

(1976) 09 DEL CK 0005

In the Delhi High Court

Case No : Civil Writ Appeal No. 87 of 1975

R.K. Misra

APPELLANT

Vs

General Manager, Northern Railway and Another

RESPONDENT

Date of Decision : 23-09-1976

Acts Referred:

Citation : (1977) ILR Delhi 424 : (1977) LabIC 643

Hon'ble Judges : H.L. Anand, J

Bench : Single Bench

Advocate : S.C. Malik, R.H. Dhebar and B.V. Desai, for the Appellant;

Judgement

H.L. Anand, J.

(1) These petitions under Articles 226, 227 of the Constitution of India by six former railway employees raise a common question as to the validity of the orders of their removal from service for alleged incitement to and participation in an illegal strike without affording them any opportunity of being heard under Rule 14(ii) of the Railway Servants Discipline and Appeal Rules, 1968, hereinafter to be referred as "the Rules", on the ground that it was not reasonably practicable to hold an inquiry in the manner laid down in the Rules.

(2) The petitioners had been in the service of the Northern Railway for different periods ranging from 17 to 30 years. Some of the petitioners had been active trade union workers and held offices in the Local, Regional or National Union of Railway men. In April 1974, a representative body of Indian Railwaymen gave a notice to the Railway Administration of the intention of the railwaymen to go on a nationwide strike from May 8, 1974 in support of their demands for better conditions of service. Pursuant to the notice some parleys were held between the administration on the one hand and the representatives of the railwaymen on the other to explore the possibility of an amicable settlement of the disputes so as to avert the strike and the consequential dislocation of the system of railways. The negotiations, however, appear to have proved abortive, and either as a

preventive measure or as a sequel to the strike, a large number of leaders of railwaymen, active trade union workers among the railway employees and other railway employees were arrested on or about May 1, 1974 and on the days following that, inter alia, on charges of incitement to an illegal strike, and alleged acts of violence and intimidation of willing workers. The strike was withdrawn on May 28, 1974. On May 29, 1974, the arrested leaders and the railway employees were released. The prosecutions filed against the striking employees were either withdrawn or were dismissed on technical grounds. During the period of the strike, a large number of railway employees were dismissed from service for misconduct constituted by their , incitement to an illegal strike, intimidation of willing workers and participation in such a strike. The employees were, however, not given any opportunity of being heard before the orders were made by virtue of the provisions of Rule 14(ii) of the Rules on the ground that it was not "reasonably practicable" to hold a,n inquiry in the manner provided by the Rules. The six petitioners were among the employees who were dealt with in that manner. The impugned orders were upheld in appeals.

(3) The first question that falls for consideration is whether the orders of the Disciplinary Authority in all these cases to the effect that it was not reasonably practicable to hold an inquiry could be said to be valid in law.

(4) Rules 9 to 13 of the Rules lay down the procedure for imposition of various penalties and the procedure for imposing major penalties contains elaborate provisions which entitle a delinquent railway employee to a complete disclosure of the charges, the grounds on which they are based and the material by which they are sought to be substantiated, a right to inspect the records to prepare defense to submit a written statement of defense, to cross-examine witnesses, produce oral and documentary evidence and to being heard against the proposed penalty. Rule 14 contains special procedure to be followed in certain cases and is in the following terms :

"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 has led to his conviction on a criminal charge, or (ii) where the disciplinary authority is satisfied, for reasons to be recorded by it in writing, that it is not reasonably practicable to hold an inquiry in the manner provided in these rules; or (iii) where the President is satisfied that in the interest of the security of the State, it is not expedient to hold an inquiry in the manner provided in these rules ; the disciplinary authority may consider the circumstances of the case and make such orders thereon as it deems fit ; Provided that the Commission shall be consulted, where such consultation is necessary, before any orders are made in any case under this rule."

