(1975) 05 CAL CK 0014

Calcutta High Court

Case No: F.M.A. No. 1019 of 1974

Chief Mechanical Engineer, Eastern Railway		APPELLANT
	Vs	
Jyoti Prosad Banerjee		RESPONDENT

Date of Decision: May 14, 1975

Acts Referred:

- Constitution of India, 1950 - Article 124, 133(1), 148, 217, 218
- Defence of India Rules, 1971 - Rule 118
- Government of India Act, 1935 - Section 240
- Railway Servants (Discipline and Appeal) Rules, 1968 - Rule 10, 11, 12, 13, 14

Citation: 79 CWN 709 : (1975) 2 ILR (Cal) 237

Hon'ble Judges: Sankar Prasad Mitra, C.J; Sunil Kumar Datta, J

Bench: Division Bench

Advocate: F.S. Nariman, Addl. Solicitor-General, Sankardas Banerjee and Prasanta Kumar Ghosh, for the Appellant;R.C. Deb, Sadhan Gupta, Somnath Chatierjee, B. Chaudhury, Mahitosh Majumdar, Samir Kumar Ghose and Asoke Kumar Ganguly, for the Respondent

Final Decision: Allowed

Judgement

Sunil Kumar Datta, J.

This is an appeal against the judgment and order of Amiya Kumar Mookerjee J. dated September 2, 1974, whereby the connected rule as also the other rules heard analogously were made absolute. The Petitioners in these rules challenged the orders passed during the all-India strike of Railway men in May 1974 removing them from service in the Railways. The relevant facts are as follows:

2. By an order dated May 25, 1973, the Central Government, in exercise of the powers conferred by Rule 118 of the Defence of India Rules, 1971, prohibited any strike in connection with any industrial dispute in the Railway services in India for a period of six months with effect from November 26, 1973. According to the

Petitioners, different Federations and Trade Unions representing majority of Railway men gave notices of an all-India Railway strike to take effect from 06.00 hours of May 8, 1974, in consequence, it was alleged, of the failure of the protracted attempts for settlement of legitimate and pressing demands of Railway men about their wages, duty hours, dearness allowance, bonus, supply of foodstuff at fair price and abolition of casual labour. While negotiations were continuing, a large number of leaders of Trade Unions of Railway men were suddenly arrested throughout the country and put into prison at the instance of the Railway authorities. The strike commenced on May 8, 1974 and the Railway administration at the instance of the Ministry of Railways adopted a policy of reckless victimisation on Railway men by taking recourse to repressive measures like arrests, large-scale dismissals, penal transfers, termination of ''service and compulsory retirements of thousands of employees. The constitutional protection under the Railway Servants (Discipline and Appeal) Rules, 1968, hereinafter referred to as the Rules were thrown overboard and the Petitioners in this appeal who were supervisors of various ranks working in various capacities in the Railway administration as head draftsman, shop superintendent, charge men at Lilluah, Eastern Railway and one of them J.N. Rao posted as assistant shop superintendent at the head-quarters, Eastern Railway, by orders purported to be under Rule 14(ii) of the Rules passed on May 16, 25 and 27, 1974, were removed from service without issuing any charge-sheet or holding any inquiry.

3. The Petitioners contended that the said orders were passed mala fide for victimising the Petitioners and without any application of mind by the disciplinary authority. The conditions precedent for dispensing inquiry were absent and there was no honest and bona fide decision based on satisfaction of the disciplinary authority on objective consideration that it was not reasonably practicable to hold the inquiry provided in the Rules. There was no recording of reasons in the impugned orders for satisfaction of the authority about the reasonable impracticability of holding the enquiry which was in violation of mandatory provisions of Rule 14(ii) and Article 311(2) of the Constitution. The orders were not speaking orders and stultified the appeal which could be filed by the dismissed Railway servants. It was also incumbent on the authorities to refer to and deal with the circumstances of each case as also the source and nature of information which only could form the basis of the order. Such order was, accordingly, passed for collateral purpose on extraneous considerations. Though the disciplinary authority was required while acting under Rule 14(ii) of the Rules to function in a quasi-judicial capacity, it failed to observe even the basic norms of natural justice and fair play in passing the impugned orders without hearing the aggrieved persons before they were condemned.

4. On these allegations and contentions the Petitioners moved this Court by an application under Article 226(1) of the Constitution and on this application a rule was issued calling upon the Union of India and the Chief Mechanical Engineer, Eastern

Railway, the disciplinary authority who passed the impugned orders to show cause why the impugned orders of removal should not be quashed by a writ in the nature of certiorari and why a writ of mandamus should not issue forbearing the said authority from giving effect to the said orders.

5. The answering Respondents contested the rule and filed two successive affidavits. In the main affidavit-in-opposition affirmed on June 24, 1974, the Chief Mechanical Engineer, Eastern Railway, B. B. Lai, the answering Respondent No. 2 who passed the orders of removal, denied the allegations about the adoption of a policy to victimise the Petitioners and asserted that the impugned orders were legally issued in exercise of powers provided by law. It was stated that it was not necessary to issue charge-sheet and the circumstances in which the Petitioners were removed from service had been clearly stated in the order of dismissal. He asserted that he had applied his mind in each case and came to the conclusion on consideration of materials before him that it was not reasonable and practicable to hold the enquiry as stated in the notices. Further, the orders were speaking orders as the reasons why it was not reasonably possible to hold an enquiry was recorded in writing. It was denied that the authority had acted illegally or mala fide in the cases and it was contended that the Petitioners were lawfully removed from service.

6. The said answering Respondent No. 2 filed another supplementary affidavit affirmed on July 1, 1974, wherein it was stated that on the commencement of the strike from May 8, 1974, by all categories of Railway men an unprecedented and grave situation was brought into existence leading to serious set back of economic life of the community. Apart from passenger trains, a large number of goods trains were cancelled seriously affecting goods traffic of coal, foodstuff and essential raw materials for industries. Through the assistance of loyal staff daily about 60,000 tons in place of normal 1.28 lakh tons of traffic could be moved. The collapse of supply machinery was imminent leading to complete set back in supply of foodstuff and other essential goods. In Lilluah workshops coaches and wagons could not be overhauled nor were spare parts manufactured with chain of reaction on Railway services. The strike, thus, was striking at the very root of national economy adding to the sufferings of the public at large and in this context it was decided to exercise the special powers of the administration. The Petitioners were not only absenting themselves from work but were indulging in direct activities like intimidating and exercising coercive pressure on staff not to resume duties leading to crippling of workshop activities while the mood of the workmen was highly explosive and turbulent. The conditions were not at all opportune for initiating disciplinary proceeding following normal procedure under the rules which would have been protracted and time consuming. Further, no staff would dare to come out to give evidence while the individual activities would have continued unabated. Immediate action to create confidence in the mind of willing workers as also impact on mischievous workers was necessary so that the normal disciplinary procedure could not be utilised which would hold the nation at ransom.

7. Out of ten thousand workers in the workshop special care was taken to find out persons who were indulging in violent activities causing stoppage of work and removal orders were passed only in forty three cases after careful selection of persons who indulged in these activities. The magnitude and seriousness of the problem compelled the administration to exercise without delay the special powers conferred by the Constitution in the interest of maintaining the lifeline of the community. In the circumstances, in view of participation by the Petitioners in a strike declared illegal and their inciting and intimidating co-workers paralysing the administration, it was bona fide believed that witnesses would not be forthcoming because of the intimidation and threat held out to them. On a consideration of the reports of the controlling officers annexed to the said affidavit, the said answering Respondent No. 2 was satisfied that it was not reasonably practicable to hold inquiry provided in the said Rules. There were one set of reports against the Petitioners by the local controlling officers followed by the report of the Deputy Mechanical Engineer thereon and these were placed before the Chief Mechanical Engineer who ultimately considered the said reports and recorded his reasons for his satisfaction that it was not reasonably practicable to hold any inquiry in the manner provided in the Rules. On consideration of the case, orders in respect of the Petitioners removing them from service in the Railways were passed.

8. The Petitioners filed an affidavit-in-reply to the said affidavits affirmed on July 4, 1974. It was stated in reply to the main affidavit-in-opposition that the Petitioner No. 6 J. N. Rao was arrested at the instance of the Railway authorities on May 10, 1974. It was stated that about 4,000 employees were dismissed illegally, arbitrarily and mechanically with the intention to victimise them. It was reiterated that the impugned orders were passed mechanically and without application of mind. It was further stated that the said orders did not disclose or reveal the real state of affairs and circumstances that led to the decision on the impracticability of holding the inquiry while the statement that it was not reasonably practicable to hold the inquiry was false to the knowledge of the Respondent No. 2. It was also contended that as the reasons for dispensing with inquiry were not stated in the impugned orders they were not speaking orders and thereby the Petitioners'' right of appeal was taken away. The allegations in the petition were reiterated and it was submitted that in dispensing with the inquiry the authorities were more concerned about desirability of the detention of the Petitioners which clearly indicated the non-application of mind and intended victimisation.

