
(1976) 08 MP CK 0017

In the Madhya Pradesh High Court

Case No : Miscellaneous Petition No. 113 of 1973

P.K. Chowdhury and others

APPELLANT

Vs

Union of India and others

RESPONDENT

Date of Decision : 18-08-1976

Acts Referred:

Constitution of India, 1950 — Article 136, 226, 311, 311(1), 311(2)
Income Tax Act, 1961 — Section 127

Citation : (1981) ILR (MP) 822 : (1976) JLJ 855

Hon'ble Judges : S.M.N. Raina, J;G.P. Singh, J

Bench : Division Bench

Advocate : Sadan Gupta with B.D. Jain and R.P. Mitra, for the Appellant; R.K. Pandey, for the Respondent

Final Decision : Allowed

Judgement

G.P. Singh, J.—The services of a number of railway servants were terminated for participation in the Railway Strike of May 1974. The petitioners are three of them. The petitioner P.K. Chowdhury was employed as Turner and the other two petitioners, namely, Saibal Das Gupta and D.R. Das, were employed as Chargemen Grade B at Raipur in the Mechanical Section of Wagon Raipur Shop of South Eastern Railway. The petitioners were removed from service by three orders passed on 14th May 1974 by the Works Manager on the ground that they were "guilty of unauthorised absence and absconding from duty." The petitioners by this petition under Article 226 of the Constitution challenge the orders removing them from service.

2. The relevant rules applicable to the petitioners are the Railway Servants (Discipline and Appeal) Rules, 1968. Rule 6 of these Rules specifies the penalties which may, for good and sufficient reasons, be imposed on a railway servant. Removal from Service is a major penalty specified in this rule. Rules 9 to 13 contain an elaborate procedure for holding enquiry and imposing any major penalty. Rule 14 covers those cases where the procedure prescribed by Rules 9

to 13 may be dispensed with. This rule, which has an important bearing in this case, reads as follows :

14. Special procedure in certain cases.--Notwithstanding anything contained in rules 9 to 13--

(i) Where any penalty is imposed on a railway servant on the ground of conduct which had 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.

An appeal lies under Rule 18 against an order imposing any penalty. Even in those cases where the procedure prescribed by Rules 9 to 13 is dispensed with under Rule 14 the order imposing penalty is appealable because such an order is not included in Rule 17 which enumerates non-appealable orders. Rule 21 deals with forms, contents and submission of appeal. Rule 21 (2) provides that an appeal shall contain all material statements and arguments on which the appellant relies. Rule 26, which is also material in the context of this case, relates to service of orders, notices etc. This rule provides that "every order, notice and other process made or issued under these rules shall be served in person on the railway servant concerned or communicated to him by registered post". A form of notice has been prescribed for guidance of railway authorities in those cases where action is taken under Rule 14 (ii). This form, which is annexure B to the petition, in so far as relevant is as under:

Notice for Removal from Service

Reference Rule 14 (ii) of the Railway Servants (D and A) Rules" 68.

No..... (Name of office)

Place of issue Dated.....

1. Whereas Shri.....Designation.....under.....has

been unauthorisedly absenting from.....for which a charge-sheet bearing this office

No.....dated.....was sent to his name address under registration post with acknowledgement due.

2. Whereas the said charge-sheet has been returned undelivered by the postal Authorities with the remarks.....

3. Whereas the said Shri.....could not be contacted at the address on the record of this office and whereas the present where about of the said Shri.....is not known to this office.

4. Whereas the undersigned is satisfied that the circumstances of the case are such that it is not reasonably practicable to hold an enquiry in the manner provided in the Railway Servants (D and A) Rules, 1968.

5. Now, therefore, in exercise of the powers conferred by rule 14 (ii) of Railway Servants (D and A) Rules, 1958, the undersigned hereby removes the said Shri.....

.....Designation.....under.....from service with effect from

Station..... Signature.....

Date..... Designation.....

Copy to.....(name).....Designation.....Station.....