(5) It is the common case of the parties that no separate orders as envisaged by clause (ii) of Rule 14 were made in any of these cases and orders dispensing with the enquiry was made by the disciplinary authority as part of the orders dismissing the employees from service. It is also a common case of the parties

that the orders of dismissal from service communicated to the petitioners incorporating the orders under clause (ii) of Rule 14 contained the conclusion of the disciplinary authority in identical terms to the effect that it was not reasonably practicable to hold an enquiry in the manner provided in the Rules but gave no reasons for the conclusion. It was, however, not disputed on behalf of the petitioners that the orders of removal made by the disciplinary authority in the files, copies of which were enclosed with the return or were reproduced in the course of it or had been referred to in it, were more elaborate and set out not only the conclusion of the disciplinary authority that it was not reasonably practicable to hold an inquiry but also the reasons on which the conclusion was based. In the case of Saran Das, petitioner in C.W.P. 1470/74 some controversy was raised if such a detailed order was made because in that case a copy of the purported order was enclosed with the affidavit even though it was claimed that the file in which the order had been made was "not traceable". It was, therefore, by and large, conceded that the orders made on the files satisfied the requirement of the Rule in that some reasons were given why an inquiry was not reasonably practicable. What is, however, contended is that, inasmuch as the reasons were never communicated to the petitioners, the requirement of the Rule had not been satisfied. It is difficult to accept this contention. The only requirement of the Rule is that the disciplinary authority must be satisfied that it was not reasonably practicable to hold an inquiry and that such satisfaction, must be "for reasons to be recorded by it in writing". The requirement, therefore, is of recording the reasons and not of communicating the same to the aggrieved employee. There was, therefore, no express requirement of communication of the reasons to the employee concerned. It is not possible to infer from the Rule any implied requirement either. If the order of the disciplinary authority that it was not reasonably practicable to hold an inquiry was subject to any right of appeal an implied duty to communicate the reasons would perhaps have been justified because it could have been legitimately contended in that event that the non-communication of the reason had rendered the right of appeal illusory. The order is, however, not appealable in view of the limited right of appeal conferred by Rule 18 of the Rules and the conclusion is even otherwise final in view of the provisions of clause (3) of Article 311 of the Constitution. It is true that the aggrieved employee had a right to challenge the order of dismissal by way of appeal and be entitled to contend in such an appeal that the order dispensing with the inquiry had not been made in accordance with the Rule either because it had not been made by the competent authority or because there was no application of mind or to show, with reference to the reasons on which it is based, that it was based on irrelevant or extraneous reasons which were not germane to the question to be decided by the disciplinary authority in spite of the finality attaching to such an order. Even so, it is difficult to infer from the Rule for that reason any implied obligation to communicate the reasons along with the order of dismissal or to hold that because of the non-communication of the reasons to the petitioners the inquiry had not been validly dispensed with. The non-communication of the reason, however, could not be said to render the

appeal against the order of dismissal illusory. In any event, the aggrieved employee could have asked for the reasons and if the reasons had been withheld from him he could have made a legitimate grievance of it both in the appeal and in any subsequent proceedings. It is however, difficult to spell out of the Rule any requirement to communicate the reasons for the order to the petitioners or to hold that on account of failure to make such a communication the order was not valid or that the inquiry had not been validly dispensed with. This contention must, Therefore, fail.

(6) The orders dispensing with the inquiry were sought to be voided on the further ground that they were based on a misconstruction of the language of the Rule. It is contended that the inquiry could Be dispensed with only if the disciplinary authority was satisfied that it was "not reasonably practicable to hold an inquiry" implying thereby that there was some physical or legal impediment in its way, as for example the employee concerned may have absconded or otherwise be not available or because on account of civil commotion, war or disturbed conditions it was not possible to either contact the employee concerned or to arrange for an inquiry officer or to produce witnesses or because the witnesses whose evidence was to be relied upon in the inquiry were stationed in distant places and their presence could not be procured without unnecessary inconvenience and expenditure. It was, Therefore, urged that mere inability to prove the charge to be inquired into or unwillingness of witnesses to support the charge, either because they were under pressure or were otherwise unwilling, would not render the holding of an inquiry impracticable. A distinction was, Therefore, sought to be made between the practicability to hold an inquiry and the futility of it because the charge was not likely to be established. On the other hand it was urged on behalf of the Railway Administration that in the situation that obtained during the strike no employee was willing to come forward to support the charge and that in the circumstances it was not reasonably practicable to hold an inquiry and this is how the order dispensing with the inquiry justified an invocation of Rule 14(ii) in the case of the various petitioners except in the case of petitioner in C.W.P. 87/75. In the latter case the order was justified with reference to the non-availability of the petitioner as he was said to have absconded and appeared to be disinterested in defending himself.

