

(1988) 12 DEL CK 0016

In the Delhi High Court

Case No : Civil Writ Petition No. 763 of 1988

Ramesh Chander and Another

APPELLANT

Vs

Delhi Transport Corporation

RESPONDENT

Date of Decision : 20-12-1988

Acts Referred:

Citation : (1989) 58 FLR 731 : (1988) ILR Delhi 467

Hon'ble Judges : S.S. Chadha, J;S. Duggal, J

Bench : Division Bench

Advocate : V.M. Tarkunde, A.K. Goel, Ramamurthy, A.K. Bajpai, B.S. Charya, M.S. Mann, Jitender Chawla, D.N. Vohra, C.V. Francis, G. Ramaswamy, Lalit Bhasin, S.N. Bhandari, Paramjit Benipal, A.K. Sharma, for the Appellant;

Judgement

S.S. Chadha, J.

(1) These writ petitions under Article 226 of the Constitution of India raise a substantial question of law as to the virus of proviso (1) of Clause 15(c)(.2) of the Delhi Road Transport Authority (Conditions of Appointment and Service) Regulations, 1952, framed in exercise of the powers conferred by sub-section (1) lead with Clause (c) of subjection 1 (2) of Section 53 of the Delhi Road Transport Authority Act, 1950. They also seek a declaration that the impugned dismissal orders are in violation of Section 33 of the Industrial Disputes Act, 1947.

(2) The Delhi Road Transport Authority Act, 1950 was enacted to provide for the establishment and regulation of a Road Transport Authority for the promotion of a co-ordinated system of road transport in the Union Territory of Delhi. u/s 3 of the said Act, the Delhi Road Transport Authority was established and it took over with effect from April 1, 1950 the earlier transport system known as Delhi Transport Services which in turn was as a result of nationalisation of Gwalior and Northern India Transport Company Ltd. on May 14, 1948. On the coming into force of the Delhi Municipal Corporation Act, 1957, the transport service in Delhi was taken over with effect from April 7, 1958 in accordance with a scheme prepared under Chapter XIV-Transport Services. For the efficient performance of

its functions, the Municipal Corporation of Delhi had, inter alia, the Delhi Transport Undertaking for transport services. u/s 516(l)(a) of Delhi Municipal Corporation Act, 19, the Delhi Road Transport Authority Act, 1950 stood repealed. With effect from November 3, 1971, a new Corporation was established and known as Delhi Transport Corporation (hereinafter referred. to as D.T.C.) under the provisions of Road Transport Corporations Act, 1950 read with Delhi Road Transport Laws (Amendment) Ordinance, 1971 which was subsequently replaced by Delhi Road Transport Laws (Amendment) Act, 1971. The provisions relating to the transport services in the Delhi Municipal Corporation Act, 1957 were repealed by the Delhi Road Transport Laws (Amendment) Act, 1971.

(3) The power to make regulations was conferred by Section 53 of the Delhi Road Transport Authority Act, 1950. In exercise of the powers conferred by sub-section (1) read with Clause (c) of sub-section (2) of Section 53 of the Delhi Road Transport Authority, with the previous sanction of the Central Government, made the Regulations called the Delhi Road Transport Authority (Conditions of Appointment and Service) Regulations, 1952 (hereinafter referred to as Drta Regulations, 1952). Similarly the Delhi Road Transport Authority (Scales of Pay) Regulations, 1959 were made. Even after the repeal of the Delhi Road Transport Authority Act, 1950, Drta Regulations, 1952 are saved by virtue of the provisions contained in Section 516(2) of the Delhi Municipal Corporation Act, 1957. It, inter alia, provides that any regulations made or issued under any of the enactments referred to in sub-section (1) of Section 516 and in force immediately before the establishment of the Corporation, in so far as it is not inconsistent with the provisions of that Act, continue in force and be deemed to have been made, issued or granted under .the provisions of that Act, unless and until it is superseded. By virtue of Section 4(c) and (f) of the Delhi Road Transport Laws (Amendment) Act, 1971, the existing Regulations. whether made under the Delhi Road Transport Authority Act, 1950 or under the Delhi Municipal Corporation Act, 1957, are similarly saved and continue to be in force and deemed to be Regulations made by D.T.C. u/s 45 of the Road Transport Corporation Act, 1950 till the same are superseded by way of new Regulations made in exercise of the powers conferred by Section 45 of the Road Transport Corporations Act, 1950.

(4) The Drta Regulations, 1952 deal, inter alia, with conditions of appointment and service, conduct discipline and appeal etc. We are conferred in these petitions with Regulation 15. It provides that the Delhi Road Transport Authority may from time to time issue standing orders governing the conduct of its employees and a breach of those orders will amount to misconduct. In exercise of the powers under Para 15(1). Standing Orders governing conduct of employees have been issued. Clause 19 enumerates the acts of commission and omission which shall be treated as misconduct. Sub-clause 19(i) reads :

STRIKING work or inciting others to strike work in contravention of the provisions of law applicable to the D.T.S.

Sub-clause (2) of Clause 15 lays down that the named penalties may, for misconduct or for a good and sufficient reason, be imposed upon an employee of the Delhi Road Transport Authority. Dismissal from service from Delhi Road Transport Authority is one of the penalties provided. The procedure for imposing the major penalty is provided in sub-clause (c) reading as follows :

(C) Without prejudice to the foregoing provisions no order of dismissal, removal, or any other punishment except censure shall be passed against an employee of the authority other than an order based on facts before a Criminal Code unless he has been informed in writing of the grounds on which it is proposed to take action and has been afforded an adequate opportunity of rebutting them. The grounds on which it is proposed to take action shall be reduced to the form of a separate charge or charges, which shall be communicated to the person charged and of any other circumstances which it is proposed to take into consideration in passing orders on the case. The employee shall be required within a specified time to submit a written reply to the charges and to state whether he desires to be heard in person also. If he so desires and if the competent authority so directs, an oral enquiry shall be held. The officer conducting the enquiry may record facts brought out in such enquiry and may utilise them for coming to a finding on the truth or otherwise of the charge or charges leveled against the employee. The Welfare Officer if any employed with the Authority may attend such enquiry to watch the interest of the employees but shall not intervene or obtrude in proceedings at any stage. The proceedings shall contain a statement of the finding and grounds thereof. Provided (i) that the provisions of this sub-clause shall not apply where the employee concerned has absconded or where it is for other reasons impracticable to communicate with him, (ii) all or any of the provisions of this sub-clause may in exceptional cases, for special and sufficient reasons to be recorded may be waived by the competent authority. Cases falling under provision (ii) shall be reported to the Authority.

(5) The Central Government appointed Pay Commissions from time to time to consider pay structure and service conditions of Central Government employees. The reports of the First, Second and Third Pay Commissions were submitted in the years 1948, 1958 and 1973 respectively. The benefits of recommended pay scales for the Central Government employees have been suitably extended from time to time to the employees of the D.T.C.

(6) By means of a resolution dated July 29, 1983, as amended by resolution dated February 16, 1985, the Fourth Pay Commission was set up by the Government of India to consider the pay structure and service conditions of the Central Government employees. The terms of reference of the Fourth Pay Commission, however, did not cover the employees working in the public sector undertakings which were following central pay scales and D.A. pattern. The Central Government sanctioned interim relief to its employees pending recommendations of the Fourth Pay Commission. The wage group constituted by the Government of India for considering the demands regarding revision of pay

scales of the employees of the D.T.C. also gave its report recommending revision, of pay scales of all the Class Iii and Class Iv employees as an interim measure and they were implemented . A question arose whether the pay scales as recommended by the Fourth Pay Commission would be extended to the-employees of the D.T.C. The position was made clear in the various orders including the order dated February 7, 1984 issued by the D.T.C. that the pattern of the Central Government pay scales would continue to be extended to the employees of the D.T.C.

(7) The Fourth Pay Commission gave its report on June 30, 1986 and recommended it to be applicable with effect from January 1, 1986. It was accepted with some modifications by the Central Government and has been implemented with effect from January 1, 1986. The Chairman of the D.T.C. in the letter dated September 29, 1986 addressed to the Secretary, Ministry of Transport, pointed out the recommendations of the Fourth Pay Commission and expressed that it was supposed to implement the recommendations of the Fourth Pay Commission as accepted by the Central Government for the employees of the D.T.C. as had been done during the previous Pay Commissions'' recommendations in the interest of maintaining cordial industrial relations. A Committee was also appointed by the Chairman to go into the matter of the implementation of the Fourth Pay Commission's report in D.T.C. and to submit its report. A detailed report was submitted by the Committee on November 12, 1986.