9. In regard to the supplementary affidavit, it was stated that the reports annexed thereto were manufactured subsequently and there were not in existence when the main affidavit-in-opposition was affirmed. The Petitioners referred to a confidential circular issued by the Railway Board to all General Managers which set out ^ the guide-lines for dispersing with the inquiry contemplated under the said Rules in the context of the anticipated Railway strike. It was denied that conditions prevailed in any manner or as alleged which would justify the impracticability of holding the

inquiry and reference was made to the guide-lines issued by the convenor of the strike on the Railway men. It was further stated that the Respondent No. 2 had no material before him as annexed to the supplementary S affidavit nor they were speaking reports fortifying exercise of quasi-judicial powers and the impugned orders could not be passed thereon.

10. The learned Judge by his judgment under appeal in Jyoti Prosad Banerjee v. Chief Mechanical Engineer Eastern Railway (1975) 1 C.L.J. 75, inter alia, came to the conclusion that the impugned orders of removal of the Petitioners from service did not contain any reason whatsoever as to why it was not reasonably practicable to hold inquiries in the manner provided in the Rules. The recording of such reasons in the orders was imperative as it affected the rights of the Government servants and such orders were necessarily to be speaking orders. In absence of recording of reasons in the said orders, the conditions precedent for exercise of such power under Rule 14(ii) were not satisfied and it was not permissible to look into departmental files to find support for the action taken. The Rules were, accordingly, made absolute and the impugned orders were quashed with liberty to the Railway authorities to take disciplinary proceeding against the Petitioners if so advised.

11. The propriety of this order has been challenged in this appeal.

12. A decision on the legal validity of the impugned orders involves consideration of the rights and status of the Railway servants who are indisputably in public services of the Union. The relevant Articles of the Constitution in that behalf are ArticleS 309, 310 and 311. In exercise of powers conferred by the proviso to Article 309 of the Constitution, the President on August 22, 1968, framed the Railway Servants (Discipline and Appeal) Rules, 1968.

13. Rule 6 provides that minor and major penalties may, for good and sufficient reasons and as provided therein, be imposed on a Railway servant. Rules 9 to 10 provide for the procedure for imposing penalties on Railway servants in disciplinary proceeding, namely, drawing up of substance of imputations of misconduct in definite and distinct articles of charge, statement of imputations, service of the articles of charge and statement of imputations, opportunity to the Railway servant to file his written statement of defence, inquiry before the inquiring authority where oral and documentary evidence on behalf of parties are to be produced, report of the inquiry officer containing also the findings on each of the charges by the inquiring authority, the findings of the disciplinary authority thereon if he is not the inquiring authority, order by the disciplinary authority proposing major penalty if he thinks fit, giving the Railway servant further opportunity to make representation against penalty on the basis of evidence adduced during the said inquiry, consultation with Public Service Commission, if necessary, final order by the disciplinary authority.

14. Rule 11 provides the procedure for imposing minor penalties after the inquiry is held under the above Rules. Rule 12 provides for communication of order made by the disciplinary authority together with the copy of report of inquiry and findings and advice of the Public Service Commission where necessary. Rule 13 is concerned with disciplinary action in common proceeding. Rule 14 is as follows:

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.

15. Mr. Nariman, learned Additional Solicitor-General appearing for the Appellants, the Union of India and the Railway administration, contended that Article 310(1) provides the general rule that the person holding a post under the Union or the State holds office during the pleasure of the President or of the Governor as the case may be. Such pleasure, however, is controlled by the provisions of Article 311, in regard to civil posts, so that the pleasure is to be exercised in accordance with the requirements of Clause (2) of the said Article. When in the case of such an employee the application of Clause (2) is taken away by operation of any of its provisos, the control on pleasure under the said clause ceases to be operative and the tenure of service of the employee becomes subject to the rigour of the pleasure doctrine. The pleasure of the President or the Governor, as provided under Article 310(1), cannot be fettered except by Article 311 and other express provisions in the Constitution like Articles 124, 148, 217, 218 and 324. Such pleasure cannot be fettered by ordinary legislation nor by the rules framed under Article 309 of the Constitution. It was submitted that if an order of dismissal is passed in a case where a proviso to Clause (2) of Article 311 operates, such order cannot be assailed or declared invalid or void for non-observance of the provisions of inquiry under the service rules, as Article 309, as its terms indicate, is subject to the provisions of the Constitution and thus to Article 310. In view of the position in law, as indicated above, there is also no scope for application of the principles of natural justice or fair play which have been expressly ruled out by the provisos to Article 311 (2) of the Constitution and the

decision of the disciplinary authority, dispensing with the inquiry contemplated by Clause (2), has been made final by the express provisions of Clause (3). In absence of any express provision, the principles of natural justice is not to be deemed incorporated in the Constitution and if any opportunity of hearing to the employee concerned is to be given, it will mean a parallel inquiry while holding of the inquiry as provided in Article 311(2) or the Rules has been dispensed with under the provisions of the Constitution as also the Rules. The proceeding in such circumstances where the inquiry is dispensed with must necessarily proceed ex parte. It was also submitted that Rule 14(H) is a reiteration of the provision of Article 311(2) and it does not contemplate issue of any notice to the Railway servant. If any opportunity is to be given, the object of Rule 14 which is, to dispense with the inquiry would be frustrated by introducing the whole gamut of inquiry and in any event the Rules cannot fetter the pleasure contemplated in Article, 310(1).

16. Mr. R.C. Deb and later on Mr. Somnath Chatterjee appearing for the Railway servants, the Respondents in the appeal, have strongly disputed the above contentions. It was submitted that acceptance of the doctrine of pleasure as contended would amount to conferment absolute and arbitrary powers on the authorities without any restraint resulting in the negation of the rule of law so jealously cherished and protected by the Constitution. It was, further, submitted that where Rules under Article 309 have been framed, exercise of pleasure has to be made in accordance with those Rules, though no Rule under the said Article could be framed which restricts totally the application of provisions of Article 311 or the ultimate power of dismissal by the President or of the Governor while the procedure for dismissal is provided in the Rules. There is no authority which states that the Rules under Article 309 are ultra vires when it impinges on Article 310 or that Article 309 is subject to Article 310. It was, further, contended by Mr. Chatterjee as also by Mr. Sadhan Gupta that the provisions of Article 311(2) or Rule 14(ii) do not dispense with or exclude the rules of natural justice and fair play. They apply with full force and it is incumbent even when an inquiry provided in the Rules is dispensed with, a procedure appropriate to the circumstances of the case in accordance with the principles of natural justice should be followed so that the decisions may not be arbitrary. Such considerations apply with equal force on administrative orders. Reference was made to the decision in S.G. Jaisinghani Vs. Union of India (UOI) and Others, where it was observed as follows:

In this context it is important to emphasize that the absence of arbitrary power is the first essential of the rule of law upon which our whole constitutional system is based. In a system governed by the rule of law, discretion when conferred upon executive authorities must be confined within clearly defined limits. The rule of law from this point of view means that decisions should be made by the application of known principles and rules and in general such rules should be predictable and the citizen should know where he is. If a decision is taken without any principle or without any rule, it is unpredictable and such a decision is the antithesis of a

decision taken in accordance with the rule of law.

17. We shall now consider the authorities cited by the parties. In Moti Ram Deka etc. Vs. General Manager, N.E.F. Railways, Maligaon, Pandu, etc., it was observed in the majority judgment as follows:

Article 309 provides that subject to the provisions of the Constitution Act of appropriate Legislature may regulate the recruitment and conditions of service of persons appointed to public services and posts in connection with the affairs of the Union or of the State. This clearly means that the appropriate Legislature may pass Acts in respect of the terms and conditions of service of persons appointed to public services and posts, but that must be subject to the provisions of the Constitution which inevitably brings in Article 310(1). The proviso to Article 309 makes it clear that it would be competent for the President or such person as he may direct in the case of services and posts in connection with the affairs of the Union and for the Governor of a State or such person, as he may direct in the case of services and posts in connection with the affairs of the State, to make rules regulating the recruitment and prescribing the conditions of service of persons respectively appointed to the services and posts under the Union or the State. The pleasure of the President or the Governor mentioned in Article 310(1) can thus be exercised by such persons as the President or the Governor may respectively direct in that behalf and the pleasure thus exercised has to be exercised in accordance with the rules in that behalf. These rules and indeed the exercise of the powers conferred on the delegate must be subject to Article 310 and so Article 309 cannot impair or affect the pleasure of the President or the Governor therein specified. There is thus no doubt that Article 309 has to be read subject to Articles 310 and 311 and Article 310 has to be read subject to Article 311.
Para. 22. Besides, as this Court has held in The State of Bihar Vs. Abdul Majid, , the rule of English law pithily expressed in the Latin phrase "durante bene placito" (during pleasure) has not been fully adopted either by Section 240 of the Government of India Act, 1935, or by Article 310(1)...the true position is that Articles 310 and 311 must no doubt be read together, but once the true scope and effect of Article 311 is determined, the true scope and effect of Article 310(1) must be limited in the sense that in regard to cases falling under Article 311(2) the pleasure mentioned in Article 310(1) must be exercised in accordance with the requirements of Article 311.