(7) It is well settled that the absolute doctrine of Crown pleasure in the matter of service under the state, as applicable in England, has not been incorporated in India in civil service under the State and the provision of Article 310 of the Constitution, which embodies the doctrine, has been expressly made subject to the other provisions of the Constitution. Article 311 is among such provisions in the Constitution and clause (2) of this Article, Therefore, confer very valuable rights of the members of certain services with the result that no such person can be removed or reduced in rank except after an inquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard, both with regard to this guilt as also the penalty proposed to be imposed upon him. Pursuant to this constitutional guarantees rules have been framed in

relation to the various services under Article 309 of the Constitution of India which prescribe elaborate procedure for the imposition of certain types of penalties on such public servants. The Rules are one of such rules and a reference to Part IV of the Rules containing Rules 9 to 13" clearly brings out the importance that was attached to the essential safeguards before a major penalty could be imposed on a railway servant. Proviso to clause (2) of Article 311. as indeed Rule 14 of the Rules, however, provide that the inquiry may be dispensed with and the protection provided by the Constitution is withdrawn if the conditions for the same are satisfied. The proviso to clause (2) of Article 311 makes clause (2) of Article 311 inapplicable and, Therefore, deprives the public servant concerned of the protection in any of the three eventualities dealt with by clauses (a), (b) and (c) of it. Rule 14. Therefore, has its genesis in the proviso to clause (2) of Article 311 and clauses (i), (ii) and (iii) of Rule 14 are based on clauses (a), (b) and (c) of the proviso. The proviso and Rule 14 being thus in the nature of an exception to the principles of natural justice incorporated in Article 311, which has the effect of depriving a public servant of a valuable right, must be strictly construed and it is. Therefore, necessary to insist that before the inquiry is dispensed with the requirements of these provisions are strictly complied with.

(8) In construing the words "reasonably practicable to hold an enquiry" it must also be borne in mind that a domestic enquiry against a public servant is not held solely with a view to establish the charge against him or with the sole object of imposing a penalty on him. Such an enquiry has a two-fold object. One of the objects of the enquiry is to find out the truth and in that sense the outcome of the enquiry may either result in the establishment of the charge against the delinquent public servant or vindicate his stand and may, in the latter event, result in his exoneration. Rule 9(2) of the Rules make thus abundantly clear when it provides that "whenever the disciplinary authority is of the opinion that there are grounds for inquiring into the truth of any imputation" it may hold an inquiry or cause it to hold . The second object is to associate the public servant in the process of inquiring into the truth of the allegations and thereby give him a reasonable opportunity of being heard consistently with the requirements of the principles of natural justice.

(9) The words "is not reasonably practicable to hold an inquiry in the manner provided in these rules" must, Therefore, be strictly construed in the context of the two-fold object of such an inquiry. According to Webster, "practicable" means "possible to practice or perform or capable of being put into practice, done or accomplished". There can be no doubt that the impracticability, which would attract the Rule, must have relation to the holding of the enquiry and the difficulty in establishing the charge or in achieving a certain object by the inquiry would be wholly irrelevant. The impracticability in holding the enquiry must, Therefore, imply some physical or legal impediment to the holding of an enquiry . While it is not possible to put the expressions in the strait. jacket of a judicially evolved definition or to exhaustively enumerate such circumstances,

broadly, such a situation may arise where the delinquent is not traceable or where on account of a war, internal disorder or disturbed conditions, it is not possible to enforce the attendance of the delinquent or of the persons who are to conduct the enquiries or those who may be required to give evidence. It may also arise in a situation in which the witnesses are spread out in far flung areas and their attendance cannot be secured because of failure of means of communication or otherwise without undue expense or delay. It may also arise where there is any legal obstruction to an inquiry for example by a prohibitory order. It can, however, have no relation to either the fact that the witnesses or some of them are not prepared to support the charge either because of pressure or because of their belief. It may be possible in such a situation to say that from the point of view of the administration such an enquiry would be futile because the charge is not likely to be established against the delinquent. Such an enquiry would be impracticable only if the sole purpose of the enquiry was to establish the charge, but the object of the enquiry being much larger than the establishment of a charge, mere inability to establish the charge would not render the holding of the enquiry impracticable. To hold to the contrary would be to ignore the expression "hold" occurring in the Rule, which leaves no manner of doubt that impracticability must be of holding the enquiry having no relevance to the likely outcome of it. It is true that in a situation like the one that may have been created by the All India strike of Railway employees, there must have been anxiety on the part of the Administration to take drastic as well as swift action against the mass of railway employees, who were considered to have created a situation which tended to dislocate the movement of men and material so vital to the life of the nation. But mere anxiety to take drastic or swift action, however, expedient from the point of view of the Administration, could not be said to have rendered holding of an enquiry impracticable. Whatever may have been the imperatives to dispense with the enquiry and to take drastic and immediate action so as to compel the railway-men to restore normalcy none of these could possibly justify a conclusion that the holding of an enquiry had, Therefore, become impracticable. Administrative expediency is subject to constitutional and statutory constraints and executive action must, Therefore, be contained within such limitations. If a course of action is not permissible in law it could not be legitimised with reference to any compulsion arising out of administrative necessity. The expression "not reasonably practicable to hold an enquiry in the manner provided in these rules" must, Therefore, be strictly construed to mean that there were physical or legal impediments to the holding of such an enquiry or in other words that the holding of such an enquiry was not possible.