(8) In the meantime. Justice Singhla's Committee had been appointed on the directive of the Supreme Court to go into the pay scales of public sector undertakings having Central Government pay scales and D.A. and that Committee was then examining the question and its recommendations were to apply to all public sector undertakings which fall under that category. The Chairman, however, opined that implementation of the Fourth Pay Commission's report was necessary and conducive to the industrial health of D.T.C. and was also consistent with the regulations and commitments of the Government. The copies of correspondence exchanged between the Central Government and the D.T.C. in the years 1986 and 1987 are on the record. The employees of the D.T.C. had projected their problems and raised demands for the settlement of issue relating to the implementation of the Fourth Pay Commission's recommendations. There was a large scale resentment and discontentment in the employees of the D.T.C. The Government of India was also made aware of the problems arising out of non implementation of the Fourth Pay Commission's recommendations to the D.T.C. The Unions of employees of D.T.C. kept on agitating the matter but no decision was taken till February, 1988.

(9) Five Unions of the employees of the D.T.C. held a meeting on February 11, 1988 and it was decided "to press the management and the Government for the implementation of the recommendations of the Fourth Pay Commission which is still pending to oppose the privatisation of 40% of D.T.C. as per the statement of

Ministry of State of Surface Transport in the newspaper and to stop the management from harassing and victimising the workers of the D.T.C." In the notice dated February 18, 1988 to Chairman-cum-Managing Director of the D.T.C. it was stated that the workers of D.T.C. would go on an indefinite strike if the above-mentioned demands were not met by March 16, 1988. The notice of the strike was duly served on the D.T.C.

(10) By notification dated March 11, 1988, in exercise of the powers conferred by sub-section (1) of Section 3 of the Essential Services Maintenance Act, 1981 read with Essential Services Maintenance (Amendment) Act, 1985 and read with the Government of India Notification dated March 4, 1983, the Administrator of the Union Territory of Delhi expressed satisfaction in the public interest, that it was necessary and expedient so to do, thereby prohibited strike in the essential services specified therein in the Union Territory of Delhi i.e. any services in or in connection with the working of the D.T.C. It was directed in that notification that no person employed in the aforesaid essential services shall go or remain on strike and any strike declared or commenced, whether before or after the issue of that order, by person employed in the aforesaid essential services, shall be illegal. That order was directed to remain in force till June 10, 1988.

(11) D.T.C. also filed Suit No. 583/88 in the High Court of Delhi along with I.A. 1365188. This came up for hearing before a learned Single Judge of this Court who granted the following reliefs :

UPON motion made unto this court by Shri Same Chand Secretary of the plaintiff/applicant and Upon considering the application (IA No. 1365188) under order 39, Rules 1 & 2 and Section 151 CPC , (copy enclosed) and after hearing Shri Same Chand, Secretary of the plaintiff-applicant This Court Doth Order That you, your servants, employees or agents, associates, members be and the same are hereby restrained from staging Dharnas/Demonstration at the residence of the Chairman-cum-Managing Director, Secretary, General Managers and also the residences of other officers of the plaintiff Corporation. You are further restrained from preventing or obstructing the loyal staff and the willing workers and/or the Visitors from having ingress and egress to the places of the work of the plaintiff Corporation and from preventing outstanding of buses. You are further restrained from entering into or remaining or being upon and/or squatting in and/or near the plaintiff's places of work including the Head Office, depots and workshops. You are further restrained from damaging, destroying or causing any loss to any of the properties including the Buses and Buildings of the plaintiff. You are shouting language within 200 Meters and/or using any abusive language towards the Chairman-cum-Managing Director, Secretary, General Manager further restrained from holding any demonstrations or rallies and the other officers of the plaintiff Corporations including the loyal and willing workers of the plaintiff Corporation. You are further directed to maintain peace and order and not to disrupt the Transport System in any manner in the city. The plaintiffs are further permitted to seek police Assistance for enforcing the interim orders and the

S.H.O of the relevant Police Station should try and ensure that the injunction which is issued is enforced. Take Notice that the application (I.A. No. 1365/88) is also fixed for hearing on 21-3-1988. Given under my hand and the seal of this Court this the 16th day of March, 1988.

(12) The strike by some of the employees of D.T.C. declared ore March 17, 1988 commenced with effect from March 17,88, The D.T.C. reviewed the cases of staff on strike. It was decided and notified "That in case the strike continues after March 17, 1988, the employees willing to work must mark their attendance in the nearest police station. Attendances will be marked in the presence of an officer deputed by the D.T.C. List nearest police stations of various depots and Units is given for information of all".

(13) In the meanwhile, the matter was also taken up by the Labour Commissioner Conciliation Officer. In the meetings held on March 10 and Ii, 1988, the Assistant Labour Commissioner was informed of the order dated March Ii, 1988 of the Supreme Court containing a direction for payment of 20% of the basic pay to the employees of the D.T.C. with effect from February 1, 1988 to be paid along with the salary of March, 1988 on the condition that the notice of strike which had been given by some of the Unions had to be withdrawn. A failure report must have been submitted by the Conciliation Officer to the Delhi Administration as ultimately, a reference dated March 17, 1988 expressing than an industrial dispute in respect of the matter specified in the schedule existed between the Management of D.T.C. and its six named Unions and the same was referred for adjudication to an Industrial Tribunal of Delhi presided over by Shri P. L. Singhla. The terms of reference are:

WHETHER the workmen are entitled to the benefits of Fourth Pay Commission and if so, from which date and what directions are necessary in this respect?

(14) In exercise of the powers conferred by sub-section (3) of Section 10 of the Industrial Disputes Act, by order dated March 18, 1988, the Competent Authority prohibited the continuance of the strike forthwith in respect of the workmen of D.T.C., Delhi.

(15) The learned Single Judge later modified the order in Suit No. 583;88 on March 21, 1988. The order reads as under -

THE representative of the plaintiff states that persons who are willing to work would be allowed to work. While extending the injunction till further orders, I, however, vary the injunction issued whereby the workers had been restrained from entering into or remaining or being upon and/or squatting in or near the plaintiff's places of work including the Head Office, depots and workshops. I now direct that workers who are willing to work and who report for duty would be permitted to enter the premises and place of work including the Head Office, Depots and workers in those premises. The other injunction, namely, those-contained in paragraph 15 (a), (c) (e), (f) and (g) would, however, continue which means that there shall be no dharnas or demonstrations at the residence

of the officers and nor shall the loyal and willing workers and other personnel be obstructed from having ingress and egress to the place of work and the workers are further restrained from damaging, destroying or causing any loss to any of the properties including the buses and buildings and no demonstrations shall be held within 200 metres of the offices of the Chairman- cum-Managing Director, Secretary and other officers of the Corporation and the workers shall maintain peace and order and not disrupt the transport system in any manner. The S.H.O.s. concerned will ensure that there is free movement of the willing workers into and out of the place of work and adequate publicity should be given to the fact that there is no injunction on willing workers entering the place of work and doing their duties. Shri Gaur states that the doors should be opened in order to enable the workers to go in and to take the buses out. It is elementary that workers cannot go in and bring the buses out without the gates being opened.

(16) The D.T.C. has imposed a penalty of dismissal from service on about 3,125 employees, most of whom are before this Court in the batch of writ petitions filed in this Court. In the impugned orders, there is a recital to the said notification dated March 12, 1988 directing that upon issue of order (a) no person employed in D.T.C. shall go or remain on strike and (b) any strike declared or commenced whether before or after the issue of that order shall be illegal. It is also recited that the illegal strike of D.T.C. workers has made the normal functioning of the D.T.C. impossible which has ultimately resulted in disruption of the transport system causing inconvenience and hardship to the residents, visitors and commuters of Delhi specially economically weaker sections of the people and daily wage earners. In each of the dismissal orders, it is alleged that the named workman had participated in the illegal strike on 17th, 18th and 19th March, 1988 (or one or two of the above dates) and/or incited and instigated other Corporation workers to strike and thereby had committed misconduct under Clause 19(1) of the Standing Orders governing the conduct of the employees of D.T.C. Satisfaction is also recorded that any attempt to hold departmental enquiry by issuing a charge-sheet and following other procedure as provided under Clause 15(2) (e) of the D.T.C. Regulations, 1952 is not reasonably practicable and thereby the disciplinary authority waived all the procedures stipulated in Clause 15(2) (e) of the Regulations. The named employee is dismissed from service of the D.T.C. with immediate effect. The orders of dismissal have been passed on various dates between March 22, 1988 to March 26, 1988. The relief claimed in the petitions is to declare proviso (ii) to Clause 15(2) (e) of the D.T.C. Regulations, 1952 as ultra vires of Article 14 of the Constitution of India and to further quash the order of dismissal in respect of each of the employees of the D.T.C. under Proviso (ii) of Clause 15(2)(c) of the D.T.C. Regulations, 1952:

(17) The main submission of Shri V. M. Tarkunde, the learned counsel for the petitioners is that Proviso (ii) to Clause 15(2)(c) of the D.T.C. Regulations 1952 which has been invoked by the Disciplinary Authority in the impugned orders, is ultra vires Article 14 of the Constitution. The submission is that the holding of an

enquiry is the condition of service. No order of dismissal, removal or any other punishment can be passed against an employee of the D.T.C. unless he has been informed in writing of the grounds on which it is proposed to take action and has been afforded an adequate- opportunity of rebutting them. If an employee desires and if the Competent Authority so indirect ,an oral enquiry is required to be held. The officer conducting the enquiry has to record facts brought out in such enquiry and has to record a finding on the truth or otherwise of the charge or charges leveled against the employee. Holding of an enquiry is in compliance with the rules of natural justice and could not be taken away, urges the counsel, except in cases which have to be specified in the Regulations. The impugned regulation provides that all or any of the provisions of Clause 15(2)(c) may "in exceptional circumstances" be waived by Competent Authority. The power conferred is argued as arbitrary and also discriminatory as it enabled the D.T.C. to discriminate between employee and employee and the exceptional cases is no guidance for the exercise of discretion by the Competent Authority, Mr. M. K. Ramamurty, the learned counsel for some of the petitioners picked up the chain of arguments and contends that the rule making authority was not conscious of the limitations in dispensing with the enquiry as laid down in Clause (b) of the second- proviso to Article 311(2) of the Constitution. The exceptional circumstances contained in the impugned Rule is too widely worded, as it will embrace circumstances and situations unconnected with the impracticability of the holding of an enquiry. Proviso (i) to Regulations 15(2)(c) provides that the provisions of this sub-clause shall not apply where the employee concerned has absconded or where it is for other reasons impracticable to communicate with him. The situations relating to the impracticability of the holding of an enquiry are already covered by the first proviso, but there are no such limitations, urges the counsel, in impugned proviso (ii) as it mentions only exceptional circumstances. Other counsel for the petitioners have adopted these arguments.

(18) Our attention is invited to the decision of the Supreme Court in Union of India and Another Vs. Tulsiram Patel and Others, wherein it was held :--

THE principles of natural justice have thus come to be recognized as being a part of the guarantee contained in Article 14 because of the new and dynamic interpretation given by this Court to the concept of equality which is the subject-matter of that Article. Shortly put, the syllogism runs thus. violation of a rule of natural justice results in arbitrariness which is the same as discrimination: where discrimination is the result of State action, it is a violation of Article 14 : Therefore, a violation of a principle of natural justice by a State action is a violation of Article 14..... .

Reference is also made to the decision of the Supreme Court in Central Inland Water Transport Corporation Limited and Another Vs. Brojo Nath Ganguly and Another, . That case related to the interpretation of Rule 9(i) of the Central Inland Water Transport Corporation Ltd. Service, Discipline and Appeal Rules, 1979. It empowered the Corporation to terminate services of permanent

employees without giving any reason and by giving notice or pay in lieu of the notice period. It was reiterated there that the principles of natural justice are not the creation of Article 14, Article 14 is not their begetter but their Constitutional guardian. A comparison was made to Rule 36 where the Corporation could proceed and dismiss an employee on the ground of misconduct after holding a regular disciplinary enquiry. It was expressed that the Corporation is free to resort to Rule 9(i) in order to avoid the hustle of an enquiry and thus Rule 9(i) confers an absolute, arbitrary and unguided power upon the Corporation and it violates one of the two great rules of natural justice i.e. audi altram partem rule". In para 106 of the report, it was held that Rule 9(i) is both arbitrary and unreasonable and it also holly ignores audi altram partem rule, it, Therefore, violates Article 14 of the Constitution. The counsel for the petitioners conclude that the impugned proviso could similarly be described as "the Henry-VI Clause" since n guidance is laid down to indicate in what exceptional circumstances the power could be exercised.

(19) The arguments on behalf of the D.T.C. arc led by Shri G. Ramaswamy Additional Soliciter General followed by Mr. S. N. Bhandary and Mr. Lalit Bhasin. The main contention is that the Drta Regulations, 1952 have been framed in exercised of the powers conferred by sub section (1) read with Clause (c) of sub-section (2) of Section 53 of the Delhi Road Transport Authority Act, 1950 and continued under statutory- provisions and thus are statutory in character. A statutory rule can dispense with the rules of natural justice and in law there is no prohibition. By the delegated legislation, the power has been conferred in the Proviso (ii) to the waiver of the provisions of Regulation 15(2) (c) by the Competent Authority but the reasonableness of the provision is not open to challenge. It is contended that the discretion to be exercised by the Competent Authority In waiving the provisions is controlled and guided by the policy and purpose of the provisions in exceptional cases for special and sufficient reasons to be recorded which are open to judicial review. The counsel urges that the guidelines may be latent or patent, express or implied or capable of being gathered From the statutory provisions. To put it in the words of Krishna Iyer, J. as in P.N. Kaushal and Others Vs. Union of India (UOI) and Others, the guidelines may be "written in invisible ink".

(20) The support is taken for the policy and purpose on the following facts. Admittedly, the D.T.C. is an instrumentality and an agency of the State within the expression in Article 12 of the Constitution. It has been established for the promotion of a coordinated system of road transport in the Union Territory of Delhi. The first Schedule to the Industrial Disputes Act, 1947 (hereinafter referred to as the I.D. Act) list some industries which may be declared to be pubic utility service under sub-clause (vi) or Clause (n) of Section 2 and transport for the carriage of passengers by land or water) has been included in the said list of industries which may be declared to be public utility service as in the aforesaid first Schedule. The D.T.C. is an industry- as defined ill Clause (j) of Section 2 of the I.D Act and the said industry is a public utility service within the

meaning of the said expression as contained in Clause (n) of Section 2 of the I.D. Act. D.T.C. is thus charged with the responsibility of operating efficient road transport service which is a public utility service.

(21) Reference is then invited to the decision of the Supreme Court in "Union of India v. Tuisi Ram Patel", (supra), wherein their Lordships considered the ambit and scope of Clause (b) of the second proviso to Article 311(2) of the Constitution. The principles were reiterated in Satyavir Singh and Others Vs. Union of India (UOI) and Others, and Shivaji Atmaji Sawant Vs. State of Maharashtra and Others, . The purpose for which the provision was made in the second Proviso (b) of Article 311(2) is that it is not reasonably practicable to hold such enquiry. Reasonably impracticability is well-recognised in constitutional scheme of Article 311. in the impugned Rule, the guidance is contained in the words "exceptional cases" such as impossibility of holding an enquiry or impracticability of holding an enquiry at the same footing. The submission is that the Court should uphold the validity of the impugned proviso (ii) to Clause 15(2) (c) of the Drta Regulations 1952.

(22) It is unnecessary for us to trace in this judgment the history of the development of the principles of natural justice. In Tuisi Ram Patel's case (supra) which has been relied upon by the counsel for the parties. Madan, J. traced the ancestry of the principles of natural justice. The two rules" memo judges in casual " and "audi alteram parten"" and their corollary that justice should not only be done but should manifestly be seen to be done have been recognized and given effect to in many countries and in different systems of law. They have also received international recognition. Whether the rules on natural justice form part of Article 14 and if so how, have been dealt with in great detail. The conclusions reached by the majority have been summarised in Satyavir Singh's case (supra). It was ruled that "The principles of natural justice are not the creation of Article 14 of the Constitution. Article 14 is not the begetter of the principles of natural justice but is their constitutional guardian. The audi alteram partem rule has now definite meaning and connotation in law. Its content and implication is firmly established, nonetheless it is not a statutory rule. The presumption in favor of the audi alteram partem rule can be displaced. It can be adopted or modified by statutes or statutory rules or even excluded by express words of the statute or by necessary intentment. It is now fairly established by a catena of authorities that the legislation and the necessities of a situation can exclude the principles of natural justice including the audi altering partem rule.

(23) Fundamental Rule 56(j) in terms does not require that any opportunity should be given to the concerned Government servant to show cause against his compulsory retirement. The validity of this rule was question in various High Courts and the Supreme Court and upheld in T.G. Shivacharana Singh and Others Vs. The State of Mysore, In Union of India (UOI) Vs. Col. J.N. Sinha and Another, while considering the conflict between the rules of natural justice and statutory provisions, it was observed at page 42:

. AS observed by this Court in A.K. Kraipak and Others Vs. Union of India (UOI) and Others, , "the aim of rules of natural justice is to secure justice or to put it negatively to prevent miscarriage of justice. These rules can operate only in areas not covered by any law validly made. In other words they do not supplant the law but supplement it". 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 legislatures 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. Whether the exercise of a power conferred should be made in accordance with any of the principles of natural justice or not depends upon the express words of the provision conferring the power, the nature of the power conferred. the purpose for which it is conferred and the effect of the exercise of that power.

(24) In Tulsi Ram Patel's case (supra) in para 101 of the report, it was said :

NOT only ,Therefore, can the principles of natural justice be modified but in exceptional cases they can even be excluded. There are well-defined exceptions to the nemo judex in causa sua rule as also to the audi alteram partem rule. The nemo judex in causa sua rule in subjects to the doctrine of necessity yields to it as pointed out by this Court in J. Mohapatra and Co. and Another Vs. State of Orissa and Another, . So far as the audi alteram partem rule is concerned, both in England and in India, it is well established that where a right to a prior notice and an opportunity to be heard before an order is passed would obstruct the taking of prompt action, such a right can be excluded. This right can also be excluded where the nature of the action to be taken. its object and purpose and the scheme of the relevant statutory provisions warrant its exclusion: nor can the audi alteram partem rule be invoked if importing it would have the effect of paralysing the administrative process or where the need for promptitude or the urgency of taking action so demands...