In para. 57, in dealing with the judgment in The State of Uttar Pradesh and Others Vs. Babu Ram Upadhya, , it was observed:

... What the said judgment has held is that while Article 310 provides for a tenure at pleasure of the President or the Governor, Article 309 enables the Legislature or the executive, as the case may be, to make any law or rule in regard, inter alia, to the conditions of service without impinging upon the overriding power recognised

under Article 310. In other words, exercising the power conferred by Article 309, the extent of the pleasure recognised by Article 310 cannot be affected or inpaired.... The only point made is that whatever is done under Article 309 must be read subject to the pleasure prescribed by Article 310.

Mr. Chatterjee in support of his proposition referred to the following observations in Union of India (UOI) Vs. Col. J.N. Sinha and Another, .

A Government servant serving under the Union of India holds office at the pleasure of the President as provided in Article 310 of the Constitution. But this ''pleasure'' doctrine in subject to the rules or law made under Article 309 as well as to the conditions prescribed under Article 311,

and submitted that these observations were not per incuriam and had the binding force as a statement of law.

18. We were also referred to the recent decision in. M. Ramanatha Pillai Vs. The State of Kerala and Another, wherein it has been stated as follows:

Article 309 provides that subject to the provisions of the Constitution, Act of the appropriate Legislature may regulate the recruitment and conditions of service of persons appointed to public services and posts in connection with affairs of the Union or of any State. Therefore, Acts in respect of terms and conditions of service of persons are contemplated. Such Acts of Legislature must however be subject to the provisions of the Constitution. This attracts Article 310(1). The proviso to Article 309 makes it competent for the President or such person as he may direct in the case of services and posts in connection with the affairs of the Union and for the Governor of a State or such person, as he may direct in the case of service and posts in connection with the affairs of the State, to make rules regulating the recruitment and the conditions of service of persons appointed in such services and posts under the Union and the State. These rules and the exercise of power conferred on the delegate must be subject to Article 310. The result is that Article 309 cannot impair or affect the pleasure of the President or the Governor therein specified. Article 309 is, therefore, to be read subject to Article 310.

19. It thus appears that under Article 309 and its proviso that the recruitment and conditions of service of persons serving the Union or a State may be provided by Acts of appropriate Legislature or by rules made by the President or the Governor, as the case may be, or by person authorised in that behalf by the President or the Governor, as the case may be. Such Act or rules, as the Article indicates, are to be subject to provisions of the Constitution which attracts Article 310(1) while Article 310(1) is only subject to the express provisions of the Constitution. The Act or rules framed under proviso to Article 309 are not provisions of the Constitution to which only Article 310(1) is subject. It will be noticed that the Constitution provides expressly for the recruitment and tenure of service in respect of some high public offices and their tenure of office and their removal therefrom have also been laid

down therein. The persons holding such high offices cannot be said to hold office during the pleasure of the President as Article 310(1) is subject to the express provisions of those Articles, namely, Article 124 (Judge of the Supreme Court), Article 148 (Controller and Auditor-General of India), Articles 217-218 (Judge of the High Court), Article 324 (Chief Election Commissioner), which bring the tenure of these offices out of the pleasure doctrine.

20. The pleasure of the President or the Governor is also subject to the express provisions of Article 311, Clauses (1) and (2). The rules framed under Article 309 provide for the procedure in which such pleasure can be exercised consistent with, the mandatory provisions of Article 311(1) and (2) and the authority by whom such pleasure is to be exercised. The relevant rules regarding tenure of office, in fact, are reiteration of the conditions imposed by Article 311, Clause (1) and (2) and the procedure to be followed for giving due effect to these constitutional provisions. When, however, the provisos to Article 311(2) operate, Clause (2) of Article 311 ceases to apply and the pleasure of the President or the Governor revives as being free from the fetters of Article 311(2). The Act or rules framed under Article 309 cannot affect or impinge on such pleasure as have been consistently and uniformly held that such Act or rules must be subject to Article 310(1). The observation in J.N. Sinha''s case (5), referred to above, merely indicated the procedure and authority by which such pleasure is to be exercised in the context of Article 311 and it cannot be understood to mean as conferring independent powers on the basis of the Act or rules under Article 309 curtailing or overriding the constitutional provisions of Article 310 when proviso to Clause (2) of Article 311 excludes their operation. The position, therefore, is that the pleasure of the President or the Governor cannot be fettered except by the express provisions of the Constitution like Articles 124, 148, 217-218, 324 and also 311. If in a given case, by reason of the operation of a proviso, Clause (2) of Article 311 does not apply, the inquiry contemplated under the said clause is not required to be held before a public servant is dismissed, removed or reduced in rank. The rules framed under Article 309 relating to the procedure for holding an inquiry contemplated under Clause (2) of Article 311 before imposing the aforesaid major penalties also cease to operate, as such rules by themselves cannot curtail the pleasure of the President except in terms of Article 311, Clause (2) whereof has, in the circumstances, become inoperative. In view of the non-applicability of Clause (2) of Article 311, the procedure for holding inquiry, in the case before us, under Rules 9 to 13 of the Rules ceases to have operation and on the contrary, the special procedure in certain cases where any of the provisos of Clause (2) of Article 311 applies, reiterated in Rule 14 of the said Rules, apply with full force leaving the disciplinary authority as a delegate of the President or the Governor to pass such orders consistent with the ''pleasure'' doctrine as it deems fit.

21. It is thus obvious that no inquiry for holding a disciplinary proceeding in the circumstances where a proviso to Clause (2) of Article 311 operates will be available before an order of penalty is passed, as such inquiry will be inconsistent with or

fetter the pleasure of the President in regard to the tenure of office of a public servant. It J 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 provisos, 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 so held in M. Gopala Krishna Naidu Vs. State of Madhya Pradesh, and the Court referred to the three provisos to Clause (b) of Article 311 and observed:

Since there would be no inquiry in these clauses of cases the authority would not have before him any explanation by the Government servant. The authority in such cases would have to consider and pass the order merely on such facts which might be placed before him by the department concerned. The order in such a case would be ex parte without the authority having the other side of the picture.

22. The next question requiring consideration is whether in such circumstances when an inquiry contemplated under Clause (2) of Article 311 or provided under the rules is dispensed with, it is incumbent that an opportunity to the concerned Railway servant should be given to present his case before an order of penalty is passed. Clause (2) of Article 311 provides for an inquiry in which the Government servant is to be given a reasonable opportunity of being heard in respect of the charges against him and also of making a representation against the penalty proposed after such inquiry. As we have seen, rules have been framed for providing such opportunities at two stages consistent with the said clause. If by reason of the operation of proviso (b) of the said clause, the inquiry as contemplated in Clause (2) and also provided in the rules, is dispensed with, there is no scope for operation of the principles of natural justice or of justice or fair play which has been expressly ruled out by the said provisions in the Constitution and the Rules. Introduction of the concept of natural justice giving opportunity to the public servant to present his case before the passing of the order when inquiry is dispensed with under the Constitution and the Rules, will mean and imply importation of new provision in the Constitution and the Rules about natural justice and fair play which has expressly or by necessary implication has been excluded in the relevant provisions of the Constitution and also of the Rules. It is not permissible in law to import such principles of natural justice or fair play in the Constitution or in the Rules we are concerned within the context of the relevant provisions.

23. We may refer in this connection to the decision in A.K. Kraipak and Others Vs. Union of India (UOI) and Others, in which it was held that the principles of natural justice should otherwise be also applicable to administrative enquiries. It was observed:

the aim of the rules of natural justice is to secure justice or to put it negatively to present miscarriage of justice. These rules can operate only in areas not covered by law validly made. In other words, they do not supplant the law of the land but supplement it.