(10) So far as petitioner in C.W.P. No. 87 of 1975 is concerned, the conclusion that it was not reasonably practicable to hold an inquiry was based on the allegation that the whereabouts of the petitioner were not known and the authority was satisfied that the petitioner was not interested in defending himself. An attempt was made on behalf of the petitioner to assail the finding of fact with regard to the whereabouts of the petitioner and as to whether he was

interested in defending himself. Unfortunately for the petitioner this conclusion is not open to challenge because once the authority has properly applied the provision the conclusion of fact that it was not reasonably practicable to hold an inquiry was final in view of clause (3) of Article 311 of the Constitution of India. There is no force in the further contention of the petitioner that the proviso to clause (2) of Article 311 had not been invoked and the finality envisaged in clause (3) was, Therefore, not available. This is so because once the conditions requisite for the application of the proviso are satisfied the proviso comes into play and there is no further requirement that the proviso must be specifically invoked. It follows, Therefore, that the order dispensing with the inquiry, being within the Rule in this case, was valid.

(11) In the case of the other petitioners, the common conclusion that it was not reasonably practicable to hold an inquiry was based on the allegations that it was "unlikely that any witness will come forward to give a statement in the departmental inquiry if the same is held in view of the threats given to the staff". In these cases the inquiry could not be said to have been validly dispensed with with the result that these petitioners were entitled to the benefit of Rules 9 to 13 of the Rules and continued to have the protection of clause (2) of Article 311 of the Constitution of India, and could not, Therefore, be dealt with under Rule 14(ii) of the Rules unless the provisions of that rule had been validly invoked.

(12) The next question that falls for consideration is whether, assuming that the enquiry had been validly dispensed with in terms of clause (ii) of Rule 14 of the Rules, the disciplinary authority was nevertheless under any obligation either to hold some sort of an enquiry or to at least give an opportunity to the petitioners to show-cause why they should not be held guilty of mis-conduct or why a particular penalty be not imposed on them or to consider the entire material on the record and make appropriate orders after hearing the delinquent employees.

(13) According to the petitioners, once the disciplinary authority" was satisfied that it was not reasonably practicable to hold an enquiry, it was open to the authority to dispense with the enquiry but not the proceedings prior to and subsequent to the enquiry such as the show cause notice both at the initial stage and at the subsequent stage with regard to the proposed penalty. It is further contended that where Rule 14 is invoked because it is .not reasonably practicable to hold an enquiry in the manner provided in the rules, what is dispensed with is the elaborate enquiry provided in Rules 91013 but not any enquiry and that the disciplinary authority would nevertheless be under an obligation to hold some sort of an enquiry, the holding of which may be practicable. Lastly it is urged that even if the enquiry is dispensed with, the requirement of the concluding part of the Rule that "the disciplinary authority may consider the circumstances of the case and make such orders thereon as it deems fit" clearly implies a duty to consider the entire material on the record before an order is made and associate the delinquent employee with the process of consideration. On the other hand. it was urged on behalf of the Railway Administration that reading Rule 14(ii) in the