(25) In Satyavir Singh's case (supra), the conclusions reached by the majority in Tulsi Ram Patel's case (supra) with regard to audi alteram partem rule are restated in sub-para 28 in. these words :

IT is well established both in England and in India that the principles of natural justice yield to and change with the exigencies of different situations which are not alike. They are neither cast in a rigid mould nor can they be put in a legal strait jacket. They are immutable but flexible and can be adopted, modified or excluded by statute and statutory rules as also by the constitution of the tribunal which has to decide a. particular matter and the rules by which such tribunal is governed.".

(26) Regulation 15(2)(c) incorporates the principles of natural justice and the

audi alteram partem rule by providing that no order of dismissal, removal or other major punishment can be passed against an employee of the Dtc unless he has been informed in" writing of the grounds on which it is proposed to take action and given the opportunity to show cause besides examination of the witnesses at the oral enquiry to find out the truth or otherwise of the charges leveled against the employee. The employee thus has an opportunity to deny his guilt after being informed of the charges leveled against him and also to establish his innocence by cross-examining the witnesses produced against him and by examining his own witnesses in support of his defense. This safeguard provide for the employees is, however, taken away completely by Proviso (i) where the employee concerned has absconded or where it is for other reasons impracticable to communicate with him. This reflects a practical difficulty in serving the initial charge-sheet on the employee and the provisions of Clause 15(2)(c) shall not apply in toto. It leaves no scope for any kind of opportunity being given to the employee. The scope of Proviso (ii) is, however, different. It empowers the Competent Authority to waive all or any of the provisions of Clause 15(2)(c) but he can do so only in "exceptional circumstances" for special and sufficient reasons to be recorded. By Proviso (i) of the statutory Regulation 15(2)(c), the principles of natural justice including the audi alteram partem rule are totally excluded. Proviso (ii) however, permits exclusion by express words in exceptional cases. It deals with situations where immediate remedial action is required to maintain the public utility service by immediate dismissal of the employees guilty of misconduct from the post held by them and fresh recruitment to man the essential services. The paramount concern is the maintenance and running of the rail transport system in Delhi to alleviate the inconvenience to the residents, visitors and commuters of Delhi specially economically weaker sections of the people and daily wage earners. The exclusion of the safeguard of a disciplinary enquiry and of the requirement of the rules of natural justice is designed to meet an emergent situation by immediate remedial action. It is not obligatory upon the Competent. Authority to dispense with the whole of the disciplinary enquiry. Depending upon the situations and exceptional circumstances" the Competent Authority is required to consider and then it "may waive all or any of the provisions of Clause 15(2)(c). There may be great urgency of taking disciplinary action against the delinquent employees. The exceptional situations may demand the Competent Authority to act with promptitude to normalise the public transport system. The Competent Authority is thus vested with the discretion to exclude the principles of natural justice when importing it would have the effect of paralysing the public utility service. These regulations are statutory in character as shown in earlier part of the. judgment and exclude by express words of the statute the principles of natural justice in exceptional circumstances .

(27) It is not possible for the legislature to envisage all situations and eventualities which may present themselves in future for solution. It is impossible to foresee every situation or to envisage every contingency with a

view to incorporate how to solve it in the statutory provisions. There is, Therefore, a necessity for delegation of the discretionary power and the necessity of a power to dispense with all or any of the provisions of an Act or the rules or the regulations, the policy of the law may afford guidance for the exercise of discretionary power. If a statute declares a definite policy, then it cannot be said that it confers unfettered discretionary power. The statute or rule or regulation may confer a discretionary power on an authority by laying down a policy or disclosing an intelligible purpose or guiding the exercise of discretionary power. In *Jyoti Pershad Vs. The Administrator for The Union Territory of Delhi*, , it was laid :

.....In the context of modern conditions and the variety and complexity of the situations which present themselves for solution, it is not possible for the Legislature to envisage in detail every possibility and make provision for them. The Legislature, Therefore, is forced to leave the authorities created by it an ample discretion limited. however, by the guidance afforded by the Act. Tins is the ratio of delegated legislation, and is a process which has come to stay, and which one may be permitted to observe is not without its advantages. So long, Therefore, as the Legislature indicates, in the operative provisions of the statute with certainty, the policy and purpose of the enactment the mere fact that the legislation is skeletal. or the fact that the discretion is left to those entrusted with administering the law, affords no basis either for the contention that there has been an excessive delegation of legislative power as to amount to an abdication of its functions, or that the discretion vested is uncanalised and unguided as to amount to a carte blanche to discriminate.....

(28) The delegated legislation in its wisdom has introduced in the impugned proviso (ii) a power to waive all or any of the provisions contained in Regulation 15(2)(c) of the holding of a departmental enquiry. The statute was enacted for the promotion of a coordinated system of road transport system in Delhi. The appointment of the officers and servants of the Dtc is for the efficient performance of its functions. The conditions of appointment arid service are required to be specified by the regulations. They are all designed to keep the public utility service in normal operations. There may be cases of the misconduct of the employees and that may result in the paralysing of the functions of the Dtc or its road transport system. Taking disciplinary action without holding of an enquiry may be warranted by emergent situations to man the transport services in place of the delinquent officials. The power to waive all or any of the provisions of the main clause has thus been incorporated with a purpose. The power to be exercised is controlled to be invoked only in "exceptional cases" for special and sufficient reasons to be recorded.

(29) It is well settled rule of interpretation that in interpreting the provisions of a statute or a statutory rule or a statutory regulation, the Court will presume that the legislation was intended to be intra virus and reasonable. Then the Court is required to construe it so as to give a sensible meaning in favor of the

competence of the authority laying down a rule of law. The principles of reading down an impugned provision to save it from unconstitutionality have often been applied to keep the statutory provision within the limits of its scope. It is construed as operative between certain persons, or in certain circumstances, or for certain purposes only, even though the language does not indicate any such circumscription of the field of its operation.

(30) Clause (2) of Article 311 gives a constitutional mandate to the rule of *audi alteram partem* by providing that a civil servant shall not be dismissed or removed or reduced in rank except after an enquiry, in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges. This safeguard is taken away, *inter alia*, "where the authority empowered to dismiss or remove a person or to reduce him in rank is satisfied that there is some reason, to be recorded by that authority in writing, it is not reasonably practicable to hold such enquiry". There should be some reason that it is not reasonably practicable to hold an enquiry. The principle of natural justice embodied in Article 311(2) has been expressly excluded when it is not reasonably practicable to hold the enquiry and this is a well-recognized exception in civil services. Its validity has been upheld by the Supreme Court in *Tulsi Ram Patel's* case (*supra*). When the rule-making authority enacted proviso (i) to Regulation 15(2)(c) it was aware that the provisions of the main clause cannot be applied in cases where the employee concerned has absconded or where it is for other reasons impracticable to communicate with him. It was an impossibility of reaching the employee to ask him to participate in the enquiry. Yet there could be other contingencies not covered by proviso (i), when it may not be possible to hold the enquiry. The rule-making authority used the expression "exceptional cases" in proviso (ii) to cover such cases for waiving all or any of the provisions of the main clause. The "exceptional cases" are relatable to or germane to the question of the practicability of the holding of the enquiry. Situations which make it reasonably impracticable to hold an enquiry may be the creations of the employee himself or his colleagues or his associate workers in other organisations or industry. It may not be possible to foresee how long the offending situation will last or when will the normalcy be restored. Exigencies of the situation may demand the prompt disciplinary action without holding an enquiry against the delinquent employees for their misconduct to remove them from the posts. Prompt action may be required to fill up the posts to man the essential public utility services. Not taking immediate action may be construed by the employees on illegal strike as a sign of weakness on the part of the disciplinary authority. Inaction may encourage the agitating employees to increase the tempo or enlarge their activities. There may be violence with a threat to the property of the D.T.C. There may prevail an atmosphere of general indiscipline or insubordination. These are some of the illustrative circumstances and situations when it may not be feasible to carry out the normal detailed procedure of the holding of an enquiry with compliance of the principles of natural justice. The exceptional cases, therefore, have to be construed to cover

cases where the procedure of enquiry laid down in the main clause 15(2)(c) is reasonably incapable of being put into practice. We would circumscribe it to uphold its validity. We would, Therefore, read down the expressions "exceptional cases" in the Proviso (ii) to cover cases "where it is not reasonably practicable to comply with all or any of the provision of the main clause". The proviso (ii) is thus not discriminatory or the power unguided. The competent authority can waive all or any of the provisions of clause 15("2)(c) only for "special and sufficient reasons to be recorded". The competent authority cannot dispense with the disciplinary enquiry lightly or merely in order to avoid the holding of the enquiry. It cannot act arbitrarily as it has to advance special, and sufficient reasons in writing. There is a further safeguard that the cases of waiver have to be reported to the DTC. The reporting of the waiver cases ensures that the Competent Authority will act within the four corners of the proviso as his decision will be looked into by the Dtc The decision taken by the competent authority is open to judicial review. The Court will strike down the waiver of all or any of the provisions of the holding, of the enquiry, if it finds that it was exercised with ulterior motives or mala fide or for extraneous considerations or even where no reasonable person reasonably instructed in law taking a reasonable view of the prevailing circumstances and situation could form that view. The principles relating to judicial review have been reiterated in *Tulsi Ram Patel's case* (supra) and summarised in *Satyavir Singh's case* (supra) in paras 104 to 114. We may quote para 108 :