3. The petitioners were removed from service without any inquiry by recourse to Rule 14 (ii). The orders of removal that were served on the petitioners are styled as "removal notice." These orders are identical and read as follows:

I have decided that you are guilty of unauthorised absence and absconding from duty and therefore you shall be removed from service as a disciplinary measure and the same will take effect immediately.

The receipt of the notice may please be acknowledged.

Signature : Sd/- M.G. Mishra

Desiccation : Works Manager,

Station : Wagon Repair Shop, S.E. Railway, Raipur.

Copy to : Shop Supdt. (M/C) WRS, Raipur. He will please take overcharge of the railway property from the abovenamed and send the acknowledgement to this office for record.

Copy to : Notice Board,

Copy to : Party by Regd. post with acknowledgement due.

Copy to :HTK/WRS.

4. According to the return filed by the respondents, the order of removal in each case was preceded by a "Note" recorded in the case file of each petitioner in which reasons why action was being taken under Rule 14 (ii) were stated. This note is identical in respect of all the petitioners and reads as follows:

Shri.....s/o.....designation.....Station.....

has been absconding and has not reported at his place of work and continues to

absent himself from work without reasonable excuse, notwithstanding due notices issued to all staff to be present in the context of the emergency arising out of illegal threatened strike. He is also found to be indulging in activities preparatory to and leading to the illegal strike including abetting offences of violence and sabotage while remaining underground.

2. As in this case there is no doubt that Shri....., is guilty of gross misconduct in that besides violating departmental rules, he is, without lawful authority or excuse, doing prejudicial acts and he is contravening and abetting contravention of the rules and orders issued in the Defence of India Act and rules framed under it.

3. It is without doubt, in the facts and circumstances of the case that the above-mentioned action of Shri.....merits his removal/dismissal from service.

4. Shri.....is absconding and is not available and in the particular fact and circumstances of the case, I am satisfied that it is not practicable to follow D and A rules for his removal. And at the same time the administration cannot afford to allow the aforesaid person to indulge in prejudicial acts and other acts detrimental to the interest of the administration while remaining underground.

5. Therefore, I the competent authority hereby order that Shri..... shall be removed from service with immediate effect and notice should be issued accordingly.

Signature Sd/-

Name Works Manager,

Designation of Wagon Repair Shop,

the competent South Eastern Railway,

authority. Raipur (M.P.)

This note was not communicated to the petitioners. What was communicated to them is the order styled as "removal notice" which we have earlier quoted.

5. The three clauses of Rule 14 correspond to the three provisos to Article 311(2) of the Constitution incases falling within the provisos to Article 311(2) and clauses (i) to (iii) of Rule 14 the railway servant is deprived of his constitutional right conferred by Article 311(2) as also of statutory right conferred by Rules 9 to 13 that he can be punished only after an inquiry into the charges where he has an opportunity to defend himself and to show cause against the proposed punishment. As the right conferred upon the railway servant by Article 311(2) and Rules 9 to 13 is a very valuable right for his protection, the existence of conditions on which he can be deprived of this right must be strictly established. The conditions for applicability of Rule 14 (ii) which corresponds to proviso (b) to Article 311(2) are: (i) that the disciplinary authority is satisfied that it is not reasonably practicable to hold an inquiry; and (ii) that the disciplinary authority

