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**(2003) 09 MP CK 0069**

**In the Madhya Pradesh High Court**

**Case No : Writ Petition No. 1290 of 2001**

Brijendra Bahadur Singh Chouhan

APPELLANT

Vs

Managing Director, M.P. State Road Transport Corporation and  
others

RESPONDENT

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**Date of Decision : 24-09-2003**

**Acts Referred:**

Constitution of India, 1950 — Article 226

Madhya Pradesh State Road Transport Corporation Employees Conduct, Discipline and  
Appeal Regulations, 1975 — Regulation 41(8)

**Citation : (2004) 1 MPLJ 144**

**Hon'ble Judges : S.P. Khare, J**

**Bench : Single Bench**

**Advocate : G.S. Baghel, for the Appellant;**

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## **Judgement**

S.P. Khare, J.

This is a writ petition under Article 226 of the Constitution of India for quashing the order dated 7-2-2001 (Annexure P-1) by which the petitioner has been dismissed for service without any departmental enquiry in exercise of the power under Regulation 41(8) of the M.P. State Road Transport Corporation Employees Conduct, Discipline and Appeal Regulations, 1975 (hereinafter to be referred to as "the Regulations")

It is not in dispute that the petitioner was Depot Manager in M.P. State Road Transport Corporation at Sidhi. He was placed under suspension by order dated 3-2-2001. Thereafter his services were terminated by the impugned order dated 7-2-2001 (Annexure-P-1). No departmental enquiry was held against the petitioner. It is found from the order dated 7-2-2001 that it is stigmatic in character. According to the recital in this order, the petitioner has committed serious administrative and financial irregularities. These have been detailed in the order. The petitioner has been held to be inefficient in his duties. It is further stated that his misconduct is self-evident. The disciplinary authority has stated

that he "does not consider it necessary to hold a departmental enquiry."

After hearing the learned counsel for the petitioner this Court is of the opinion that the impugned order is illegal. The petitioner was undisputably a permanent employee of the respondents and, therefore, ordinarily a departmental enquiry was necessary as required by the Regulations. Regulation 41(8) is as under:

From the above Regulation it is clear that where the competent authority is satisfied that the enquiry as per regulations is not desirable in the interest of the Corporation, he would consider the circumstances of the case and he can pass such orders as he thinks fit. In the present case the various acts and omissions of the petitioner have been detailed in the impugned order. He was, however, not given any opportunity to give his explanation regarding these allegations. The charges cast a stigma on the petitioner. It was necessary to hold a departmental enquiry against the petitioner in which he could explain the circumstances and disprove the charges. The disciplinary authority has not recorded the reasons for dispensing with the departmental enquiry. It was necessary for the disciplinary authority to record reasons to satisfy this Court that the nature of the case was such in which the departmental enquiry was impracticable or it was not desirable to hold the enquiry. This is not a case covered by the exceptional circumstances where the enquiry is impracticable or it cannot be held. The Constitution Bench of the Supreme Court has held in *Union of India and Another Vs. Tulsiram Patel and Others*, : "A disciplinary authority is not expected to dispense with a disciplinary inquiry lightly or arbitrarily or out of ulterior motives or "merely in order to avoid the holding of an inquiry" or because the Department's case against the government servant is weak and must fail."

Relying upon the decision of the Supreme Court it has again been held in *Jaswant Singh Vs. State of Punjab and others*, that the decision to dispense with the departmental enquiry cannot, therefore, be rested solely on the ipse dixit of the concerned authority. When the satisfaction of the concerned authority is questioned in a Court of law, it is incumbent on those who support the order to show that the satisfaction is based on certain objective facts and is not the outcome of the whim or caprice of the concerned officer.

Regulation 41(8) of the Regulations is akin to the proviso to Article 311(2) of the Constitution of India and therefore, there should have been more weighty and solid ground to dispense with the departmental enquiry. The general rule is that a departmental enquiry must be held in conformity with the principles of natural justice before the services of an employee are terminated on the ground of misconduct and the dispensing with the departmental enquiry should be treated as an exception. Even in such a case it is necessary for the disciplinary authority to satisfy the Court that the holding of departmental enquiry was impracticable or it was not desirable. The present case is not covered by the exception. The departmental enquiry could be held against the petitioner on the charges levelled against him and he should have been given an opportunity to defend himself.

It is pointed out that the respondent-Corporation is undergoing financial crises and some of the charges against the petitioner cannot be said to be without foundation. Recently it has been held by the Supreme Court in M.P. State Electricity Board vs. Jarina Bee, 2003(3) MPLJ 534 that it is not necessary to grant full back wages where the disciplinary action is not found to be according to law. There is no strait-jacket formula. It should be decided on the facts and circumstances of each case. In the present case 30% backwages would be proper.

In view of the above discussion, the petition is partly allowed. The impugned order dated 7-2-2001 (Annexure-P-1) by which the petitioner has been dismissed from service is quashed. The respondents are directed to reinstate the petitioner in service and pay him 30% backwages.