IN examining the relevancy of the reasons given for dispensing with the inquiry, the Court will consider the circumstances which, according to the disciplinary authority, made it come to the conclusion that it was not reasonably practicable to hold the inquiry. If the Court finds that the reasons are irrelevant, the order dispensing with the inquiry and the order of penalty following upon it would be void and the Court will strike them down. In considering the relevancy of the reasons given by the disciplinary authority, the Court will not, however, sit in judgment over the reasons like a Court of first appeal in order to decide whether or not the reasons are germane to Clause (b) of the second proviso or an analogous service rule. The Court must put itself in the place of the disciplinary authority and consider what in the then prevailing situation a reasonable man acting in a reasonable manner would have done. It will judge the matter in the light of the then prevailing situation and not as if the disciplinary authority was deciding the question whether the inquiry should be dispensed with or not in the cool and detached atmosphere of a Court-room, removed in time from the situation in question. Where two views are possible, the Court will decline to interfere.

(31) Clause 15(3) of the DTC Regulations, 1952 provides for an appeal in these words :

(3)Appeal.-Every employee of the Authority shall have the right to appeal within such time and in accordance with such terms as may be prescribed by the Delhi

Road Transport Authority against an order of punishment or penalty passed against him to the next higher authority, except where the order has been passed by the Authority itself. Where the order of punishment or penalty is passed by the General Manager, the appellate authority shall be the Authority. In case of difference of opinion amongst the members of the Appellate Authority, the majority view shall prevail.

Standing Orders regarding appeals have been issued by the D.T.C. The appellate subcommittee has to consider :

(a) Whether the facts on which the order of punishment or penalty was based have been established. (b) Whether the facts established afford sufficient ground for taking action, and (c) Whether the penalty is excessive, adequate or inadequate and after such consideration may; (i) confirm, modify or revise the order, or (ii) direct that a further inquiry be held in the case, or (iii) reduce or enhance the penalty imposed by the order, or (iv) make such other order in the case as it may deem fit

Mr. Ramamurthy had argued that proviso (ii) of Clause 15(2)(c) is bad as there is no provision for holding of an enquiry even at the appellate stage. He, however, made it clear that it is not that the petitioners want to go into the disciplinary enquiry at the appellate stage. We will read into Clause 15(3) the provision of holding an enquiry while disposing of an appeal. as was directed by the Supreme Court in *Tulsi Ram Patel's* case (supra) and the principle extracted in para 96 of *Satyavir Singh's* case (supra) in these words :

WHERE service rules do not contain a provision similar to sub-clause (ii) of Clause (c) of the first proviso to R. 25(1) of the Railway Servants (Discipline and Appeal) Rules, 1968-having regard to the factors to be taken into account by the appellate authority in deciding an appeal, a provision similar to the said sub-clause (ii) of Clause (c) of R. 25(1) of the Railway Servants (Discipline and Appeal) Rules, 1968, should be read and imported into the provisions relating to appeals and revision contained in such service rules. This would, however, be subject to a situation envisaged by the. second proviso to Art. 311(2) not existing at the time of the hearing of the appeal or revision.

We are relieved of expressing more as the D.T.C. has agreed to hold the disciplinary enquiry at the appellate stage.

(32) We may at this stage deal with the contentions relating to the exercise of power in the light of the extent of judicial review noticed above. We sent for the original records whose particulars were given by the counsel for the petitioners as illustrative cases. The allegations in substance are the same in all these files. The file commenced with a report of an officer of the D.T.C. that the named official was found to incite and instigate other workers to strike works on 17th March, 1988. 18th March, 1988 and 19th March, 1988 (or one or two of the dates) at the shed meetings or other specified places. It is further alleged that they indulged in shouting of slogans and incited other workers to strike work and

that they threatened that they would not allow any bus to out shedding and would paralyse the services of the D.T.C. The officer suggests that suitable disciplinary action against them be taken. The Competent Authority received the report and recorded his own reasons that the normal functioning of the depot was made impossible by the strike which resulted in the complete disruption of the out shedding of the buses, that this has caused inconvenience and hardship to the residents, visitors and commuters of Delhi, especially the people belonging to the economically weaker sections and daily wage earners and that the strike has also paralysed the function of the offices of the D.T.C. It is then recorded :

IT may be stated that an order u/s 3 of the Essential Services Maintenance Act, 1981, has already been issued by the Delhi Administration on 11-3-1988, prohibiting strike in the Dtc and as such the strike has become illegal and anybody who has participated in the strike and/or incited and instigated others to strike work has made himself liable for disciplinary action including dismissal. Moreover, striking work and inciting the others to strike work in contravention of provision of law applicable to Dtc is a misconduct which is punishable with dismissal under the D.R.T.A. (Conditions of Appointment and Services) Regulations, 1952. In view of the seriousness of the situation created by the strike in which Shri Het Ram, A.T.I. Token No. 16328 Unit South Checking has participated and for has instigated and incited other workers to strike work. I have considered the report of Sh. Gurdev Singh, Ats and am fully satisfied that penalty of dismissal from service is warranted in the case of Shri Het Ram, A.T.I.T. No. 16328. In view of the circumstances mentioned above, I am also fully satisfied that detailed inquiry and procedure as contemplated under clause 15(2) (c) of the D.R.T.A. (Conditions of Appointment and Services) Regulations, 1952 is not reasonably practicable in the prevailing strike situation and as such I hereby waive the procedure stipulated in the above said cause by virtue of proviso (ii) thereof. Accordingly .I hereby dismiss Shri Het Ram. Ati, T No. 16328 of South Checking with immediate effect. Please issue orders of dismissal placed below.

THEREAFTER formal dismissal order is drawn up incorporating similar satisfaction of the competent authority. This satisfaction, in our view, has to be judged under the extraordinary and exceptional circumstances created by the mass illegal strike resorted to by the employees to the D.T.C. which was operating a public utility service. In the counter-affidavit, it is stated:- 4.8 The day of commencement of strike witnessed violence, inspire of stringent measures taken by the Corporation to avoid sabotage and damage to the vehicles, in different parts of the city. Many buses were damaged by the agitating employees inspire of heavy police patrolling outside each of the depots. Attempts were made by the striking workers at the border to stop buses of different State transports from entering Delhi. At Ghaziabad many buses were damaged. At the Haryana border over 50 buses from J&K were stopped by the striking workers. As the day progressed the police arrested over 700 workers who were indulging in violence or exhorting others to do so. Violence occurred at Mayapuri, Vikaspuri, Khanpur, Lawrence Road, Nehru Place, Naiafgarh and Wazirpur. Striking workers prevented

private buses from plying, stoned buses and deflated tyres. Most commuters were under incredible strain as most of the destinations were without a transport link. The private operators and bus drivers from other States were threatened. Bus drivers were beaten up. Many people were injured. 4.9 inspire of prohibitory orders and untold suffering caused to the commuters the Unions issued statements to continue with the strike and threatened to heighten acts of violence in case their agitation was repressed. People travelled precariously perched on roof tops and hanging on to otherwise overloaded buses, tempos etc. 4.10 The striking workers on 21-3-1988 assembled at the India Gate and held a rally defying prohibitory orders and courted arrest. The participation was in several thousands. 4.11 Press carried photographs of the rally showing the extent of participation by the striking workers in furtherance of their common goal in the strike which had been declared illegal. 4.12 Police found it difficult to arrange turn a fleet of vehicles to carry the several thousands D.T.C. workers after they courted arrest at India Gate. 4.13 inspire of the fact that warning was published in press by the Corporation that in case the striking workers failed to report for duty latest by March 21, 1988, stern action would be taken against them including dismissal of service u/s 4 of The Essential Services MAINTENANCE- Act, 1981 read with Essential Services Maintenance (AMENDMENT) Act, 1985 and Regulation 15(2) of the D.R.T.A. (Conditions of Appointment and Service) Regulations, 1952. the striking workers continued their agitation. As reported in press over 1500 workers also courted arrest near Patel Chowk on Parliament Street. A rally was held at Bahadurgarh on 23-3-1988 where. as reported over 10,000 workers assembled and a decision was taken to intensify the agitation. The agitation took a violent turn and a private bus was burnt even though the police, prevented the striking workers from disrupting traffic at the cross near "All India Institute of Medical Sciences.