has recorded its reasons why it is so satisfied. The power to dispense with an inquiry and thus to deprive the railway servant of his valuable constitutional and statutory right is a very drastic power and it must be exercised strictly within the limits and subject to conditions mentioned in Rule 14 (ii). The disciplinary authority must, therefore, not only record the satisfaction that it is not reasonably practicable to hold an inquiry but it must also record its reasons why it is so satisfied. Both these conditions are mandatory before the inquiry can be dispensed with. There are a number of cases in which it has been held that when a power is conferred by a Statute to take action on being satisfied of certain matters for reasons to be recorded, action cannot be taken without recording the reasons of satisfaction, even though the satisfaction required is only subjective and the nature of the power purely administrative. In such cases, mere recording of satisfaction as to the existence of the conditions is not enough but the reasons which led to the satisfaction must also be recorded. Further, the reasons recorded must be relevant and germane to the content and scope of the power conferred by the statute and must show a reasonable nexus between the facts considered and satisfaction reached : *The Collector of Monghyr and Others Vs. Keshav Prasad Goenka and Others*, *Associated Electrical Industries (India) Private Ltd., Calcutta Vs. Its Workmen*, *Union of India (UOI) Vs. Mohan Lal Capoor and Others*, and *Ajantha Industries and Others Vs. Central Board of Direct Taxes, New Delhi and Others*, . It need hardly be emphasized that the requirement of Rule 14 (ii) and proviso (b) to Article 311(2) that reasons be recorded is not a mere formality and it must be strictly complied with. The reasons must state the facts from which the satisfaction that it is not reasonably practicable to hold an inquiry is derived by the disciplinary authority. In *Union of India v. M.L. Capoor* (supra) the Supreme Court observed :

Reasons are the links between the materials on which certain conclusions are based and the actual conclusions. They disclose how the mind is applied to the subject-matter for a decision whether it is purely administrative or quasi judicial. They should reveal a rational nexus between the facts considered and the conclusions reached.

If the reasons recorded by the disciplinary authority do not contain the facts considered from which the satisfaction that it is not reasonably practicable to hold an inquiry is drawn or if the facts stated are irrelevant and cannot reasonably lead to that satisfaction, the railway servant can successfully contend that the power of dispensing with the inquiry has not been validly exercised and that the order of punishment passed against him is invalid and void. In this context it is a point to be noted that an appeal lies against an order of punishment even in those cases where the inquiry is dispensed with under Rule 14. The railway servant can contend before the appellate authority that power of dispensing with the inquiry under Rule 14 (ii) was misused and was not properly exercised and that due inquiry should have been held against him in respect of the charges. Unless it is obligatory on the disciplinary authority to record the reasons stating the facts leading to its satisfaction that it is not reasonably

practicable to hold an inquiry, how can the appellate authority decide the question whether the inquiry was properly dispensed with. The fact that the satisfaction of the disciplinary authority can be challenged in appeal strengthens the inference that it is obligatory for the authority to record the reasons stating the material facts from which its satisfaction is derived.

6. The first contention raised by the learned counsel for the petitioners is that the reasons recorded for dispensing with the inquiry in the "Note", which we have extensively quoted in para 4 above, do not satisfy the requirement of Rule 14 (ii) and consequently the order dispensing with the inquiry is invalid. We have already referred to Rule 26, which provides that a notice must be served in person on the railway servant or communicated to him by registered post. We have also quoted the form prescribed for guidance of the authorities when action is taken under Rule 14 (it). The form shows the steps which normally should be taken by the disciplinary authority before reaching the satisfaction that it is impracticable to hold an inquiry. It appears from the form that the charge-sheet should be sent to the concerned railway servant by registered post and effort should be made to contact him at the address given in the office record and it is only when the charge-sheet has been returned undelivered by the postal authorities and the whereabouts of the railway servant cannot be known and he cannot be contacted that the disciplinary authority should reach the satisfaction that it is not reasonably practicable to hold an inquiry. These are the facts and reasons which would normally be recorded in the order dispensing with the inquiry. In the instant case, para (1) of the "Note" says that the petitioner concerned "has been absconding and has not reported at the place of his work and continues to absent himself from work without reasonable excuse notwithstanding due notices". Para (4) states that the petitioner concerned "is absconding and is not available". These are the reasons which are stated in the order for being satisfied that it is not reasonably practicable to hold the inquiry. It will be seen that it is not anywhere stated that effort was made to serve the charge-sheet on the petitioners by registered post or otherwise. The conclusion that the petitioners were absconding was merely reached from the fact that they had not reported at their places of work and continued to absent from their work without reasonable excuse. In our opinion, the facts stated in the order cannot reasonably lead to an inference that it was not reasonably possible to hold an inquiry against the petitioners. In this connection it must be noticed that the expression "not reasonably practicable" has a different connotation from the expression "expedient". Rule 14 (iii) and proviso (c) to Article 311(2) use the word "expedient" whereas Rule 14 (ii) and proviso (b) use the words "not reasonably practicable". The distinction between the two expressions "not reasonably practicable" and "expedient" was drawn in *Karam Singh v. Transport Commissioner* AIR 1965 J&K 53 while dealing with the corresponding provisions of the Constitution of Jammu and Kashmir, Fazl Ali, J. as he then was, observed that it must be shown that it was not possible or feasible with due diligence to afford the public servant concerned a reasonable opportunity of showing cause