context of proviso to clause (2) of Article 311 of the Constitution of India, once the disciplinary authority comes to the conclusion that it was not reasonably practicable to hold an enquiry, it has the effect of withdrawing the protection given to the civil servant by clause (2) of Article 311 of the Constitution of India and bring about a change in the nature of his tenure from that of satisfactory conduct to pleasure, with the result that such a civil servant would hold office at the absolute pleasure of the President. It was, Therefore, urged that in such a situation the authority was entitled to deal with the delinquent in an ex parte manner in exercise of the "pleasure doctrine" of the President and that there could be no fetter to the exercise of such a power. It is urged that the concluding part of Rule 14 merely emphasises the absolute nature of the pleasure of the President when it empowers the authority to consider the circumstances and make any order and that any obligation in such a situation to hear the delinquent would be inconsistent with the Presidential pleasure and be void. It is urged that the action of the disciplinary authority competent to remove a public servant has its genesis in the Presidential pleasure subject to which he holds the post and the order of the disciplinary authority would be an exercise of that pleasure notwithstanding that such an order is not made by the President himself. It is further urged that in any event where the disciplinary authority dispenses with the enquiry because holding of such an enquiry is not reasonably practicable, there was no question of the disciplinary authority nevertheless giving any opportunity to the delinquent of being heard before making the order even though such a requirement may perhaps be justified in a case where a public servant is being removed on the ground of conduct which has led to his conviction on a criminal charge as provided in clause (i) of Rule 14. If the enquiry cannot be held, runs the argument, because it is not reasonably practicable to hold the enquiry, how can it be reasonably practicable to hold any mini enquiry or to issue a show-cause notice to the public servant either at the initial stage or at a subsequent stage or otherwise hear him before making the final order.

(14) What then is the true effect of an order under clause (ii) of Rule 14 dispensing with the inquiry and what are the obligations of the Disciplinary Authority after such an order has been made ? When the disciplinary authority is satisfied that it was not reasonably practicable to hold an inquiry in the manner provided in Rules 9 to 14 of the Rules, it brings into play proviso (b) to clause (2) of Article 311 of the Constitution of India, with the consequence that clause (2) of that Article ceases to be applicable to the case of the civil servant concerned by virtue of the opening words of the Proviso. Such a civil servant whose tenure was protected by clause (2) of that Article because he held the post during the pleasure of the President in terms of Article 310, but subject to the provisions of Article 311 of the Constitution, is relegated to the position in which he holds the post at the absolute pleasure of the President untrammelled by the provisions of clause (2) of Article 311. Such a civil servant would, Therefore, neither have any right to the post nor any constitutional protection in the matter of service and could, Therefore, be removed in exercise of the Presidential pleasure without any

further proceedings. There is no force in the contention that the invocation of Rule 14 would not attract proviso to clause (2) of Article 311 unless the proviso is in terms invoked but there is no such requirement in the proviso. All that the proviso to clause (2) provides is that where the authority empowered to dismiss or remove a person or to reduce him in rank is satisfied with regard to the reasonable impracticability of holding an inquiry, clause (2) of Article 311 would not apply. No express invocation of the proviso is, Therefore, envisaged. The proviso comes into play the moment the conditions for its applicability are satisfied and the only condition is an order by a competent authority, for reasons to be recorded in writing, that it is not reasonably practicable to hold the inquiry. Such a satisfaction under Rule 14 satisfies the requirement of the proviso. Even in terms of Rule 14, once such a satisfaction is recorded the disciplinary authority is free to consider the circumstances of the case and make such orders as it deems fit clearly dispensing with the procedure provided in Rules 9 to 13 and the only obligation that the Rule seems to keep alive is an obligation to consider the circumstances and to make orders which the authority may deem fit. It is true that the schemes of Rules 9 to 13 does visualise a pre and post inquiry stages and there is considerable force in the contention that in the scheme of the Rules of the show-cause notice, the written statement of defense, the inspection of records, etc. precede the actual inquiry. The Rules also envisage proceedings on the conclusion of the inquiry where the authority considers the findings of the inquiry and tentatively decides to impose a penalty. If the matter were to be examined in the context of the Rules alone it is quite possible to hold the view that Rule 14 dispenses with the inquiry as distinct from the pre and post inquiry stages. It is, however, not possible to consider the language of the Rule in isolation from Article 311 of the Constitution, for, the Rules, which provide for an elaborate procedure to give a reasonable opportunity to a civil servant of being heard, have their genesis in clause (2) of Article 311. The proviso to clause (2) of Article 311 leaves no manner of doubt that once the satisfaction is recorded that it is not reasonably practicable to hold an inquiry, what is dispensed with is not the inquiry alone but, what is more, clause (2) of Article 311 becomes inapplicable in its entirety and clause (2) does not talk merely of an inquiry in the limited sense in which it is understood but in a comprehensive sense of a process by which a, reasonable opportunity is afforded to the civil servant. In that sense the inquiry would include the issue of a show-cause notice, as indeed, a further notice after a particular penalty has been proposed to be imposed on him. It is, Therefore, not possible to accept the contention that even after the inquiry has been validly dispensed with there was an obligation to issue a show-cause notice either with reference to the charge or with reference to a penalty that may be proposed. The further contention that what could be dispensed with under the Rule is not every inquiry but "an inquiry in the manner provided in these rules" and that even after such an order some sort of an inquiry, howsoever, limited in its scope, was nevertheless obligatory is equally devoid of any force. This is so because if it is not reasonably practicable to hold an elaborate inquiry it is difficult to hold that it may nevertheless be practicable to hold some inquiry and