(33) The said notification dated March 11, 1988 under E.S.M.A., 1981 made the strike illegal with the result that those who participated in it or instigated or incited other workers were liable to disciplinary action including dismissal because of misconduct within the meaning of Clause 19(i) of the Standing Orders read with Section 4 of E.S.M.A., 1981. The functioning of the D.T.C. was completely disrupted as a result of the illegal strike. The endeavor was towards restoration of normal operations of the essential transport services which is the life-time for the commuters of Delhi. In the prevailing strike situation, it was rightly thought in view that it was not reasonably practicable to hold the enquiry. Prompt and urgent action was imperative to bring the situation under control "and to avert the agitation taking an ugly turn possibly with grave loss to life and property. No witnesses could be available or forthcoming to depose against the striking employees judged in the context of the prevailing situations and circumstances when the substantial numbers of the employees were on illegal strike. In retrospect, it is evident that the rigour of the strike petered out after the impugned orders were passed dismissing the employees guilty of the misconduct of instigating and inciting other workers "to illegal strike. There was

material on the record in. the report of the officer who kept the vigil that each of the named employees was found to incite and instigate other workers to strike work. The then prevailing illegal strike situation and its impact on the functioning of the D.T.C. is recalled briefly in the order recording the reasons for waiving the procedure stipulated in main Clause 15(2)(c). Those reasons, in our opinion, are relevant and germane for determining the question about the dispensing with of the enquiry. Judged from the standard of a reasonable man acting in a reasonable manner, no other view was possible in the then prevailing situation. The allegations of mala fide which are denied in the counter affidavits, are bereft of any particulars and do not amount, in law to a plea of mala fides. The competent authority has benefice applied his mind in each case when it came to the conclusion that it is not reasonably practicable to hold the disciplinary enquiry and thus waived the entire procedure laid down in the main clause. We. Therefore, uphold the virus of Clause 15 (2)(c) of the Drta Regulations, 1952 as well as the exercise of power by the competent authority in each of the cases before us. II. Violation of the provisions of Section. 33 of the I.D. Act:

(34) We may recall that the five Unions of the employees of the D.T.C. held a meeting on February 11, 1988 and it was decided, inter alia, to press the management and the Government for the implementation of the recommendations of the Fourth Pay Commission. In the notice dated February 18, 1988, it was stated that the workers would go on an indefinite strike if the demands were not met by March 16, 1988. By an order of the appropriate Government dated March 17, 1988. an industrial dispute with the terms of reference, namely, "Whether the workmen are entitled to the benefits of the Fourth Pay Commission and if so, from which date and what directions are necessary in this respect", was referred for adjudication to an Industrial Tribunal, Delhi presided over by Shri P.L. Singhal. By virtue of the provisions contained in Section 20(3) of the I.D. Act. the adjudication proceedings before the Industrial Tribunal shall be deemed to have commenced on the date of reference of the dispute to adjudication and to have concluded on the date on which the award becomes enforceable u/s 17A

(35) The contention of the counsel for the petitioners is that the impugned orders of dismissal are in violation of the provisions of Section 33 of the I.D. Act, having been made during: the pendency of the reference and without the permission of the Industrial Tribunal. Because of the prohibition contained in Section 33 of the I.D. Act, the employer cannot for any misconduct connected with the dispute, discharge or punish, whether by dismissal or otherwise, any workman concerned in such dispute, save with the express permission in writing of the Authority before which the proceeding is pending. In each of the dismissal orders, it is alleged that the named workman had participated in the illegal strike on 17th, 18th and 19th March, 1988 (or one or two of the above dates) and/or incited or instigated the other workers to strike and thereby had committed a misconduct under Clause 19(1) of the Standing Orders governing the conduct of the employees of D.T.C. The imposition of the penalty of dismissal from service is

argued to be connected with the pendente lite industrial dispute and no punishment can be imposed without the permission of the Authority before which the proceeding is pending Admittedly. no permission u/s 33(1) has been taken from the Industrial Tribunal, Delhi. Even if the dismissal is for any misconduct not connected with the pendente lite industrial dispute, it is further urged that it cannot be without the approval of such Authority. Admittedly, no application for approval of the Industrial Tribunal has been filed.

(36) In support of the submission that the order of dismissal is ill violation of Section 33(1) of the I.D. Act, having been made during the pendency of a reference and without permission of the Industrial Tribunal and it should be declared as void ab initio in these proceedings under Article 226 of the Constitution, Shri M. K. Ramamurthy relied upon the decision in Punjab National Bank Ltd. Vs. Employees of The Bank, In that case. their Lordships expressed that The dismissal of the respondents by the Bank without obtaining the permission as required by Section 33 was also illegal". Reliance is also placed on Managing Director, Uttar Pradesh Warehousing Corporation and Another Vs. Vijay Narayan Vajpayee, There, the dismissal of an employee of U.P. Warehousing Corporation was in total breach of rule of natural justice and was declared illegal. The order of dismissal of the workman on the ground of its being invalid was quashed by the High Court in the proceedings under Article 226 of the Constitution and was upheld by the Supreme Court except that there was a deletion of the direction for payment to the workman of full back wages.

(37) The contention of Mr. G. Ramaswamy, the learned counsel for the D.T.C. is that where an employer contravenes the provisions of Section 33 during the pendency of title proceedings before an .industrial Tribunal and the employee is aggrieved of such contravention, he can make a complaint in writing in the prescribed manner to the Industrial Tribunal under the provisions of Section 33A. of the .1. D. Act and on receipt of such complaint the Industrial Tribunal has to adjudicate upon the complaint as if it were a dispute referred to or pending before it in accordance with the provisions of the 1.1). Act and he has .to submit its award to the appropriate Government and the provisions of the 1. D. Act shall apply accordingly. The submission is that the right has been created under a statute which also provides for the remedy for its breach and, Therefore, this Court should not exercise jurisdiction under Article 226 of the Constitution. The further submission of Shri Lalit Bhasin is that Section 33 cannot be read in isolation and has to be read along with Section 33A to gather the intention of the legislature. Mr. S. N. Bhandari laid great emphasis and cited a number of decided cases (reference to which need not be made) to contend that it is settled rule of judicial policy, convenience and discretion that a writ Court would refuse to interfere under Article 226 of the Constitution in cases where an equally efficacious remedy exists.

(38) Initially, only Section 33(1) provided penalty for contravention of Section 33. The workman could also invoke the jurisdiction for a reference by the

appropriate. Government u/s 10 for the management's breach of his statutory obligation u/s 33. The appropriate Government was, however, not bound to refer the disputes u/s 10. Section 33A was enacted later for making a special provision for adjudication of the complaints relating to the contraventions of Section 33. Punjab National Bank's case of 1953 (supra) was considered by the Supreme Court in *The Punjab National Bank Ltd. Vs. Its Workmen*, . The scope and ambit of Section 33 of the I.D. Act was laid down. A contention was also noticed that as a result of the decision of the Supreme Court in the- appeal referred by the Bank against the interlocutory judgment of the Appellate Tribunal, the whole of the enquiry held by the said Tribunal pursuant to the said interlocutory judgment is invalid and infructuous, that the Supreme Court had held that the dismissal of 150 employees is illegal having regard to the provisions of Section 33 of the Act; and that if the dismissal is illegal it is void and inoperative and as such it cannot be said to have terminated the relationship of master and servant between the Bank and its employees. A further argument noticed was that the principles applicable to the decision of the industrial dispute arising from the dismissal of an employee to which their Lordships had referred serve to emphasise the obligatory character of the limitation imposed on the employer by Section 33 of the I. D. Act and by the requirements of " natural justice that every dismissal must be preceded by a proper enquiry. The further submission noticed was that where the ban imposed by Section 33 of the Act had been defied and/ or where a proper enquiry has not been held at all, the action of the employer in dismissing his employee must be treated as void and inoperative, and that such a case stood outside the" principles discussed. These contentions were answered in para 31 of the reported case when it was opined that these contentions are, however, untenable in view of the decision of the Supreme Court where the provisions of Section 33A have been construed and considered. Their Lordships then turned to Section 33A expressing as follows :

" THIS contention is, however, untenable in view of the decision of this Court where the provisions of S. 33A have been construed and considered, and, so we must now turn S. 33A. This section was inserted in the Act in 1950. Before it was enacted the only remedy available to the employees against the breach of S. 33 was to raise an industrial dispute in that- behalf and to move the appropriate Government for its reference to the adjudication of a tribunal under S. 10 of the Act. The trade union movement in the country complained that the remedy of asking for a reference under S. 10 involved delay and left the redress of the grievance of the employees entirely in the discretion of the appropriate Government because even in cases of contravention of S. 33 the appropriate Government was not bound to refer the dispute under S. 10. That is why S. 33A was enacted for making a special provision for adjudication as to whether S. 33 has been contravened. This section enables an employee aggrieved by such contravention to make a complaint in writing in the prescribed manner to the tribunal and it adds that on receipt of such complaint the Tribunal shall adjudicate upon it as if it is a dispute referred to it in accordance with the

provisions of the Act. It also requires the tribunal to submit its award to the appropriate Government and the provisions of the Act. It also requires the tribunal to submit its award to the appropriate Government and the provisions of the Act shall then apply to the said award. It would thus be noticed that by this section an employee aggrieved by a wrongful order or dismissal passed against him in contravention of S. 33 is given a right to move the Tribunal in redress of his grievance without having to take recourse to S. 10 of the Act.