before it can be said that it is not reasonably practicable to afford him that opportunity. It may be that the disciplinary authority may have thought in the facts and circumstances of the case that it was not expedient to hold an inquiry; but, in our opinion, the facts stated in the order could not have reasonably led to the satisfaction that it was not reasonably practicable to hold an inquiry. The facts and reasons stated in the order do not "reveal a rational nexus between the facts considered and the conclusion reached". In other words, the reasons recorded in the order are not germane to the satisfaction that it is not reasonably practicable to hold an inquiry. In this conclusion we are fully supported by a Division Bench of the Calcutta High Court in *Union of India v. N.K. Chandra* 1976 (1) SLR 800 where an identically worded order was considered and it was held that the railway servant was wrongfully deprived of the opportunity of inquiry and his removal was invalid.

7. Learned counsel for the respondents has laid stress upon clause (3) of Article 311 which provides that if a question arises whether it is reasonably practicable to hold an inquiry as is referred to in clause (2), the decision thereon of the authority empowered to dismiss or remove such person or reduce him in rank shall be final. We will assume in this case that clause (3) of Article 311 also applies for the purposes of Rule 14 (ii), although no corresponding clause has been inserted in Rule 14. The finality of the decision of the authority empowered to dismiss or remove a civil servant that it is not reasonably practicable to hold an inquiry is only when the requirement of recording reasons under proviso (b) to Article 311(2) is satisfied. If the reasons recorded are germane and can reasonably lead to the satisfaction that it is not reasonably practicable to hold an enquiry, then the decision of the authority is final. The Courts then cannot intervene and differ from the finding reached by the authority. But when the reasons recorded are not germane and cannot reasonably lead to the satisfaction that it is not reasonably practicable to hold an inquiry, the requirement of proviso (b) is not complied with and in such a situation the decision of the authority is not final. To put it differently, clause (3) of Article 311 is applicable only when the requirement of proviso (b) is fully complied with. As, in our opinion, the reasons recorded in the instant case are not germane to the satisfaction that it was not reasonably practicable to hold an inquiry against the petitioners, there is no finality to the satisfaction of the authority and clause (3) of Article 311 does not come into play.

8. It was also contended by the learned counsel for the petitioners that the reasons recorded by the authority ought to have been communicated to the petitioners. It is argued that it is not sufficient to keep the reasons in the file and to communicate only the bare order of removal, and that it is necessary that the reasons for dispensing with the inquiry should be communicated. In our opinion, there is considerable force in this contention. We have already stated that the order of punishment even in those cases where inquiry is dispensed with is appealable and the appellate authority can go into the question whether the inquiry was properly dispensed with. The right of appeal conferred upon the