Quoting the excerpt in J.N. Sinha''s case Supra (para. 7) it was further observed:

It is true that if a statutory provision can be read consistently with the principles of natural justice, the Courts should do so because it must be presumed that the Legislature and the statutory authorities intend to act in accordance with the principles of natural justice. But, if on the other hand, a statutory provision, either specifically or by necessary implication, excludes the application of any or all the rules of principles of natural justice, then the Court cannot ignore the mandate of the Legislature or the statutory authority and read into the concerned provision the principles of natural justice....

24. It has been contended that even administrative orders which involve civil consequences should be passed consistently in accordance with basic concept of justice and fair play after giving to the person affected an opportunity of being heard on the authority of the decision in State of Orissa Vs. Dr. (Miss) Binapani Dei and Others, . In this case the Government servant under the rules framed under Article 309 could not otherwise be removed from service before superannuation except ''for good and sufficient reasons'' and according to her case the date of superannuation was April 10, 1968. On the basis of a report made on inquiry held ex parte the Government gave notice to her as to why the date of birth as in the report should not be accepted on the basis whereof she would retire in 1965. No copy of the report was enclosed and it was observed by the Supreme Court that such an inquiry and decision thereon were contrary to the basic concept of justice and could not have any value and accordingly, the order was rightly set aside by the High Court. It was observed:

...the decision of the State could be based on the result of an inquiry in manner consonant with the basic concept of justice. An order by the State to the prejudice of a person in derogation of his vested rights may be made only in accordance with the basic rules of justice and fair play.

25. In Daud Ahmad Vs. The District Magistrate, Allahabad and Others, it was held that a deprivation of property affects the right of a person and if the decision that the landlord has a suitable alternative accommodation elsewhere, resulting in an order depriving him of his property, is arrived at without giving him any say in the matter, the principle of audi alteram partem is attracted.

26. Reliance was also placed on the case of Erusian Equipment and Chemicals Ltd. Vs. State of West Bengal and Another, in which it was held that black-listing has the effect of preventing a person from the privilege and advantage of entering into contract with the Government for purposes of trade. As this decision is dependant on objective satisfaction it was observed:

Fundamentals of fair play require that the person concerned should be given an opportunity to represent his case before he is put on the black-list.

27. In the The Government of Mysore and Others Vs. J.V. Bhat and Others, the Supreme Court was considering Section 3 of the Mysore Slum Areas (Improvement and Clearance) Act, 1958, whereunder the State Government was empowered to declare any area a slum area and u/s 9 to be a clearance area, while Section 12 gave power to the State Government to acquire lands adjoining or surrounded by such slum area or clearance area or any land in the locality. Such acquisition could be made by publication of a notice in Official Gazette and before publication of a notice the owner or other interested party could be called upon to show cause why it should not be acquired and the State Government was to consider the cause shown. The notifications under Sections 3, 9 and 12 were issued without any notice on the interested persons. The Court proceeded to consider the controversy on the presumption of the constitutionality of the statute and on the basis observed:

...as there is nothing in the statutory provisions which debar the application of the principles of natural justice while the authorities exercise the statutory powers under the Act and as the principles of natural justice would apply unless the statutory provisions point to the contrary the statutory provisions themselves are not unconstitutional though the notifications issued under them may be struck down if the authorities concerned do not observe the principles of natural justice while exercising their statutory powers.

The Court noticed the considerable advance made in recent years in its attitude towards the question of application of the principles of natural justice and on the basis of the proposition indicated above and the provisions of the statute, it was held that the duty to hear those whose dwellings are to be condemned was imperative before demolishing the same. The notifications under Sections 3, 9 and 12, accordingly, were set aside.

28. In all these cases, as pointed out by Mr. Nariman, the persons aggrieved had an independent right to the property or office which could not be taken away or prejudiced without affording them an opportunity to show cause against the proposed action. As the Supreme Court observed, the rules of natural justice are part of requirements of our Constitutional law although they are not specifically conferred upon the citizens under a separate heading. Even so, the aggrieved person to be entitled to an opportunity to show cause adversely prejudicing his right must have such right protected by law and independent of the pleasure of the

President or the Governor and such right cannot be prejudiced without following the principles of natural justice or justice and fair play. In Binapani Dei''s case Supra the Government servant''s tenure of service was I assured till superannuation as the pleasure of the Governor was subject to the conditions under Article 311(2) which never ceases to apply except by the operation of any of the provisos thereunder which was not the case. Accordingly, refixation of the age of the Government servant which would lead to her early retirement according to her case, without any opportunity to her to meet the inquiry report, was set aside. Similarly, in Erusion Equipment Company''s case Supra the company had the fundamental right to carry on business and in connection therewith had the further fundamental right of equal treatment from the Government in the matter of carrying its business. This right was seriously prejudiced by the black-listing the company without hearing and accordingly, the impugned order was set aside. In the two other cases, the rights of citizens to hold property independent of the pleasure of the President or the Governor was seriously affected and accordingly, the orders depriving them of such right without hearing them was struck down, even though all these orders were taken as administrative orders.

29. We have, further, seen that the provisions of the Constitution and of the Rules expressly or by necessary implication exclude the operation of the principles of natural justice while passing orders. Though they may affect the tenure of service of Government servants, as we have seen it, could not be said that their rights in service were affected, which, in view of the operation of the provisos to Article 311(2) they had no independent legal basis except being subject to the pleasure of the President or the Governor.

30. Strong reliance was placed on the decision of M.P. Thakkar J. of Gujrat High Court in Special Civil Application No. 794 of 1974 dated October 28, 1974, since reported, in Bhola Nath Khanna v. Union of India and Ors. (1975) 1 S.L.R. 277. It was held:

On (a) On a true reading of Rule 14(2) it appears that it is incumbent upon the disciplinary authority to hold some form of inquiry, may be ex parte, the elicit comments of the Railway servant before the order of penalty is passed. Though an inquiry under Rules 9 to 13 may be dispensed with, the authority was bound to afford opportunity against punishment which was not precluded under the Rule 14 in regard to other Rules.

(b) Article 311(2) or Rule 14(2) should not be construed a denying the Government servant the right to claim enforcement of principles of fair play and natural justice.

(c) The order imposing penalty is a nullity if it is not a speaking order.

31. We have seen as the express provisions of Article 311 indicate that Clause (2) thereof will not apply when any of the provisions operates. Rule 14 is merely a reiteration of the provisions of the said proviso and indeed it cannot travel beyond

the same Act and Rules under Article 309 being subject to the provisions of the Constitution. It may be that the wordings of Rule 14 in regard to the operative portion do not fit in properly with its Clause (i), but there is no inconsistency between the operative portion and Clause (ii) and (iii) as noticed in the said judgment. But the importation of the operation of other Rules or the said Rules or the principles of natural justice even after the application of proviso (b) of Article 311(2) or conditions referred to Clause (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. Further, the question of the operation of the concept of justice and fair play will have no operation unless the aggrieved persons have any independent right protected by law from which he is being deprived without notice or any opportunity to show cause against the proposed action. For these reasons we are unable to accept the propositions of law advanced in the said judgment as noted in Clause (a) and (b) above and we respectfully differ from the same.

32. The next question requiring consideration is on the contents of the order of removal from service. We have seen that under Clause (2), proviso (b) of Article 311 as also Rule 14(ii), where the disciplinary authority is satisfied that it is not reasonably practicable to hold an inquiry contemplated in the said clauses and also in the Rules, it shall record its reasons in writing. Under the Rules, the said authority shall, thereafter, consider the circumstances of the case and make, such orders thereon as it deems fit. It has been contended that the reasons for dispensing with ''inquiry'' have not been recorded in the impugned orders which is a mandatory condition before such power dispensing with inquiry can be exercised. The reasons recorded in the order will ensure the compliance of the mandatory provisions and will also show the application of mind of the authority while arriving at its satisfaction dispensing with the inquiry. Absence of reasons in the order will also stultify the appeal or other proceeding, the aggrieved employee may elect to prefer or take and at least, he should be made aware of the reasons which take away this valuable right guaranteed by the Constitution. Further, even though the satisfaction of the disciplinary authority is final, the impugned order of penalty is subject to appeal and further, the factual existence of the conditions for the satisfaction of the disciplinary authority on reasonable impracticability of holding the inquiry must be open and available for the Court''s scrutiny which extends further to a consideration of bona fides of the order. The order must accordingly, be a speaking order.