where does one draw the line. It would mean that the Rule would have different meanings in different situations which would be inconsistent with the principles of interpretation of statutes. The language of the Rule also leaves no manner of doubt that if the Rule is invoked the- only requirement is for the authority to "consider the circumstances of the case and make such, orders thereon as it deems fit".

(15) The only question that remains to. be examined is the ambit of the consideration by the disciplinary authority before making the final order in terms of the concluding part of Rule 14 of the Rules. If the true effect of the order dispensing with the inquiry be, as I have held above, the conversion of satisfactory conduct tenure into absolute pleasure tenure, then ordinarily, applying the doctrine of absolute Crown pleasure, there is neither the right to hold the post nor any obligation to give reasons for the removal or to hear a civil servant before he is removed from service. The position of such a civil servant would be analogous to a person in the service of the Crown in England. Even in England recent legal thinking on the question appears to favor a dilution of the pleasure doctrine to an extent where there was a statutory protection that a, person in the service of the Crown could be removed from service only for good cause and in such cases it has been held that there is an obligation to remove him only for that cause and after hearing him. It is interesting to notice that in England even in Cases where the tenure is subject to the absolute pleasure of the Crown casting no obligation on the Crown to give an opportunity to the delinquent of being heard, an opportunity is nevertheless given in an anxiety to act in a just and fair manner. The position in India is in no sense different. It is well settled that even in cases where the constitutional protection is not available to a public servant the statute or the statutory rules governing the service may nevertheless provide that the removal could be for sufficient cause and in the manner laid down therein and the statutory rules in such cases invariably provide, consistently with the principles of natural justice, that the public servant would have the right of hearing before he is removed from service. There is no force in the contention that any such rules would be in derogation of the Presidential pleasure and would, Therefore, be unconstitutional. There is no inconsistency between the Presidential pleasure and the statutory rules framed under Article 309 of the Constitution because the Rules merely lay down the manner of the exercise of the Presidential pleasure and would not for that reason alone constitute a fetter on the Presidential pleasure. This principle was sought to be reinforced on behalf of the petitioners with reference to the decision of the Supreme Court in the case of *The Divisional Personnel Officer, Southern Railway and Another Vs. T.R. Chellappan and Others*, . (1) One of the questions before the court in that case was if the concluding part of Rule 14 referred to above incorporates an obligation on the disciplinary authority to consider the entire circumstances of the case in order to decide the nature a,nd extent of the penalty to be imposed on the delinquent employee on his conviction on a criminal charge after giving an opportunity to him of being heard. The Supreme