railway servant will be stultified and become nugatory if he is not told as to what are the reasons on which the inquiry has been dispensed with by the disciplinary authority. Apart from the provision of appeal, an order dispensing with the inquiry may be challenged under Article 226 of the Constitution on the ground that it is arbitrary or mala fide or that the reasons recorded are not germane to the satisfaction that it is not reasonably practicable to hold an inquiry. To approach the High Court for challenging the order on these grounds, the railway servant must know the reasons recorded for dispensing with the inquiry. The reasons recorded under Rule 14 (ii) must, therefore, be communicated to the railway servant concerned against whom action is taken. There is, however, a difference of opinion on this question whether those reasons should be communicated along with the order of punishment or whether they should be communicated only when the railway servant applies for the same. The Gujarat, Allahabad and Patna High Courts have taken the view that the reasons recorded under Rule 14 (ii) must be communicated along with the order of punishment. These cases are: *Bhola Nath v. Union of India* 1975 (1) SLR 277 (Guj) ; *Indra Deo v. Union of India* Civil Misc. Writ Petition No. 7688 of 1974, decided on 27-4-1976 (Allahabad High Court) and *Ram Charit Sharma v. Union of India* Civil Writ Jurisdiction Case No. 1735 of 1975, decided on 15-4-1976 (Patna High Court). But the Calcutta High Court in *C.M. Engineer v. Jyoti Prasad* 1975 (2) SLR 437 took the view that there is no obligation laid in Rule 14 (ii) on the disciplinary authority to communicate the reasons for dispensing with the inquiry along with the order of removal and that if the railway servant wants to know the reasons for enabling him to challenge the order before the appellate authority, he must apply to the disciplinary authority for giving him the reasons and then the reasons will be communicated to him. Having considered all these cases, we find ourselves in agreement with the view taken by the Gujarat, Allahabad and Patna High Courts that the disciplinary authority must communicate the reasons under Rule 14 (ii) along with the order of removal. In *Ajantha Industries v. C. Board, Direct Taxes* (supra), the Supreme Court had to consider section 127 of the income tax Act, 1961. This section provides that the Commissioner may, after giving the assessee a reasonable opportunity of being heard in the matter wherever it is possible to do so and after recording his reasons for doing so, transfer any case from one income tax Officer subordinate to him to another also subordinate to him. In construing this section the Supreme Court held that the reasons must not only be recorded but they must also be communicated along with the order and that non-communication of the reasons is not saved by simply showing that the reasons exist in the file although not communicated to the assessee. It will be seen that there is no express requirement contained in section 127 of the income tax Act that the reasons for the order of transfer be communicated to the assessee, yet it was held that the reasons have to be communicated along with the order. The Supreme Court observed that the object of recording of reasons in the order and making these reasons known to the assessee is to enable an opportunity to the assessee to approach the High Court in writ jurisdiction under Article 226 of the Constitution or the Supreme Court

under Article 136 in appropriate cases for challenging the order inter alia on the ground that it is mala fide or arbitrary or that it is passed on irrelevant or extraneous considerations. The same considerations as also an additional, consideration that an appeal is provided under the rules, require that the reasons recorded under Rule 14 (ii) should be communicated to the railway servant along with the order of punishment. An appeal has to be preferred under the rules within a period of 45 days from the date on which a copy of the order appealed against is delivered to the railway servant. There is no specific provision made in the rules that in cases where action is taken under Rule 14 (ii) the time taken in supplying a copy of the reasons recorded under that provision when an application is made for it will be excluded in computing the period of limitation. Indeed, there is no provision that the railway servant has to apply for a copy of the order of punishment or a copy of the reasons under Rule 14(ii). The order of punishment has to be communicated and all reasons in support of that order including the reasons for dispensing with the inquiry must be communicated to the railway servant so that he may avail of the right of appeal for challenging the order. The form prescribed for guidance under Rule 14(ii), which we have quoted in para 2 above, also shows that reasons for dispensing with the inquiry must be communicated along with the order of punishment. If the railway servant is required to apply for the reasons recorded under Rule 14 (ii) separately, the delay in supplying the reasons may deprive him of the right of appeal because of expiry of limitation. For all these reasons, in our opinion, the more reasonable view to adopt is that reasons recorded under Rule 14 (ii) must be supplied along with the order of punishment. Omission to supply the reasons is a serious breach of Rule 14 (ii) making the order dispensing with the inquiry invalid.