33. These contentions have been disputed by the Appellants contending, inter alia, that under the relevant provisions of law it is not incumbent that the reasons for the satisfaction dispensing with the inquiry must be recorded in the order of penalty that may be passed by the disciplinary authority under Rule 14. Sentence non-mention of the reasons in the order under Rule 14 forming the basis of such satisfaction affecting the Railway servant will not render such order a nullity or void

if the reasons for the order dispensing with inquiry, in fact, are recorded elsewhere in the relevant departmental files. If the aggrieved Railway servant so desires, such reasons will be made available to him on demand for the purpose of preferring appeal from the order or for any other purpose. The decision of the disciplinary authority about the impracticability of holding the inquiry is, under Clause (3) of Article 311 is final and thus not justiciable. The appellate authority under the Rules cannot reopen the decision and appeal must, accordingly, be confined only to the question of sentence. The departmental record again will be available to the appellate authority only for examination if the recording of reasons for dispensing inquiry has, in fact, been recorded as also to the Court for scrutiny to the extent permissible as and when occasion arises. Further, by its very nature, the order recording the satisfaction of the disciplinary authority dispensing with inquiry must precede, in point of time, the order of penalty and really they are two stages of the proceeding. In the first stage of the proceeding the authority records its reasons in writing. In the second stage the authority passes the order of penalty if it is satisfied on the reasons recorded that it is reasonably impracticable to hold an inquiry. In any event, the proceeding being essentially administrative the impugned orders need not be speaking orders.

34. Reliance was placed by the Petitioners-Respondents in the decision in the The Collector of Monghyr and Others Vs. Keshav Prasad Goenka and Others, in which the Court was considering certain order passed u/s 5A of the Bihar Private Irrigation Works Act, 1922--an Act to provide for construction and repair of irrigation works, to secure their maintenance and to regulate supply or distribution of water by means of such works. Sections 3 to 5 provide normal procedure for repair of existing irrigation work and u/s 3, Sub-section (i) the Collector is required to serve on the landlord of the land where irrigation work is situated as also on public and under Sub-section (ii) and also on others under obligation to maintain such work, notice of his intention to take action for repair of the said work. Section 4 provides for an inquiry by the Collector when he is to hear the objection and take evidence and also the probable costs of the proposed work of repairs. Section 5 empowers the Collector to issue an order in writing requiring the proposed work be carried out by such persons who have been served with notice and agree to carry out the work or by such agency as the Collector thinks fit. Section 5A(1) provides:

Notwithstanding anything to the contrary contained in this Act, whenever the Collector, for reasons to be recorded by him, is of opinion that the delay in the repair of any existing irrigation work which may be occasioned by proceedings commenced by a notice u/s 3 adversely affects or is likely to affect adversely lands which are dependent on such irrigation work for a supply of water, he may forthwith cause the repair of such irrigation work to be begun by any one or more of the persons mentioned in Clause (ii) of Section 3 or by such agency as he thinks proper....

35. Section 7 makes provision for the recovery of the costs of works by persons who effected the repairs u/s 5A by application to the Collector, who will apportion the costs between the persons obliged to maintain the work. In this case the Collector passed the following order:

Whereas it appears to me that the repair of an existing irrigation work, viz... situated in village...Thana...District Monghyr, is necessary for the benefit of the aforesaid village and the failure of repair of such irrigation work adversely affects and is likely to affect adversely the lands which are dependent thereon for supply of water, and

Whereas I am satisfied that my intervention is necessary because, in my opinion, delay in the repair of the existing irrigation work which may be occasioned by the proceedings commenced by a notice u/s 3 adversely affects or is likely to affect adversely the land which depends on such irrigation work for supply of water, it is deemed expedient to proceed u/s 5A of the B.P.I.W. Act. I therefore hereby order that the said work be forthwith put to execution u/s 5A of the said Act. A public notice u/s 5A(1) be given at a convenient place at the aforesaid village that the work mentioned therein has already begun.

The Court observed (para. 13):

If the question whether the circumstances recited in Section 5A(1) exist or not is entirely for the Collector to decide in his discretion, it will be seen that the recording of the reasons is the only protection which is afforded to the persons affected to ensure that the reasons which impelled the Collector were those germane to the content and scope of the power vested in him. It could not be disputed that if the reasons recorded by him were totally irrelevant as a justification for considering that an emergency had arisen or for dispensing with notice and inquiry under Sections 3 to 5, the exercise of the power u/s 5A would be void as not justified by the statute. So much Learned Counsel for the Appellant had to concede. But, if in those circumstances the Section requires what might be termed a ''speaking order'' before persons are saddled with liability, we consider the object with which the provision was inserted would be wholly defeated and protection afforded nullified, if it were held that the requirement was anything but mandatory.

If, as we hold, the requirement was mandatory it was not disputed that the orders of the Collector which did not comply with the statutory condition precedent must be null and void and of no effect altogether.

36. In this case, which we have dealt with in some detail in view of the emphasis laid thereon by the Respondents, it is seen that apart from the order u/s 5A quoted above which the Court found insufficient, there was no other order or reasons recorded by the Collector in support of the order. Section 5A provides for recording of reasons before the power thereunder is exercised so that failure to do so renders the action taken void. The order as also the reasons found insufficient and thus non est were embodied in one composite order which, as the Court held, the section

required to be a speaking order, fastening as it did a pecuniary liability on the persons affected by the order.

37. Under Article 311 (2) of the Constitution, proviso (b) and Rule 14(ii), the reasons for the satisfaction that it is not reasonably practicable to hold the inquiry contemplated by Article 311(2) or the Rules is to be recorded in writing. As soon as in a case the said provisions operate, further order on dispensing with the inquiry is to be passed by the disciplinary authority as may be deemed fit on a consideration of circumstances of the case which for its enforceability is to be communicated to the concerned Railway servant. There is no requirement under the Constitution or the Rules, far less a mandatory requirement that the reasons for dispensing with inquiry is to be recorded in the order of penalty under Rule 14(ii) which is communicated to the Railway servant. Accordingly, accepting the contention of the Appellant it is held that non-mention of the reasons dispensing with the inquiry in the order of penalty communicated to the Railway servant will not by itself render such order a nullity, though it is incumbent that such reasons dispensing with the inquiry must be recorded in writing obviously in the records of the case before the order of penalty is passed. It is also to be remembered that one will find in the records of the case the reasons, if they are there at all, for dispensing with inquiry as also the order of penalty on a Railway servant which constitute the original records of the proceeding and that such order of penalty is communicated to the Railway servant for its enforceability.

38. There can be little dispute that the aggrieved Railway servant is entitled to know the reasons for dispensing with the inquiry which deprives him of the constitutional guarantee in respect of the tenure of his service in the Railway. If the order of penalty communicated does not contain the reasons for dispensing with the inquiry, it will be incumbent on the disciplinary authority or the Railway disciplinary administration to supply the Railway servant on demand the reasons for the decision that it is not practicable for such authority to hold the inquiry contemplated by Article 311(2) or the Rules. Such disclosure of the reasons dispensing with the inquiry is essential for enabling the Railway servant to prefer an appeal against the order as may be provided in the Rules or to approach the Court for its scrutiny of such orders to the extent permissible in law. If the reasons are not furnished, it will be open to him to approach a Court of law for enforcing the requirement and at the same time preventing enforceability of the penalty till the reasons are furnished. Apprehensions have been expressed on behalf of the Respondents that if the reasons are not furnished or there is delay, the Railway servant may be prevented from filing the appeal under Rule 20 which fixes a time of forty five days from service of the order appealed against. It cannot be said that the apprehensions are unreasonable, but under the proviso to the Rule the appellate authority has been given the power to entertain the appeal even after the expiry of the period if it is satisfied that the Appellant had sufficient cause for not preferring the appeal in time and non-furnishing of the reasons for dispensing with the inquiry depriving the

Railway servant of his constitutional right and the delay so caused by all criteria will be a sufficient ground for not preferring appeal in time and for condonation of the delay.

39. Further, as has been pointed out on behalf of the Appellants the question about the Railway servants being unable to prefer appeal against the impugned orders is academic. The reasons recorded in the office records were disclosed by the supplementary affidavit affirmed on July 1, 1974, so that in respect of orders passed on, May 25 and 27, 1974, the appeals could be filed by July 6/8, 1974, within the period of limitation, except in regard to J.N. Rao who was removed from service by order dated May 16, 1974. At no time prior to moving this Court, the Petitioners made any demand for disclosure of reasons.

40. Rule 17 of the Rules mentions the orders against which no appeal lies and order under Rule 14 is not one of them. Under Rule 18 appeal lies, inter alia, against order imposing any of the penalties specified in Rule 6 which includes dismissal and removal from service. In Rule 22(2) the appellate authority is required to consider

(a) whether the procedure laid down in these Rules has been complied with and if not, whether such non-compliance has resulted in the violation of any provisions of the Constitution of India or in the failure of justice....

