

**(1995) 11 AHC CK 0102**

**Allahabad High Court**

**Case No:** C.M.W.P. No. 37969 of 1992

Balveer Singh

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

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**Date of Decision:** Nov. 10, 1995

**Acts Referred:**

- Constitution of India, 1950 - Article 311(2)
- Railway Servants (Discipline and Appeal) Rules, 1968 - Rule 14

**Citation:** (1996) 1 UPLBEC 316

**Hon'ble Judges:** Paritosh K. Mukherjee, J

**Bench:** Single Bench

**Advocate:** V.B. Singh, for the Appellant;

**Final Decision:** Allowed

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**Judgement**

Paritosh K. Mukherjee, J.

Balveer Singh, moved this writ petition challenging the appellate order dated 3.9.1992, affirming the order of termination dated 24.12.1991 set out at Annexure "IV" and "I" respectively to the writ petition.

2. The said order of termination was passed against the Petitioner by Respondent No. 3 in exercise of powers under the provisions of para 8 (2)(b) of the U.P. Police Officers of the Subordinate Ranks (Punishment and Appeal) Rules, 1991 (hereinafter referred to as "Rules, 1991). The said para 8 of the Rules, 1991 reads as follows:

8. Dismissal and removal.--

(1) No Police Officer shall be dismissed or removed from service by an authority subordinate to the appointing authority.

(2) No police officer shall be dismissed, removed or reduced in rank except after proper inquiry and disciplinary proceedings as contemplated by these rules:

Provided that this rule 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 enquiry; or

(c) Where the Government is satisfied that in the interest of the security of the State it is not expedient to hold such enquiry.

3. It appears from the aforesaid para 8 (2)(b) of the Rules that the authority has power to dismiss or remove a person or to reduce him in rank if he is satisfied that for some reason to be recorded by the said authority in writing, It is not reasonably practicable to hold such enquiry.

4. This provision is parameter to the provisions of Article 311(2)(b) of the Constitution whereby such dispensation of enquiry was provided when it is not practicable to hold enquiry and Governor or the President of India is of the opinion to that effect. In the case of [B.K. Sardari Lal Vs. Union of India \(UOI\) and Others](#), It was, inter alia, held that such an enquiry may be held by the President or the Governor of the State, as the case may be, but in the case of [Samsher Singh Vs. State of Punjab and Another](#), , it has been held that the satisfaction could be arrived at by the Minister and Governor should be entitled to pass the order of ex parte, the order for satisfaction is not transferred and earlier view expressed In B.K. Sardari Lal (supra) has been reversed to that extent. It will be relevant to point out at this stage that the last Judgment of the Supreme Court reported in [Jaswant Singh Vs. State of Punjab and others](#), , wherein the Bench consisting of Hon"ble K. Jagannatha Shetty and Hon"ble A.M. Ahmadi, JJ., inter alia, interpreted the dispensation with departmental enquiry--subjective satisfaction of concerned authority must be fortified by independent material. The observation of the Supreme Court in Jaswant Singh (supra) is as follows:

It was Incumbent on the Respondents to disclose to the court the material In existence at the date of the passing of the impugned order-in support of the subjective satisfaction recorded by Respondent No. 3 in the impugned order. Clause (b) of the second proviso to Article 311(2) can be invoked only when the authority is satisfied from the material placed before him that it is not reasonably practicable to hold a departmental enquiry. Their Lordships in the said Judgment of Jaswant Singh (supra) has also placed reliance on the Judgment of [Union of India and Another Vs. Tulsiram Patel and Others](#), where, it was observed as follows:

A disciplinary authority is not expected to dispense with a disciplinary authority 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 decision to dispense with the departmental enquiry cannot, therefore, be rested solely on the ipse dixit of the concerned authority.

5. In the case of Jaswant Singh (supra), thereafter the Supreme Court held that since no particular subjective satisfaction of the concerned authority, having been disclosed, the impugned order of dismissal dated 7.4.1981 was set aside and Appellant was re-instated in the service forthwith.

6. Prior to passing of the said judgment of the Supreme Court, a single Judge of Calcutta High Court presided by Hon"ble Omiyo Kumar, J. in the case of Jyoti Prasad v. Union of India 1974 Calcutta Law Journal, inter alia, held in interpreting the provisions of Rule 14(ii) of the Railways Service Conduct and Discipline Rules, 1958 that material should be disclosed in the counter-affidavit to the effect that in the meantime made to serve charge-sheet for the purpose of holding enquiry. The delinquent was not available and by no mere subjective satisfaction of the disciplinary authority, such enquiry should be dispensed with.

7. The said view has got endorsement in the judgment of the Supreme Court in the case of Jaswant Singh (supra). The said judgment of the learned Single Judge has been affirmed by Hon"ble Shankar Prasad Mitra, J. sitting with Hon"ble S.K. Dutt J., such view, which has already been taken, got endorsement in the case of Jaswant Singh (supra).

8. Sri V.B. Singh, learned Counsel appearing for the Petitioner referred a judgment of Hon"ble Markandey Katju, J. dated 14.8.1995 passed in Civil Misc. Writ Petition No. 15410 of 1993 Ravindra Singh v. The State of U.P. and Ors. .

9. Learned standing counsel appearing for the State wanted time to produce the record and as such time was granted to him. Records were produced and relevant portion from the counter-affidavit has been placed before me.

10. I have gone through the impugned order of termination dated 24.12.1991 passed by Respondent No. 3 wherefrom it appears that the charge-sheet is not drawn and served and there was no material disclosed In the said charge-sheet that the Respondent made endeavour to serve the charge-sheet personally as the Petitioner was absconding or going underground but by mere recital of Para 8 (2) of the Rules, the services of the Petitioner were wrongfully terminated.

11. Thus, it appears before this Court that the order of termination dated 24.12.1991 passed by Respondent No. 3 cannot be sustained in law in view of the judgment of Jaswant Singh (supra) and is liable to be quashed. This order will not, however, prevent the Respondents to initiate any proceeding, if there is proper material for holding enquiry and In compliance of the principles of natural justice and in terms of the Rules.

12. In the result, the writ petition succeeds and is allowed and the order dated 3.9.1992 and 24.12.1991 passed by Respondent Nos. 2 and 3 respectively are set aside. The Petitioner will be entitled to be reinstated in service from the date of termination and he will be permitted to join service within a period of one week from the date of the production of a certified copy of this order and all consequential benefits be given to him.