9. The next contention raised by the learned counsel for the petitioners is that even when action is taken under Rule 14, inquiry is not wholly dispensed with and that the disciplinary authority must hold a summary inquiry giving an opportunity to the railway servant to offer his explanation on the charges levelled against him. We have earlier stated that the three clauses of Rule 14 correspond to the three provisos contained in Article 311(2) of the Constitution. The language of Article 311(2) is clear that clause (2) has no application and no inquiry whatsoever is obligatory when the case falls under any of the three provisos : B.C. Dass etc. Vs. State of Assam and Others, . The provisos in Article 311(2) were earlier considered by the Supreme Court in M. Gopala Krishna Naidu Vs. State of Madhya Pradesh, and it was observed as follows :

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.

It may be a plausible argument that Rule 14 should be construed in the light of the above observations of the Supreme Court made in the context of the provisos to Article 311(2). However, Rule 14 itself came up for consideration

before the Supreme Court in *The Divisional Personnel Officer, Southern Railway and Another Vs. T.R. Chellappan and Others*, . The Supreme Court after construing the words "may consider the circumstances of the case" held that those words postulated consideration of all aspects after hearing the aggrieved person in a summary inquiry. The following passages from the judgment of the Supreme Court are relevant on this point:

The word "consider" has been used in contradistinction to the word "determine". The rule-making authority deliberately used the word "consider" and not "determine" because the word "determine" has a much wider scope. The word "consider" merely connotes that there should be active application of the mind by the disciplinary authority after considering the entire circumstances of the case in order to decide the nature and extent of the penalty to be imposed on the delinquent employee on his conviction on a criminal charge. This matter can be objectively determined only if the delinquent employee is heard and is given a chance to satisfy the authority regarding the final orders that may be passed by the said authority. In other words, the term "consider" postulates consideration of all the aspects, the pros and cons of the matter after hearing the aggrieved person such an inquiry would be a summary inquiry to be held by the disciplinary authority after hearing the delinquent employee.

The statutory provision referred to above merely imports a rule of natural justice in enjoining that before taking final action in the matter the delinquent employee should be heard and the circumstances of the case may be objectively considered. This is in keeping with the sense of justice and fair-play.

It will be seen that the word "consider" was used by the Supreme Court in *Gopalkrishna's* case to convey the idea of application of mind to the facts in an ex parte inquiry. But the word "consider" in the context of Rule 14 has been construed differently and has been held to convey the idea of a summary inquiry in which the railway servant has a right to participate. It is true that the ruling in *Challappan's* case (supra) was given in the context of Rule 14 (i) and not in the context of Rule 14 (ii), but this does not make any valid distinction, for the words "may consider the circumstances of the case" as they occur at the end of Rule 14 undoubtedly apply to all the three clauses. These words cannot be construed in one way for the purpose of clause (i) and in another way for the purpose of clause (ii). We, therefore, accept the contention of the learned counsel for the petitioners that even in cases falling under clause (ii) the disciplinary authority must hold a summary inquiry in which it should give an opportunity to the railway servant for giving his explanation to the charges levelled against him. The view that we have taken is in line with the view taken by the Gujarat, Allahabad and Patna High Courts in the cases referred to earlier, The Calcutta High Court in *C.M. Engineer's* case took a contrary view. It, however, appears that *Challappan's* case had till then not been decided and the Calcutta High Court had not the benefit of that decision. As the view taken by the Gujarat, Allahabad and Patna High Courts is in line with the decision in *Challappan's* case, that view

has to be preferred against the view of the Calcutta High Court on this point.

10. Learned counsel for the petitioners further contends that the petitioners were removed by an authority which was not competent to remove them, Reference in this connection is made to the definition of "appointing authority" in the rules which reads as follows :

2 (a), "appointing authority" in relation to a railway servant means--

(i) the authority empowered to make appointments to the service of which the railway servant is for the time being a member or to the grade of the service in which the railway servant is for the time being included, or,

(ii) the authority empowered to make appointments to the post which the railway servant for the time being holds, or

(iii) the authority which appointed the railway servant to such service, grade or post, as the case may be, or

(iv) where the railway servant having been a permanent member of any other Service or having substantively held any other permanent post, has been in continuous employment under the Ministry of Railways, the authority which appointed him to that service or to any grade in that Service or to that post, whichever authority is the highest authority.