Court answered the question in the affirmative and held that the Rule imports a rule of nature justice in enjoining that before taking final action in the matter the delinquent employee should be heard and the circumstances of the case ought to be objectively considered. According to the petitioners this decision is an authority for the proposition that even after the inquiry was dispensed with under Rule 14 the delinquent employee cannot be removed as if he held the post at the absolute pleasure of the President because of the inapplicability of clause (2) of Article 311 of the Constitution and proceeds on the basis that even in such a situation the employee would be entitled to be heard. Shri Dhebar, learned counsel for the Railway Administration, however, vehemently urged that the decisions of the Supreme Court constitute law under the Constitution and are binding only in so far as they incorporate a decision on a question which is raised and expressly decided, and that the decision would not be an authority for the question that was neither raised nor decided. It is no doubt true that the larger question as to the effect of the satisfaction under Rule 14 on the tenure of a civil servant and as a possible fetter on Presidential pleasure was neither raised nor considered by the Supreme Court. But it is nevertheless difficult to ignore the fact that the Supreme Court proceeded on the basis that even in such a situation the concluding part of Rule 14 conferred a right on the delinquent employee and a corresponding obligation on the authority to consider the entire matter objectively after associating the employee in the process of consideration and, Therefore, there was an implied decision on the question which would not justify an independent examination of the question by this court in a manner which may be contrary to such a conclusion. Even otherwise, as I have pointed out above, the legal position obtaining in England gives considerable support to the assumption made by the Supreme Court in that case, and I say so with respect, that, independently of clause (2) of Article 311 of the Constitution the delinquent employee had the protection of the concluding part of Rule 14 even though his tenure was reduced to one of absolute pleasure of the President and I would, Therefore, be reluctant to hold to the contrary. It must, Therefore, be held that in spite of the change that the satisfaction under clause (2) of Rule 14 brings about in the nature of the tenure of the petitioners the concluding part of Rule 14 still casts an obligation on the: authority to consider the circumstances of the case objectively after associating .the petitioner in the process of consideration, and make appropriate orders.

(16) Mr. Dhebar, learned counsel for the Railway Administration however, sought to distinguish the decision of the Supreme Court on the ground that that case arose under clause" (i) of Rule 14 which empowered the; authority to consider the circumstances Of the case and make a final order "where any penalty is imposed on a railway servant on the ground of conduct which had led to his conviction on a criminal clings". Mr. Dhebar contends that the ambit of the concluding part of Rule 14 was construed by the Supreme Court in the context of clause (i) and decision would not-be an authority-to construe the aforesaid part in the context of either clause (ii), which is attracted in the present case, or

clause (iii) which empowers the President to dispense with the inquiry on the ground of its being inexpedient in the interest, of the security of the State. Where, as under clause, (ii), an. inquiry had to be dispensed with because the holding of it is not reasonably practicable, runs the argument of Mr. Dhebar, as for example where the delinquent employee is not traceable, how can such an employee be associated in the process of consideration of the circumstances of the case before making a final order. According to him the situation would be slightly more difficult where clause (iii) has been invoked. On the other hand it is urged on behalf of the petitioners that the concluding part of Rule 14 would have a much wider ambit in a case in which the Rule is invoked under clause (ii) of it because in a case under clause (i) the guilt of the employee has already been established in a court of law and all that remained to be considered by the disciplinary authority is the quantum of punishment while in a case under clause (ii), it is contended, there has been no conviction by a court and the consideration by the disciplinary authority under the concluding part of Rule 14 is not confined to the quantum of penalty only but extends to the question if the delinquent is guilty of conduct which may justify his removal from service. It is, Therefore, urged that the extent of consideration by the disciplinary authority is much wider and the association of the delinquent, which had been held to be obligatory by the Supreme Court in a case covered by clause (i), would be absolutely necessary and he must be heard not only on the question of quantum of punishment but also on the question if he is guilty of the conduct attributed to him. In the alternative it is urged that, in any event, while acting under the last part of the Rule the disciplinary authority was bound to associate the delinquent and bound to consider the circumstances of the case to the extent such association and consideration was reasonably practicable.

(17) The three clauses of the Rule deal with three diverse situations. Clause (i) deals with a case where the guilt has been established in a criminal court. In such a case there is obviously no need for consideration of the question as to the guilt of the delinquent. In such a case the only question that survives for consideration would be as to the quantum of punishment Clause (ii) deals with a case where there has been no inquiry whatever because none was reasonably practicable. Obviously, Therefore, there was no finding as to the guilt of the delinquent and the consideration in such a case obviously could not be confined, as in the case of clause (i), to the question of quantum of punishment alone and must, of necessity, extend to both the questions as to the guilt and as to the quantum of punishment. Clause (iii) deals with a situation in which in the interest of the security of the Sate it is not expedient to hold an inquiry. Here again, the guilt, as indeed, the quantum of punishment remain to be considered, for there has been no inquiry. The concluding part of the Rule is common to all the three clauses. Could the concluding part, which obliges the disciplinary authority to consider the circumstances of the case and make such order thereon a,s it deems fit, be construed and determined differently in relation to the three different situation ? The concluding part obviously is common to each of the

three clauses. Could the concluding part, Therefore, have different meanings in three different contexts ?