(c) whether the penalty...imposed is adequate, inadequate or severe; and pass orders

(i) confirming, enhancing, reducing or setting aside the penalty.

41. It will thus be seen that an appeal lies against an order under Rule 14 and the appellate authority can only exercise its powers provided in Clause (a) and (c) above. The appellate authority is empowered to examine if the requirements of Rule 14 have been complied with which, in the instant case, is confined to the scrutiny as to whether the disciplinary authority is satisfied for reasons in fact recorded by that authority in writing that it is not reasonably practicable to hold such inquiry, as failure to record reasons amounts to violation of Rule 14(ii) as also of proviso (b) to Clause (2) of Article 311 of the Constitution. Further, the appellate authority as a delegatee of the President is also empowered to assess once again the severity or otherwise of the penalty in the context of the imputations and reports of misconduct of the concerned Railway servant. Even so, the appellate authority has no power to examine the propriety or otherwise of the decision of the disciplinary authority dispensing with the holding of the inquiry, as the decision of the disciplinary authority in this respect is final under Clause (3) of Article 311 and there can be no power conferred on the appellate authority by the Rules to reopen or reconsider the same. In dealing with the appeal the appellate authority will have the records before it to examine if the requirement of Article 311(2) proviso (b) also embodied in Rule 14(ii) has been complied with.

42. It has also been contended on behalf of the Appellants that the impugned orders contain the reasons for the satisfaction that it is not reasonably practicable to hold the inquiry and also for their removal from service. The form of orders communicated to the Petitioners are as follows:

Eastern Railway

Whereas Shri

is wilfully and without any reasonable excuse absenting himself from Headquarters/Place of work/Office since 8.5.1974 with the sole object in making the illegal strike a success and

Whereas Shri

is inciting and instigating other loyal and innocent employees of joining the illegal strike and threatening them with severe bodily hurt if they do not comply with the unlawful demand, viz. joining the illegal strike and

Whereas the above named staff is preventing the other innocent and loyal staff from attending the office/place of work and the innocent and loyal members of the staff are unable to join their duties for fear of their lives and/or severe bodily hurt by him and

Whereas in the interest of the Railway as also of the general public, retention of Shri

in the Railway service any further is considered undesirable and it is considered that the circumstance of the case are such that it is not reasonably practicable to hold an enquiry in the manner as provided for in the Railway servants (D and A) Rules, 1968.

Now, therefore, in exercise of the powers conferred by Rule 14(ii) of Railway Servants (Discipline and Appeal) Rules, 1968, the undersigned hereby removes Shri

from service with immediate effect.

Sd/- B.B. Lal

Chief Mechanical Engineer,

Eastern Railway, Calcutta

Place : Calcutta

Date

we are in agreement with the learned Judge that the grounds set out in the said order are germane for the non-retention of the Railway servant, but no reason is expressly recorded why it is not reasonably practicable to hold the inquiry. The original office orders of the disciplinary authority disclosed by the supplementary affidavit reads in excerpts as follows:

I have carefully considered the reports submitted by the Dy. Chief Mech. Engineer, Eastern Railway, Lilluah, against the above-named staff and having satisfied myself that the above-named staff is wilfully absenting himself from office place of work and causing serious dislocation in the normal day to day working of the administration and I am also satisfied from the report that the above-named staff is in a turbulent mood and his sole object is to create a reign of terror in the minds of the innocent and loyal staff who are not willing to join the illegal strike. I have considered the question of taking suitable disciplinary action against the above-named staff, but in view of his turbulent mood no staff would be able to depose against him for establishing the charges in the D. and A. proceedings for fear of their lives and of severe bodily hurt. Moreover, there is a strong cause of apprehension that an inquiry under D. and A. Rules will give the hooligans an opportunity and time to organise unlawful demonstration leading to the stoppage of normal working of the administration and I am satisfied that under the circumstances it is not reasonably practicable to hold any D. and A. inquiry against the above-named staff.

43. The above facts and the reasons and satisfaction based thereon constitute, in our opinion, due compliance of requirements in law and we do not find any infirmity in the order, based on facts, germane and not disputed by the Petitioners-Respondents as we shall presently see except a bare general denial. The reasons so disclosed, as set forth above, in clear terms indicate that no staff would be available in the circumstances to depose against the Petitioners to establish the charges for fear of their life and of severe bodily hurt. Further, there was a strong cause for apprehension that an inquiry under D. and A. Rules would give the Respondents concerned an opportunity and time to organise unlawful demonstration leading to stoppage of normal working of administration. The said reasons, in our opinion, form the rational nexus between the circumstances prevailing at the material time with the conclusion arrived at about the reasonable impracticability of holding the inquiry.

44. We shall now consider whether in exercising powers under Rule 14(ii) the disciplinary authority can be said to exercise quasi-judicial functions. It was observed in Jaswant Sugar Mills Ltd., Meerut Vs. Lakshmichand and Others, the following criteria must be satisfied to make a decision or act judicial:

(a) it is in substance a determination upon investigation of a question by application of objective standards to facts found in the light of pre-existing rules;

(b) it declares right or imposes upon parties obligation affecting their civil rights; and

(c) the investigation is subject to procedural attributes contemplating an opportunity of presenting its case to a party, ascertainment of facts by means of material if a dispute be on a question of fact and if the dispute be on a question of law on the

presentation of legal argument and a decision resulting in the disposal of the matter on findings based upon those questions of law and fact.

It was held that the Conciliation Officer under the U.P. Industrial Disputes Article 1947, in granting or refusing permission to alter the terms of employment of workmen, at the instance of the employer, has to act judicially. His decision is not made to depend upon any subjective satisfaction, he is required to investigate and ascertain facts, apply objective standards to acts found and to declare that the employer has made a case for permission to alter the terms of employment of employees.

45. In Testeels Ltd. Vs. N.M. Desai and Another, it is held both on principle and on authority that every administrative officer exercising quasi-judicial functions is bound to give reasons in support of the order he makes. It is observed that the administrative authorities have to take decision in accordance with known principles and rules and the necessity of giving reasons is one of the most important safeguards to ensure observance of the duty to act judicially as otherwise it may lead to abuse of power and arbitrariness. Reasons in the decision or order introduces clarity, checks introduction of extraneous or irrelevant consideration and excludes or minimises arbitrariness in the decision making process. It is further necessary that such order being subject to judicial review it will not be possible for the High Court or the Supreme Court to examine whether the Administrative Officer has made any error in making the order or the orders according to known principles and based on facts germane to the conclusion reached. Such judicial review would be stultified and no redress would be available to the citizens if the reasons for the order are not disclosed.

46. The order, we are concerned with, may not be strictly called as an exercise of judicial power as the decision dispensing with inquiry, though dependent on factual existence of relevant circumstances, is subjective and there is no scope for affording opportunities to the parties to state their respective cases or arguments or to accept evidence in proof of facts. Even so, there can be no dispute that such orders should be speaking orders to indicate that they are based on relevant facts and in accordance with known rules and principles and judicial review extends to a scrutiny of such orders. There can be little dispute also that the individual orders in the files of the Railway administration in respect of the Railway servants concerned disclosed in the supplementary affidavit-in opposition are speaking orders and are subject to Court''s scrutiny to permissible extent.

47. The recent decisions have extended the judicial review to administrative decisions whether the authorities in making the decisions exercise judicial, quasi-judicial or administrative functions. The disciplinary authority in the case before us is not required to hold inquiry required to be held under Clause (2) of Article 311 of the Constitution if it is satisfied that for some reasons to be recorded in writing it is not reasonably practicable to hold such inquiry. The reasons for the

satisfaction of the disciplinary authority for not holding the inquiry thus depends primarily on the factual existence of the circumstances on which the satisfaction of the authority is found. The mental process in arriving at a decision is thus not entirely a subjective function, but it is dependent on the existence of circumstances which is not a matter of subjective opinion. The conclusion reached at by Hidayatulla J. (as he then was) and Shelat J. in The Barium Chemicals Ltd. and Another Vs. The Company Law Board and Others, that existence of circumstances cannot be a matter of subjective opinion was considered and accepted in Rohtas Industries Vs. S.D. Agarwal and Others, in which it was observed:

...the existence of the circumstances in question is open to judicial review though the opinion formed is not amenable to review by the Courts.

48. In M.A. Rasheed and Others Vs. The State of Kerala, the Supreme Court, on authority and principles, laid down the principles in regard to the extent and scope of judicial review of administrative decisions when administrative authorities by statutes are specifically J invested with powers to pass orders on the basis of their opinion and satisfaction. The principles as laid down are as follows:

7. Where powers are conferred on public authorities to exercise the same when ''they are satisfied'' or when ''it appears to them'', or when ''in their opinion'' a certain state of affairs exists, or when powers enable public authorities to take ''such action as they think fit'' in relation to a subject-matter, the Courts will not readily defer to the conclusiveness of an executive authority''s opinion as to the existence of a matter of law or fact upon which the validity of the exercise of the power is predicated.

