplinary Authority passed a reasoned order on the file but did not communicate the same to the delinquent officer, but instead thereof a cryptic

order was issued. The Division Bench of the Punjab and Haryana High Court observed as under :--

There is no dispute that disciplinary proceeding against a Government servant, whether original or appellate, are quasi-judicial in nature. Not only

that the principles of natural justice have to be followed but the final order has to contain the reasons which have to be communicated to the

delinquent officer in order to enable him to effectively challenge those reasons in appeal or in other statutory proceedings available to him.

In coming to the aforesaid conclusion the High Court relied upon the following observations of their Lordships of the Supreme Court in Pragdas

Umar Vaishav v. Union of India, (Civil Appeal No. 657 of 1967, decided on August 17, 1967) (SC) :--

Recording of reasons and disclosure thereof is not a mere formality. The party affected by the order has a right to approach this Court in appeal,

and an effective challenge against the order may be raised only if the party aggrieved is apprised of the reasons in support of the order.

43. In Vijay Singh Yadava v. The State of Haryana (1971) 1 SLR 720 : 1972 Lab IC 713 , R. S. Narula J., (the present Chief Justice) of the

Punjab and Haryana High Court agreed with the earlier decisions of that Court and held that it was incumbent upon the Authority passing an order

to state his reasons and to communicate the same to the public servant concerned in order to enable him to effectively exercise his right of appeal.

44. In The State of Gujarat Vs. Patil Raghav Natha and Others, their Lordships of the Supreme Court made the following observations in this

respect :--

We are also of the opinion that the order of the Commissioner should be quashed on the ground that he did not give any reasons for his

conclusions. We have already extracted the passage above which shows that after reciting the various contentions he baldly stated his conclusions

without disclosing his reasons. In a matter of this kind the Commissioner should indicate his reasons, however briefly, so that an aggrieved party

may carry the matter further if so advised.

45. In a recent case arising u/s 127(1) of the Income Tax Act, 1961 their Lordships of the Supreme Court in Ajantha Industries and Others Vs.

Central Board of Direct Taxes, New Delhi and Others, held that non-communication of reasons was a serious infirmity and the order passed by

the Commissioner of Income Tax u/s 127(1) of the Income Tax Act was held to be invalid on this very ground. Their Lordships relied upon their

earlier decision in Pragdass Umar Vaishay v. Union of India, (C. A. No. 657 of 1967, D/- 7-4-1967 (SC)) referred to above, wherein their

Lordships had held that the Central Government was bound to record its reasons and communicate the same to the parties affected thereby and

further that the reasons should not be gathered from the notings in the file. In essence it was held by their Lordships that the recording of reasons

and disclosure thereof was not a mere formality. Their Lordships made the following pertinent observations in M/s. Ajantha Industries''s case :--

Communication of the order is an absolutely essential requirement since the assessee is then immediately made aware of the reasons which

impelled the authorities to pass the order ..... it is submitted, on behalf of the Revenue, that the very fact that reasons are recorded in the file,

although these are not communicated to the assessee, fully meets the requirement of Section 127(1). We are unable to accept this submission ... ...

... ... The reason for recording of reasons in the order and making these reasons known to the assessee is to enable an opportunity to the

assessee to approach the High Court under its writ jurisdiction under Article 226 of the Constitution and even to this Court under Article 136 of

the Constitution in an appropriate case for challenging the order, inter alia, either on the ground that it is mala fide or arbitrary or that it is based on

irrelevant and extraneous considerations ... ... When Law requires reasons to be recorded in a particular order affecting prejudicially the

interests of any person, who can challenge the order in Court, it ceases to be a mere administrative order and the vice of violation of the principles

of natural justice on account of omission to communicate the reasons is not expiated.

From the aforesaid decision it is apparent that the non-communication of reasons in respect of an order passed by an Administrative Authority,

which is required to act in a quasi-judicial manner, could not be supported merely on the ground that reasons could be extracted from the file,

although not communicated to the concerned delinquent employee. The principle laid down by their Lordships of the Supreme Court in the

aforesaid decision is fully applicable to the cases before me.

46. The Division Bench of the Gujarat High Court had occasion to deal with orders similar to those which were communicated to the petitioners in

cases included in Schedule ''A'' while deciding Letters Patent Appeal No. 217 of 1974 by its order dated April I 1975 (Guj). Those cases also

arose out of the Railway Employees'' strike and the employee concerned was also merely informed that in exercise of the powers vested in the

Disciplinary Authority under Rule 14 (ii) of the Rules, he was dismissed from service for serious misconduct. The Division Bench of that Court

made the following observations :--

What action or actions of the respondent constituted serious misconduct according to disciplinary authority was never communicated to him nor

was he informed of the reasons why the disciplinary authority came to the conclusion that these actions amounted to serious misconduct. He was

not informed why the penalty of dismissal from service was being imposed. Hence it was impossible for him to effectively appeal against the

decision of the disciplinary authority though the right of appeal has been conferred upon him by these statutory rules ..... it does not set out the

reasons why the authority came to the conclusion that certain acts of serious misconduct were committed by the appellant and why he imposed the

penalty of dismissal from service.