(39) In *The Automobile Products of India Ltd. Vs. Rukmaji Bala and Others*, . their Lordships considered the question when an employer contravenes the provisions of Section 33 of the I. D. Act or Section 22 of the Industrial Disputes Appellate Tribunal Act, 1950. The grievance noticed is two-fold. In the first place, the employer has taken a prejudicial action against the workmen without the express permission in writing of the authority concerned and thereby deprived them of the statutory safeguard which the Legislature has provided for their protection against victimisation. In the second place, the workmen may also have a grievance on merits. It was that it is clear that u/s 33-A of the 1. D. Act, the authority is to adjudicate upon the complaint as if it were a disputes referred to or pending before it and u/s 23 , of 1950 Act the authority is to decide the complaint as if it were an appeal pending before it and that these provisions can clearly indicate that the jurisdiction of the authority is not only to decide whether there has been a failure on the part of the employer to obtain permission of the authority before taking action but also to go into the merits of the complaint and grant appropriate relief.

(40) In *Punjab Beverages Pvt. Ltd., Chandigarh Vs. Suresh Chand and Another*, the Supreme Court considered the question of law relating to the interpretation of Section 33(2)(b) and 33C(2) of the I.D. Act. The principal question which arose for consideration there was as to what was the effect of contravention of Section 33(2)(b) on an order of dismissal passed by an employer in breach of it. Does it. render the order of dismissal void and inoperative so that the aggrieved workman can say that he continues to be in service and is entitled to receive wages from the employer? The further question was whether the contravention of Section 33(2)(b) introduces a fatal infirmity in the order of dismissal passed in violation of it so as to render it wholly without force or effect. or despite such contravention, the order of dismissal may still be sustained as valid. Their Lordships first examined the object and purpose for which Section 33 of which sub-section 2 (b) forms part, has been introduced in the Act. It was ruled:

IT will be seen that the only scope of the inquiry before the Tribunal exercising jurisdiction under S. 33 is to decide when the ban imposed on the employer by this section should be lifted or maintained by granting or refusing the permission or approval asked for by the employer. If the permission or approval is refused by the Tribunal, the employer would be precluded from discharging or punishing the workman by way of dismissal and the action of discharge or dismissal already taken would be void. But the reverse is not true for even if

the permission or approval is granted that would not validate the action of discharge or punishment by way of dismissal taken by the employer. The permission or approval would merely remove the to enable the employer to make an order of discharge or Dismissal and thus avoid incurring the penalty under S 31(1). but the validity of the order of discharge or dismissal would still be liable to be tested in a reference at the instance of the workman under S. 10. Vide Atherton West and Co's case and the Punjab National Bank case. The workman would be entitled to raise an industrial dispute, in regard to the order of discharge or dismissal and have it referred for adjudication under S. 10 and the Tribunal in such reference would be entitled to interfere with the order of discharge or dismissal within the limits laid down by this Court. in several decisions commencing from Indian Iron and Steel Co., Ltd. and Another Vs. Their Workmen, ..

Then their Lordships considered that if an application for permission or approval is not made as required by Section 33, what would be its effect on the order of dismissal or discharge made by the employer. It was held :

" WE must .Therefore, construe section 33 not as if it were standing alone and apart from the rest of the Act, but in the light of the next following Section 33A and if these two sections are read together, it is clear that the legislative intent Was not to invalidate an order of discharge or dismissal passed in contravention of S. 33. despite the mandatory language employed in the section and the penal provision enacted in Section 31(1). Now, if the effect of contravention of S. 33 were to make the order of discharge or dismissal void and inoperative, the workman would straightway be entitled to an order of reinstatement as soon as he establishes in the complaint made by him under S. 33A hat the employer has contravened S. 33 in making the order, of discharge or dismissal. There would be no need to go into the further question whether the order of discharge or dismissal is justified on the merits. It is difficult to imagine how the law can permit an order of discharge or dismissal which is void and inoperative to be justified on the merits. There can be no question of justification on merits of an order of discharge or dismissal which is found to be null and void. The very fact that even after the contravention of Section 33 is proved, the Tribunal is required to go into the further question whether the order of discharge or dismissal passed by the employer is justified on the merit clearly indicates that the order of discharge is not rendered void and inoperative by such contravention. It is interesting to note that Gajendragadkar, J., speaking on behalf of the Court in Equitable Coal Co. Ltd. Vs. Algu Singh and Another, , characterised the breach of Section 33 as a technical breach not having tiny invalidating; consequence on the order of discharge or dismissal if the scope of the inquiry u/s 33A is what it has been held to be in the decisions in The Automobile Products of India Ltd. Vs. Rukmaji Bala and Others, , Equitable Coal Co. and the The Punjab National Bank Ltd. Vs. Its Workmen, , the conclusion must inevitably follow that the contravention of Section 33 docs not render the order of discharge or dismissal void and of no effect.

(41) By a combined reading of Section 33 and 33A of the I. D. Act and the above noticed ratio of the judgments of the Supreme Court, we are of the opinion that it is a matter of legislative policy as to what consequences flow from the contravention of Section 33 and what type of remedy should be provided in case of such contravention. The legislature in its wisdom enacted a special provision in Section 33A for adjudication as to whether Section 33 has been contravened or not and what would be the scope of the enquiry. The work- man has been given a right to move the Tribunal for redressal of his grievances without recourse to Section 10 of the 1. D. Act. As the Supreme Court says the contravention of Section 33 docs not render the order of discharge or dismissal void and of no effect. This Court will, Therefore, not declare so in these proceedings.

(42) The Unions of the workmen had given a notice of strike. In exercise of the powers conferred by sub-section (1) of Section 3 of the Essential Services Maintenance Act, 1981. the Administrator had issued an order dated March 11, 1988 prohibiting strike in or in connection with the workmen of the DTC. By means of this order, persons employed in the Dtc were directed not to go or remain on strike. A further direction was issued that any strike declared or commenced whether before or after the issue of the order in the essential services shall be illegal. Some of UK" Unions had approached the Supreme Court who vide its order dated March Ii, 1988 directed the D.T.C. to pay 20 per cent of the salary as an ad hoc payment to the employees but advised the Unions not to goon strike. The demand relating to the implementation of the Fourth Pay Commission"s report was also referred for adjudication by the Delhi Administration to the Industrial Tribunal under the provisions of I.D. Act. An order was passed u/s 10(2) of the I.D. Act prohibiting title Continuance of the strike by the D.T.C. workers. The workmen went on strike from March 17, 1988. The commuters , were left stranded and had to face grave hardships to reach their destinations. The strike particularly at a time when school examinations were being held showed complete disregard of the workers for commuters" convenience arid an attempt was made to hold the citizens of Delhi at ransom. The D.T.C. had to requisition buses from the neighbouring States which added to the burden on the exchequer apart from the losses suffered by the D.T.C. on account of the strike. The staking workers incited and" instigated the loyal workers. On these facts, the D.T.C. decided to dispense with the enquiry by exercise of the power under Second Proviso to Regulation 15(2)(c) as it was not reasonably practicable. They could not have also invoked the jurisdiction of the Industrial Tribunal u/s 33(1) or (b), whichever is applicable, as that would have delayed the implementation of the orders. As we sec in retrospect, after title orders of dismissal were passed and given effect to, the strike fizzled out and the public utility service resumed in stages and was in complete gear within two weeks.

(43) We cannot consider the effect of the legality of the action u/s 33 dehors the provisions of Section 33A. The question for consideration is not of striking down an illegal order but the consequences that may follow. As their Lordships in

Punjab National Bank's case (supra) had said that each case must be considered on its own merits and in reaching the final decision an attempt must be made to reconcile the conflicting claims made by the employee and the employer. The employee is entitled to security of service and should be protected against wrongful dismissal and so the normal rule should be reinstatement in such cases. Nevertheless in unusual and exceptional cases, the Tribunal may have to consider whether in the interest of the industry itself, it would be desirable or expedient not to direct reinstatement. As in many other matters arising before the Industrial Courts for their decisions, this question has also to be decided after balancing the relevant factors and without adopting any legalistic or doctrinaire approach. This Court cannot order the reinstatement of the workmen with full back wages as that is not the scope of the jurisdiction under Article 226 of the Constitution. The foundation of the jurisdiction u/s 33A of the I.D. Act is the contravention of Section 33. If the contravention of Section 33 is established, the next question would be whether the dismissal of the employee passed by the management is justified on merits. If the Tribunal does not uphold the order, then the question of relief will have to be determined in the light of the facts and circumstances of each case. We would, Therefore, leave the petitioners to pursue their remedies u/s 33A. Peculiar facts:

(44) Some of the writ petitions raise only two questions of law, namely, to the effect of Clause (2) of Regulation 15(2)(c) of the D.T.C. Regulations, 1952 and the violation of the provisions of Section 33 of the I.D. Act. On facts some of the petitions allege that practically no employee of the D.T.C. reported for duty from 17th to 19th March, 1988. particularly because of the injunction obtained by the D.T.C. in I.A 1356/88 in Suit No. 583188 on March 16, 1988 and also because of the charged atmosphere. The petitioners allege that apart from not reporting for duty, except negligible number of employees who either marked their attendance at police station or were somehow managed to report for duty the petitioners did not do any overt act of instigating or inciting others to strike work or in any way were guilty of any misconduct. Some of the writ petitions make allegations that the petitioner is not a striker, he did not participate in any strike, he did not instigate or incite any of the workers as alleged by management in the impugned orders and that he lastly worked on March 16, 1988 and thereafter he was daily reporting for duty but was prevented by the outsiders from resuming duty.