8. Where reasonable conduct is expected, the criterion of reasonableness is not subjective, but objective. Lord Atkin in Liversidge v. Anderson (1942) A.C. 206 at pp. 228, 229, said "If there are reasonable grounds the Judge has no further duty of deciding whether he would have formed the same belief any more than, if there is reasonable evidence to go to a jury, the Judge is concerned with whether he would have come to the same verdict". The onus of establishing unreasonableness, however, rests upon the person challenging the validity of the acts.

9. Administrative decisions in exercise of powers, even if conferred in subjective terms, are to be made in good faith on relevant consideration. The Courts inquire whether a reasonable man could have come to the decision in question without misdirecting himself on the law or the facts in a material respect. The standard of reasonableness to which the administrative body is required to conform may range from the Courts own opinion of what is reasonable to the criterion of what a reasonable body might have decided. The Courts will find out whether conditions precedent to the formation of the opinion have a factual basis.

49. The Court, accordingly, can thus review an administrative decision or order affecting rights of persons on the following principles:

(a) Where the existence of circumstances is a condition precedent to and the basis for the formation of the opinion, satisfaction or decision though such opinion, satisfaction or decision is subjective, the Court can go behind the recitals of the existence of such circumstances in the order and can determine whether such circumstances did in fact exist.

(b) The administrative authority is to form its opinion, satisfaction or decision in good faith and on relevant consideration and not on expediency or on extraneous matters. The Court can inquire if the opinion, satisfaction or decision satisfies the above conditions and also if a reasonable man could have formed the opinion or come to the decision in question on the materials before him.

(c) If there are reasonable grounds for the opinion, satisfaction, decision and the opinion, satisfaction or decision is free from the vice indicated above, the Court has no further duty to decide whether it would have formed the same belief, as the Court does not sit on appeal against such administrative opinion or satisfaction or decision.

50. It has, however, been contended by the Appellants that even such review is not permissible in view of the specific provisions of the Constitution in Clause (3) of Article 311 as the decision for dispensing with the inquiry has thereby been made final. We have been also referred to the speech of Dr. Ambedkar in the Constituent Assembly on July 8, 1949, which is set out below:

Coming to Clause (3), this has been deliberately introduced. Suppose, this Clause (3) was not true there, what would be the position? The position would be that any person, who has not been given notice under Sub-Clause (a) or (b) or (c), would be entitled to go to Court of law and say that he has been dismissed without giving him an opportunity to show cause. Now, Courts have taken two different views with regard to the word ''satisfaction''. Is it a subjective state of mind of the officer himself or an objective state, that is to say, depending upon the circumstances? It has been felt in a matter of this sort, it is better to cast out the jurisdiction of the Court and to make the decision of the officer final. That is the reason why this Clause (3) had to be introduced that no Court shall be able to call in question if the officer feels that it is impracticable to give reasonable notice or the President thinks that under certain circumstances notice need not be given.

51. The intention for introduction of Clause (3) in Article 311 may be to take away the jurisdiction of the Court to call in question the satisfaction of the President or the disciplinary authority against the holding of inquiry provided in Clause (2) of Article 311. In view of the law declared by the Supreme Court on this question, as indicated above, it is not necessary for us to consider this aspect of the matter further.

52. The provision in Clause (3) of Article 311 on the finality of a decision under proviso (b) to Article 311 has a parallel in the provisions of Article 217(3) of the Constitution which is as follows:

If any question arises as to the age of a Judge of a High Court, the question shall be decided by the President after consultation with the Chief Justice of India and the decision of the President shall be final.

53. The Supreme Court in Union of India (UOI) Vs. Jyoti Prakash Mitter, in dealing with the above Article observed as follows:

Notwithstanding the declared finality of the order of the President the Court has jurisdiction in appropriate cases to set aside the order, if it appears that it was passed on collateral consideration or the rules of natural justice were not observed or that the President''s judgment was coloured by the advice or representation made by the executive or it was founded on no evidence. But, this Court will not sit in appeal over the judgment of the President, nor will the Courts determine the weight which should be attached to the evidence. Appreciation of evidence is entirely left to the President and it is not for the Courts to hold that on the evidence placed before the President on which conclusion is founded, if they were called upon to decide the case they would have reached some other conclusion.

54. We have already seen that there is no question of following the principle of natural justice in coming to a decision about the reasonable impracticability of holding the inquiry. There is no scope in the relevant provisions for following such procedure which will be repugnant to the other connected provisions of the Constitution. Regarding imposition of penalty, we have also seen that there is also no scope for any opportunity being offered to the public servant, as on the inquiry being dispensed with, he holds his service during the pleasure of the President. As to the question of the President''s judgment being coloured by the executive while exercising powers under Article 217, it is to be noted that in the decision in Samsher Singh Vs. State of Punjab and Another, it is held that "the President as well as the Governor exercises his powers and functions conferred on him by or under the Constitution on the aid and advice of his Council of Ministers, save in the spheres where the Governor is required by or under the Constitution to exercise his functions in his discretion" and neither the President nor the Governor is required to exercise executive functions personally but such powers are to be exercised in accordance with the Rules in that behalf under the Constitution. We are not really concerned with the above propositions of law in the said decision, as the disciplinary authority has been specified under Article 311 and the Rules framed under Article 309 of the Constitution, whose satisfaction and order of penalty are matters of concern with us. Still then the decisions and orders will have to be scrutinised by the Court when a challenge is thrown to see if they are free from the vices we have noted above.

55. We shall first examine if there was factual existence of the circumstances which led the satisfaction of the disciplinary authority that it was not reasonably practicable to hold such inquiry. The circumstances have been disclosed in paras. 5, 8 and 9 of the supplementary affidavit-in-opposition affirmed on July 1, 1974, by B.B.

Lal, Chief Mechanical Engineer, the disciplinary authority, as also the reports of the local and controlling officers and his orders annexed thereto. The reports of the controlling officers stated that the Petitioners who were absenting themselves from work were preventing the innocent and loyal workers from joining their duties. It was further stated that the said staff had created a reign of terror and being in turbulent mood no loyal worker would dare to attend office place of work for fear of their lives or severe bodily hurt due to the aforesaid acts of the above-named staff.

56. These reports were forwarded by the superior officer of the place to the disciplinary authority wherein the reports of the controlling officers were endorsed. It was, further, stated that in view of the turbulent mood of the staff, no staff would come forward to depose against them for establishing the charges in the D. and A. proceedings if brought against them and accordingly, action under Rule 14(ii) was suggested for removal of such staff.

57. The disciplinary authority considered the above reports and satisfied himself of the truth of allegations made against the staff and also about their sole object which was alleged to create a reign of terror in the mind of loyal and innocent staff who were not willing to join the illegal strike as would appear from the extract of his order quoted earlier. He also considered the question of taking suitable disciplinary action against them, but it appeared to him that in view of their turbulent mood no staff would be able to depose against them for establishing the charge against them in D. and A. proceedings for fear of their lives or severe bodily hurt. He also apprehended that an inquiry under the Rules would give the ''hooligans'' an opportunity and time to organise unlawful demonstration leading to stoppage of normal working of the administration. The disciplinary authority, in the circumstances, was satisfied that it was not reasonably practicable to hold any D. and A. inquiry against such staff, namely the Petitioners.

58. It was contended that the supplementary affidavit was filed without leave of Court and could not be used at the hearing. Even so, the said affidavit was dealt with by the Petitioners in their affidavit-in-reply to the main affidavit-in-opposition and accordingly, it cannot be said that they were prejudiced thereby. It was alleged therein that the documents annexed to the said affidavit were not in existence on the dates mentioned therein. We must mention here that there is no evidence that the documents were manufactured and this allegation is not acceptable to the Court. The Petitioners referred to a circular of April 2, 1974, issued by the Railway Board wherein a note of the Administration''s lawyer was appended which set out the guidelines for taking recourse to Rule 14(ii) and suggested taking recourse to these provisions in selected cases in the context of the anticipated Railway strike. It was denied with reference to para. 5 of the supplementary affidavit that condition prevailed in any manner as alleged which justified the impracticability of holding the inquiry. With reference to paras. 8 and 9 wherein the disciplinary authority stated about his satisfaction for dispensing with inquiry, the allegations were denied and

disputed and it was stated that the said authority had not materials before him as marked as annexures to the said affidavit and that he did not apply his mind.