47. In the case of Ram Khilari and the other cases which are included in Schedule "A" to this order, the respondents have produced copies of the

reasons recorded by the concerned Disciplinary Authority on the files on the basis of which it came to the conclusion that the railway employee

concerned had committed serious misconduct. However, it is admitted that in those cases the reasons recorded by the concerned Disciplinary

Authority on the file were not communicated to the railway employee concerned. In the absence of communication of such reasons the right of

appeal, provided by Rule 18 against an order imposing penalty of removal or dismissal upon the concerned railway employee, became illusive. It

may also be observed that Clause (ii) of Rule 21 requires that the delinquent railway employee should present his appeal to the authority to whom

such appeal lies and that the appeal should contain all material statement and arguments on which the appellant relies and should be complete in

itself. If the reasons, on the basis of which the concerned Disciplinary Authority came to the conclusion that the delinquent railway employee had

committed serious misconduct and on the basis of which the punishment of dismissal or removal from service was imposed upon him, were not

communicated to the delinquent railway employee, then it would be impossible for him to make his submissions of fact or arguments in his appeal

against the order passed by the concerned Disciplinary Authority. It must, therefore, be held that the concerned Disciplinary Authority was not

merely bound to record reasons on the file for arriving at the conclusion that the railway employee concerned had committed serious misconduct

and also for awarding punishment of removal or dismissal from service upon him, but he was also bound to communicate the same to the

delinquent railway employee.

Rule 26 of the Rules also provides that every order made under the Rules shall be served in person on the railway servant concerned or

communicated to him by registered post What was, therefore, required to be communicated to the railway servant concerned was not merely a

cryptic order just informing him that he was found guilty of serious misconduct and was removed or dismissed from service, but a copy of the

order recorded by the competent Disciplinary Authority under Clause (ii) of Rule 14. By following the procedure of communicating merely a

cryptic order, the concerned Disciplinary Authority has deprived the railway employee concerned of his statutory right of presenting and

prosecuting an effective appeal before the appellate authority and the right of appeal has, thereby been rendered nugatory.

48. In this connection it may be pointed out that in the orders supplied to the concerned petitioners, whose writ petitions are included in Schedule

''A'', even no indication was given that the competent Disciplinary Authorities had separately recorded reasons on the file and those petitioners

were never informed that reasons had been recorded in respect of their alleged misconduct or that the same would he supplied to them on

demand, although the orders communicated to the concerned petitioners imposing penalty of dismissal from service upon them, informed the

concerned petitioners that they were entitled to file appeals to the competent Appellate Authorities against the orders of their dismissal from

service. In the absence of any indication whatsoever, it was not possible for the petitioners to imagine that the competent Disciplinary Authorities

had recorded reasons separately on the files or to make a demand for the same. Moreover, it was the duty of the Railway Administration to supply

the reasons along with the order imposing punishment upon the petitioners. The orders imposing penalty communicated to the petitioners, whose

writ petitions are included in Schedule ''A'', and in the writ petition of Ram Khilari, therefore, deserved to be quashed.

49. However, in the writ petitions included in Schedule ''B'' the orders, which were conveyed to the concerned petitioners, contained particulars of

the misconduct alleged to have been committed by them and on the basis of which the concerned Disciplinary Authority came to the conclusion

that the concerned petitioner had committed such serious misconduct that the penalty of dismissal or removal from service was required to be

imposed upon him. As such in those cases there was a speaking order passed by the Disciplinary Authority concerned and the same was also

communicated to the delinquent railway employee and such petitioners could pursue their right of appeal in an effective manner. I do not find that

any illegality was committed by the concerned Disciplinary Authorities in respect of the orders passed and communicated to the petitioners whose

cases have been included in Schedule ''B'' appended to this order.

50. As a result of the aforesaid discussion, the writ petition of Ram Khilari and sixteen other writ petitions included in Schedule ''A'' of this order

are allowed. The order passed by the concerned Disciplinary Authority dismissing the petitioner concerned from railway service on the ground of

having committed serious misconduct (Annexure I in each case) as also the subsequent order passed on appeal are quashed. However, the

comptent Disciplinary Authority would be free, if it considers proper, to communicate to the petitioner concerned the order which it might have

passed on the file under Clause (ii) of Rule 14 of the Railway Servants (Discipline and Appeal) Rules, 1968, so as to afford the concerned

petitioner an effective right of appeal against the order of his dismissal from service. The remaining writ petitions included in Schedule ''B'' have no

merits and are, therefore, dismissed. Petitioner Ram Khilari and other petitioners, whose writ petitions are included in Schedule ''A'', will be entitled

to get their costs from the respondents. In the writ petitions included in Schedule ''B'', the parties are directed to bear their own costs. (The rest of

the judgment is not material for purposes of this report--Ed.)