(45) As already noticed five of the Unions gave a notice of strike with effect from March 17, 1988 to press for the demands for immediate implementation of the benefits of the Fourth Pay Commission to the employees of the D.T.C. The D.T.C. workers' Union had not given any call for the strike and also four other Unions. The petitioners who are not the members of the Union who gave the notice of strike, allege in the writ petitions that the petitioners neither participated in the strike nor instigated or incited other workers to strike work. Averments are made that the petitioners have marked their attendance in the police stations and thus were on duty and cannot be said to have participated in the strike as alleged in the impugned order of dismissal. The further submission that the D.T.C. had

locked the premises on March 16, 1988 after obtaining the restraint order from the High Court of Delhi and that the D.T.C. did not permit the petitioners to report for duty. The contention is that there was no cessation of work by the petitioners but a lock-out of the premises by the D.T.C. Our attention is invited to the definition of lock-out contained in Section 2(1) of the I.D. Act to urge that the definition does not make a distinction between the cause or reason of the closing of the place of employment and other type of temporary closing of the place of employment is a lock-out. Reliance is placed on Gujarat Steel Tubes Ltd. and Others Vs. Gujarat Steel Tubes Mazdoor Sabha and Others, to support the contention that mere absence from work may not compel the conclusion of the involvement of the petitioners in the illegal strike. The further contention is that the degree of culpability and the quantum of punishment turn on the level of participation in the unjustified strike and that aspect has not been taken into consideration by the disciplinary authority. It was ruled there :

. WHAT did worker Ado? Did he join the strike or- remain at home for fear of vengeance against blacklegs in a para violent situation? Like and limb are dearer than loyalty, to the common run of men. and discretion is the better part of valour. Surely, the Sabha complained of Management's goondas and he latter sought notice aid against the purely core of strikers. In between the ordinary nary rustic workmen might not have desired to be branded blacklegs or become martyrs and would not have reported for work. If not being heroic in daring to break through the strike cordon-illegal though the strike be-were misconduct, the conclusion would have been different Not reporting for work docs not lead to an irrefutable presumption of active participation in. the strike. More is needed to bring home the means read and that burden is on the prosecutor, to wit the Management. Huddling together the eventful history of deteriorating industrial relations and perverse leadership of the Sabha is no charge against a single worker whose job is at stake oil dismissal. What did he do? Even when lawyers did go on strike in the higher Courts or organize a boycott, legally or illegally, even top law officers of the Central Govt. did not attend court, argued Shri Tarkunde, and if they did not boycott but merely did not attend, could workers beneath the bread line be made of sterner stuff. There is force in this pragmatic approach. The strike being illegal is a non-issue at this level. The focus is on active participation. Mere absence, without more, may not compel the conclusion of involvement.

(46) Some glaring cases have been brought to our notice during the course of hearing that dismissal orders have been issued even in respect of employees who died before the commencement of the strike itself, against employees who were sanctioned medical leave, against employees who were arrested on March 16, 1988 and were in police/judicial custody between March 17, 1988 to March 19, 1988 and yes there are other employees who had been transferred from a particular depot and serving under another depot but the orders have been paused by the Depot Manager of the previous place of employment. The contention is that inhere was a total non application of mind.

(47) On the other hand. in the counter affidavit, it is admitted that the management had obtained orders from the High Court of Delhi for restraining the workmen who were suspected to resort to unconstitutional methods such as gheacs, dharnas, violence, sabotage etc. but the working places were open for all the employees. In view of the gravity of the situation prevailing in the depots and due to the illegal strike. the precautionary measures were taken to stop happening of any untoward incident. The further contention is that the petitioners have not only participated in the illegal strike but instigated and incited the other fellow workmen to participate in such illegal strike, that the they used provocative and abusive language also against the management , that the petitioners illegally and forcibly stopped the employees who were willing to report for work for joining their duties and that they have committed grave misconduct under the rules and regulations of the D.T.C. The averment is that in view of the gravity of their misconduct, their services were terminated by the competent authority after examining each and every case on merits.

(48) We are not inclined to express any considered opinion on the facts of each case though for some glaring cases, we were tempted to do so. Under Clause 15(3) of the Drta Regulations, 1952, every employee if the authority has the right to appeal. Most of the petitioners, have preferred the appeals. Some of the appeals have been disposed of. The appellate authority has declined to go into the question of each of the dismissed employee's participation and his instigating". or inciting other loyal workers to stoke work on the ground that this could be enquired into only in a disciplinary enquiry. The provision of holding an enquiry while disposing of an appeal is being read by us into Clause 15(3). The D.T.G has also agreed to hold the enquiry at the appellate sage .The appellate orders passed in the cases are Therefore to be quashed.

(49) It is the case of the D.T.C. that it kept a close vigil all along on the activities of workers who had participated in the illegal strike, instigated or exhorted the others to go on strike, gave inflammatory and provocative speeches, adopted intimidatory tactics, took out processions, prevented others from, going to work and I or acted in furtherance of the common object to create a situation whereby the functioning of the public utility service was paralysed and normal operations were- rendered difficult and impossible, it is further stated that the D.T.C. assigned various officers with the duty to identify and report the cases of workers who had indulged in various prejudicial activities. The impugned orders recite that the named employee had participated in the illegal strike on 17th, 18th and 19th March, 1988 (or one or two" of the dates in different cases) and/or incited and instigated other workers to strike work and thereby committed misconduct under Clause 19(1) of the Standing Orders. The disciplinary authority has. dispensed with the holding of the enquiry by waiving all the provisions of main Clause 15(2)(c) in exercise of the power under proviso (ii). As the enquiry in the manner laid down in Clause 15(2) (c) has not been held in the case of the petitioners. we direct that the appellate authority shall hold the enquiry itself or direct that such enquiry be held in accordance with the provisions of Clause 15(2)

(c). The appellate authority shall, thereafter, on a consideration of the proceedings of the enquiry in each case pass such orders as it deems fit in exercise of the powers conferred by Clause 15(2).

(50) We are not inclined to go into the question whether the Dtc had in fact or in law declared any lock-out having obtained injunction order in I.A. 1365188 in Suit No. 583/88 on March 16, 1988 from the High Court of Delhi restraining the employees from entering into the place of their duty or there was any temporary closure of the place of their employment or the D.T.C. had created a situation of lock-out preventing the willing workers to report for work or whether the workers were chased out by the police. The stand of the Dtc is that there was no lock-out but the declared strike commenced on March 17, 1988. We leave this question open to be determined if necessary, in industrial adjudication or in the proceeding u/s 33A of the I.D. Act (if filed). There the parties will have an opportunity to lead oral and documentary evidence, the evidence of the conduct of the striking workers before and after March 17, 1988, the evidence of the situations and circumstances under which the orders dated March 16, 1988 were obtained from the High Court of Delhi and other evidence of relevant and germane factors. The enquiry in this regard is likely to be an elaborate one. The special remedy under Article 226 is, thus, not intended for this purpose.

(51) As a result of the above discussion, the batch of the writ petitions are disposed of in these terms :

(A) We uphold the virus of proviso (ii) to Clause 15(2) (c) of the Drta Regulations, 1952 by reading down the expression "exceptional cases" to cover cases "where it is not reasonably practicable to comply with all or any of the provisions of the main clause"; (b) The exercise of the power that it was not reasonably practicable to hold the disciplinary enquire, was bona fide and for relevant and germane reasons arid we uphold it; (c) We leave the petitioners to pursues their remedies for the contravention of the provisions of Section 33 of the I..D. Act, if they so desire, under the provisions of Section 33A of I.D. Act; (d) We hereby quash the orders by the Appellate Authority in whichever cases they have been passed. wherein it declined to go into the question of each of the dismissed employee's participation and his instigating and inciting other loyal workers and direct that the Appellate Authority shall hold the enquiry itself or direct that such enquiry be. held in accordance with the provisions of Clause 15(2)(c) and then pass such orders as it. deems fit ; (e) The petitioners who have not preferred the appeals under Clause 15(3), may do so within the same prescribed period commencing from today and those appeals will also be determined in the similar manner as indicated above ; (f) The parties are left to bear their own costs on the facts and circumstances of the case.