(18) Ordinarily, if an expression qualified different sub-clauses of a Rule or sub-sections of a Section, the qualifying expression would have uniform meaning in relation to all the clauses. The concluding part of Rule 14, however, deals with 3 diverse sets of circumstances and it would, Therefore, be reasonable to interpret the concluding part in the peculiar context of each of these three sets of circumstances. If, where penalty is to be imposed on a railway servant on the ground of criminal charge as envisaged in clause (i) of Rule 14, the concluding part of the Rule must be construed as implying, not only a consideration by the authority of all the circumstances of the case, but also association of the delinquent in the process of consideration by giving an opportunity to him of being heard in the matter of quantum of punishment, as held by the Supreme Court in the case of Challappan (*supra*), it follows a fortiori that in a case covered by clause (ii), as in the present cases, there is an implied obligation not only to consider the circumstances of the case objectively but also to associate the delinquent with such a process. Now it is obvious that in a case covered by clause (i) the guilt of the delinquent is beyond doubt because of a conviction on a criminal trial. Such a question, Therefore, does not survive to be considered by the disciplinary authority. In such a case obviously the consideration must be confined to the question as to the quantum of punishment. In a case covered by clause (ii), however, the inquiry is dispensed with because it is not reasonably practicable. There has, Therefore, been neither a domestic inquiry nor a criminal trial and the disciplinary authority, Therefore, would have to consider not only the question if the delinquent is guilty of misconduct alleged against him but also, assuming that he is, as to the quantum of punishment. The ambit of consideration in the case of clause (ii) must of necessity, Therefore, be wider than in a case covered by clause (i). This distinction between the two sets of circumstances seem? to me to be so obvious as to be beyond any controversy. There is an obvious distinction in the two sets of cases in the matter of associating the delinquent with the process of consideration. In a case covered by clause (i) there is obviously no impediment to the delinquent being associated but in a case covered by clause (ii), the association of the delinquent may not always be possible where for example, the reasonable impracticability in holding an inquiry arises out of the disappearance of the delinquent or some insurmountable difficulty in having access to him. Where, Therefore, the inquiry is validly dispensed with under clause (ii) because the delinquent could not be traced either because he is concealing himself or for some other reasons, the admit of association of the delinquent with the process of consideration would have, Therefore, to be limited, by the very nature of the circumstances, and in such a case the requirement of the concluding part of the Rule would be satisfied where the authority applies its mind to the material before it and makes appropriate orders. Where, however, the inquiry is dispensed with under clause (ii) for reasons other than the availability of the delinquent, such as any physical

impediment to the holding of the inquiry it could not be said that the delinquent could not be associated with the process of consideration. It may, however, be possible that in a given case reasonable impracticability of holding an inquiry may have something to do with the conditions obtaining at the time which may preclude the possibility of association of the delinquent with the process of consideration. It could, Therefore, be reasonable to interpret the concluding part of the Rule in the context of clause (ii) of it to imply an obligation to consider the material objectively associating the delinquent with the process, in so far as such an association is reasonably practicable.

(19) It cannot be said that in the present cases there is any infirmity so far as the obligation to consider the circumstances of the case is concerned because the various orders made by the competent authority clearly indicate an application of mind to the circumstances in arriving at the conclusion of the guilt of the delinquent. It is not disputed that in none of these cases the delinquent were associated with the process of consideration. I have already held above that, except in the case of petitioner in C.W.P. 87 of 1975, no valid order dispensing with the inquiry could be said to have been made but assuming that valid orders dispensing with the inquiry had been made in all the cases, it could not be said that the delinquents in cases other than the above case were not available or that their association with the process of consideration was not reasonably practicable.

(20) For all these reasons C.W.P. Nos. 101/73, 1048/75, 1073/75, 1369/74 and 1470/74 succeed and the orders impugned in these petitions are quashed. Petition No. 87/75, however, fails and is hereby dismissed. The petitioners would have their respective costs in each of the petitions, which succeed. Counsel fees in each case is fixed at Rs. 450.00 . There would be no costs in the petition that fails.

(21) The authorities would, however, be at liberty to initiate such proceedings against the petitioners, whose petitions have been accepted, in accordance with law, as may be considered proper.