Reference is then made to Note 2 of Schedule 1 which reads :

Note (2). The penalty of compulsory retirement or removal or dismissal from service shall be imposed only by the Appointing Authority or an authority of equivalent rank or a higher authority.

The learned counsel then refers to para. 134 of the Railway Establishment Code Vol. I, where the General Manager, or lower authority to whom he may delegate the power is shown as the authority competent to make first appointment. The argument of the learned counsel is that if the authority empowered to make appointments to the post held by the railway servant and the authority which actually appointed the railway servant are different then whichever authority is the highest is alone the appointing authority according to the definition contained in Rule 2 (a) and it is only this authority that can remove or dismiss the railway servant. Stress is laid on the words "whichever authority is the highest authority" as they occur in the definition in Rule 2 (a) and it is contended that the words "appointing authority" in Note 2 of Schedule I should be construed in accordance with this definition. It is not disputed by the learned counsel that there has been no contravention of Article 311(1) of the Constitution and that the petitioners have been removed by the authority which appointed them to the posts from which they have been removed. The point that the General Manager is the only authority competent to pass orders of removal or dismissal is not raised in the petition. Apart from that, we find no merit in this contention. The definition in Rule 2 (a) applies only when the context does not otherwise require. The case of

railway servants it cannot be disputed that the Central Government is the highest authority which can make appointments to any post and, therefore, if the highest authority is alone competent to take disciplinary action of removal or dismissal then all orders of such a nature will have to be passed by the Central Government alone. The note authorises the appointing authority or an authority of equivalent rank or a higher authority to impose the penalty of removal or dismissal. The wording of the note makes it clear that the expression "appointing authority" has not been used to signify the highest authority as required by the definition in Rule 2 (a). The provision in the note that an authority of equivalent rank or higher authority can also pass orders of removal or dismissal clearly indicates that the expression "appointing authority" has been used in its ordinary sense meaning that authority which appointed the railway servant concerned on the post or in the service from which he is removed. As earlier stated, Central Government is the highest authority for making appointments and, therefore, if every order has to be passed by the Central Government, the words "or an authority of equivalent rank or a higher authority" as they occur in Note 2 will become wholly redundant. Further, the provision for appeal will also have no meaning. The rules would become unworkable. It would be wholly impracticable for the highest authority competent to make appointments, be it the Central Government or the General Manager, to pass orders of punishment in every case. In our opinion, therefore, the appointing authority within the meaning of the note must be construed to mean that authority which appointed the railway servant concerned on the post or in the service from which he is removed. If this is the correct construction, it is not disputed that the authority passing the orders against the petitioners was competent to remove them from service.

11. Learned counsel for the respondents contended that violation of the requirements of Rule 14 is not enforceable because a railway servant holds his post at the pleasure of the President. In our opinion, there is no merit in this contention. In *Lekh Raj Khurana Vs. Union of India (UOI)*, a Constitution Bench of the Supreme Court ruled that termination of service in breach of a statutory rule can be challenged although there is no violation of Article 311. See further, *Senior Superintendent, R.M.S., Cochin and Another Vs. K.V. Gopinath, Sorter*, Indeed, in *Challappan's case (supra)*, which is directly in point, there was no violation of Article 311 and the only violation held to be proved was of Rule 14 in that there was no summary inquiry held before imposing the punishment. Still, the Supreme Court held that the order of removal was invalid. *Challappan's case* is a clear authority that non-holding of a summary inquiry as required by Rule 14 makes the order of removal invalid although there is no violation of Article 311. Further, in the instant case there is no valid order dispensing with the inquiry as required under Rule 14 (ii) or proviso (b) to Article 311(2), therefore, the non-holding of inquiry violates not only Rules 9 to 13 but also Article 311(2) of the Constitution.

12. The petition is allowed. The orders of removal passed against the petitioners are quashed. There will be no order as to costs. The amount of security deposit

shall be refunded to the petitioners.