59. It will thus be clear that though in the affidavit-in-reply various objections were taken to the allegations made in the affidavit-in-opposition, there is no denial of specific allegations against the Petitioners made therein or in the reports. The allegations stated that not only did the Petitioners absented themselves from work, they were preventing other loyal workers from joining their duties, intimidating them with bodily injury, creating a reign of terror and they were in turbulent mood. In absence of denial of these material allegations on which the disciplinary authority was satisfied that it would not be reasonably practicable to hold the inquiry, as no staff would be available to depose against the strikers in the context of these circumstances, there is no escape from the conclusion that there was factual existence of the circumstances stated therein.

60. It is, further, to be seen that the decision of the disciplinary authority dispensing with the holding of the inquiry in such situation cannot also be said to be a decision which is not bona fide or perverse or a reasonable man could not have arrived at. There is, in our opinion, a clear and sufficient nexus between the attending circumstances referred to above and the conclusion arrived at by the disciplinary authority that it was not reasonably practicable to hold the inquiry in respect of the Petitioners. It is to be noted that the Constitution requires that the disciplinary authority must be satisfied that the holding of the inquiry is not reasonably practicable--not impossible. The decision for not holding the inquiry in the context of the aforesaid circumstances appears to us to be based on relevant consideration and not on expediency or extraneous matters and a reasonable man would have, in our opinion, come to the same decision on the materials before him.

61. Mr. Chatterjee also urged that there was complete non-application of mind by the controlling and local authorities as also by the disciplinary authorities as will be evident from the reports of the said officers which though of different dates and relate to different persons and of different places tally with each other word by word with even punctuations and are vague without any particulars. It was obvious, according to the Petitioners, that typed out copies of the reports and orders were kept prepared and only the names of the Petitioners and other Railway men were simply put in with the object of victimising the Railway men for taking recourse to enforce their legitimate demands through legal means.

62. We shall have to view the situation in the context of the all-India strike observed throughout the country in all the Railways by a considerable section of the Railway employees which was unprecedented in its extent and magnitude. While it may be permissible for the Railway men 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 several groups of people indulge in the same kind of activities in different areas during specified period, there is nothing wrong in making the same allegations and orders against all of them. Their objective (with which we are not concerned) was to make the strike, declared illegal, a success. To achieve this objective, they not only abstained themselves from work (which is admitted) but they were also threatening others even with bodily injuries if they come to perform their daily duties. There is nothing on record to show that the circumstances were otherwise. 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-staff 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 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 effective or any 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. About J.N. Rao it was submitted that he was under arrest from May 10, 1974, but even in his case it has not been denied that he did not commit the acts alleged even during the period of strike when he was free., It has been stated by the disciplinary authority that he applied his mind to the cases of the Petitioners, against whom there were reports of unlawful acts noted above, before arriving at the decision dispensing with inquiry and passing orders of penalty. Accordingly, after giving our serious consideration to the respective contentions we are of the opinion that merely because the reports and orders were in uniform language and in typed forms, they should not be unacceptable to the Court when the factual existence of the allegations had not been challenged. We, in the circumstances, are unable to accept the contentions raised and hold that the reports relating to the Petitioners and the circumstances therein mentioned which had factual existence, formed the basis of the steps taken by the disciplinary authority and there was due application of mind by the disciplinary authority in passing the impugned orders even if they were of uniform pattern.

63. It was next contended that the satisfaction of the disciplinary authority was not made in good faith but was a dishonest exercise of power as it was based on the policy decision of the Government to crush the strike by victimisation of the Railway

men through indiscriminate dismissals and other penalties. The Petitioners relied on an alleged confidential D.O. letter No. E (D. and A.) 74 RG 6-13 dated April 2, 1974, by the Railway Board to the General Managers of the Railways. In that letter in the context of the anticipated Railway strike, attention of the General Managers was drawn to the exceptions to Clause (2) as also to Clause (3) of Article 311 of the Constitution. It was, further, stated that a note of the legal adviser was appended to the same and it was said that it would not be possible to challenge the decision of the competent authority under these provisions except on grounds of mala fides which would not be possible to prove if precautions mentioned by the legal adviser were taken. It was further stated:

In the light of the note recorded by the legal adviser and also in the context of the anticipated Railway strike it should be possible for you to avail yourself more often than you have done so far of these provisions in selected cases. Every time such step is taken, care should be taken to consult competent legal opinion and to see that the reasons are recorded by you to show clearly that you have applied your mind to the whole question....

The note of the legal adviser was not appended in the annexure but judgment of Sinha J. referred to therein was annexed. This judgment in Prabhansu v. K.S. Mathur C.R. No. 117 of 1952 dated August 6, 1953 is also relied on by the Appellants and copy thereof was produced in the Court. It was observed as follows:

...If the decision of the dismissing authority (regarding the holding of the inquiry) is final, then I do not see how this Court can go into that question, unless of course it can be shown that there has been a dishonest exercise of power, since that does not amount to an exercise of power at all. No such case has been made out.

64. Mr. Chatterjee contended that the above letter of the Railway Board clearly indicated the policy decision of the Government to dismiss selected persons from service for collateral purpose of breaking the strike by victimisation by recourse to dismissals and punishments. The disciplinary authority carried out the said policy by the impugned orders and accordingly, it was a dishonest and mala fide exercise of power conferred by law which did not amount to exercise of power at all according to the above decision.

65. The Railway strike throughout the country in all the Railways started with notice and its serious repercussion was obvious. Strike in the Railway was earlier declared illegal and in view of the determination of the Railway men to go on strike, as evidenced by notice, it was only proper of the authorities to take adequate measures for smooth running of Railways to ensure movement of food-staff and essential goods throughout the country. There was, therefore, in the fitness of things for the authorities to set out the guidelines to appropriate authorities in the Railways for taking necessary steps in the context of impending strike. Attention of such authorities was drawn to the scope of the relevant provisions of the

Constitution and the Rules and they were asked to avail themselves in selected cases more often than they had done so far. As the challenge to the decision could be made, according to the note, only on grounds, of mala fides, it was pointed out that the reasons recorded should clearly show that such authority had applied its mind to the whole question.

66. The authenticity of the letter could not be tested as at was I annexed in the affidavit-in-reply, but in course of argument no case was made by the Appellants against its genuineness. Assuming it to be a genuine document, we do not think it laid down a policy decision on the Railway authorities for their blind observance for dismissal of Railway servants joining the strike while dispensing with the inquiry. It drew the attention of the disciplinary authorities to the relevant provisions to which recourse could be made in selected cases in the contingency where obviously activities of the Railway-men and circumstances attending necessitated such action. Since it was thought that the decision could be challenged on ground of mala fides, the authorities were directed to state reasons which would ensure the application of mind to the whole question. If the higher authority was of opinion that in view of the impending situation certain positive steps should be taken to avert a disaster, but in doing so the legal requirements must be strictly observed, it is only proper that the subordinate authorities concerned should be appraised of the legal principle applicable to such cases.

67. We have seen, while reviewing the reasons recorded in the decisions dispensing with the holding of the inquiry relating to the Petitioners, that it could no longer be disputed that there was factual existence of the circumstances which to a reasonable person would warrant the decision arrived at to dispense with the inquiry. Accordingly, we are not in a position to accept the contention that the disciplinary authorities came to the decision in furtherance of a Government policy or for such collateral purpose or the decision was taken mala fide. At no time there was any averment on the part of the Petitioners that they while observing the strike did not incite others to join the strike or intimidate the Railway servants willing to join their duties, with threat of life or bodily injury or they were not in turbulent mood. These facts impelled the disciplinary authorities to take the decision it took. The policy decision, if any, was to invite the attention of the Disciplinary Authorities to the relevant provisions of law and also to take recourse to the same in appropriate cases. The entire discretion in the matter was left to the Disciplinary Authorities concerned. It cannot, therefore, be said that a policy decision was imposed on the disciplinary authorities to dispense with the inquiry or to dismiss the Railway servants by mala fide exercise of power and it is to be noted, as already seen, that the commission of such acts and existence of attending circumstances, on the affidavits before us, had not been disputed or denied. Accordingly, we are unable to find any infirmity in the proceedings and the orders in culmination thereof.

68. For the above reasons, the appeal is allowed and the judgment and order under appeal are set aside and the rule is discharged. There will be no order as to costs and all interim orders are vacated.

69. On the oral application of the counsel for the Respondents we grant leave to appeal to the Supreme Court under Article 133(1)(a) of the Constitution as in our opinion the present case fulfils the requirements of the said Article. We also make all the consequential orders.

Sankar Prasad Mitra, C.J.

70. I agree.