

(1993) 07 DEL CK 0019
In the Delhi High Court
Case No : C.W. No. 389 of 1984

Sh. Ajay Kumar

APPELLANT

Vs

Indian Railway Construction Co. Ltd.

RESPONDENT

Date of Decision : 08-07-1993

Acts Referred:

Citation : (1994) 2 LLJ 182

Hon'ble Judges : Y.K. Sabharwal, J

Bench : Single Bench

Judgement

Y. K. Sabharwal, J.—The facts leading to the dismissal of the petitioner from service as pleaded in the petition, in brief are :-

The petitioner was appointed in the respondent company as Junior Engineer on 29th June, 1981. The workman employed in the Headquarters as well as in the various Projects of the respondent company formed a Trade Union known as IRCON Employees Union, New Delhi, which was registered with the Registrar of Trade unions on 9th November, 1983. The petitioner became the first President of the Union and one Mr. V. K. Talwar became its General Secretary. On 10th November, 1983 a letter was sent by the petitioner to the management of the respondent Company requesting for recognition of the Union. In retaliation the management on 10th November, 1983 at about 4.30 p.m. ordered the transfer of the petitioner from New Delhi to Anpara (M. P.) a very remote place about 800 kms away in the State of Uttar Pradesh. V. K. Talwar was ordered to be posted on transfer at Korba (M. P.) again a very remote place. The petitioner and the said V. K. Talwar filed a suit for permanent injunction for restraining the respondent company from transferring them. The Sub-judge, First class, Delhi, on 15th November, 1983 granted an ex parte stay of the transfer letter dated 10th November, 1983 and the respondents were directed to appear before the Court on 22nd December, 1983. The management of the respondent company was further annoyed on receipt of the said restraint order and started taking other measures to victimise the petitioner and other office bearers of the Union. The

members of the union were compelled by the management to disassociate with the Union and to submit their resignation from the office bearership as well as from membership of the Union. Since the petitioner is a Schedule Caste he submitted a letter on 5th December 1983 to the Commissioner of Scheduled Castes and Scheduled Tribes expressing his grievances and apprehension that he may be removed from service on account of his being President of the Union. The Commissioner, Scheduled Castes and Scheduled Tribes looked into the grievances expressed by the petitioner in his letter dated 5th December, 1983 and on the same day a letter was sent by the Commissioner to the management of the respondent Company along with which the complaint of the petitioner dated 5th December, 1983 was also attached. With a view to victimise the petitioner and other office bearers of the Union the management on 7th December, 1983 dismissed the petitioner and said V. K. Talwar from service without holding any enquiry whatsoever and without giving the petitioner and V. K. Talwar even a show cause notice or charge-sheet and without giving them any opportunity of being heard.

2. Further the petitioner says that on 5th January, 1984 he and V. K. Talwar were called by the Managing Director of the respondent Company and both were asked to sign a letter promising that in case they sign the letter the impugned order of dismissal shall be withdrawn. The petitioner refused to sign the said letter. However, V. K. Talwar was forced to sign the letter on 5th January, 1984 after some little modification as V. K. Talwar was in distress on account of continuous illness of his real uncle with whom he was living and on account of acute financial crisis. A copy of the letter signed by V. K. Talwar has been placed on record which inter alia, states that V. K. Talwar has no relation with the union as he had disassociated himself from the said Union. The letter also states that the incident which resulted in the making of the order of dismissal of V. K. Talwar was true and they should not have behaved in irresponsible manner and sincere apology was tendered and Managing Director was requested to withdraw the order of dismissal. The petitioner says that the contents of the said letter evidently show that the Union and its members were oppressed by the Management by various mal-practice.

3. The order of dismissal has been made by the respondent company by invoking Rule 30 of Indian Railway Construction Company Limited Conduct, Discipline & Appeal Rules, 1981 (for short "the Rules") : Rule 30, inter alia, provides that notwithstanding anything contained in Rule 25 or 26 the Disciplinary authority may impose any of the penalties specified in Rule 23 where the Disciplinary Authority is satisfied for the reasons to be recorded by it in writing that it is not reasonably practicable to hold an enquiry in the manner provided in the Rules. Rule 23, inter alia, sets out the minor and major penalties which may be imposed on an employee by following procedure as provided in Rules 25, 26 and 27 for misconduct committed by an employee or for any other good and sufficient reasons. The order of dismissal of the petitioner was made in exercise of power under Rule 30 on forming the opinion that it is not reasonably practicable to hold

an enquiry in the manner provided under Rule 25.

4. The petitioner has challenged the order of dismissal and also the legality of the action of the respondent in dispensing with the enquiry, inter alia, on the ground that there was no material for forming the opinion that it was not reasonably practicable to hold an enquiry in the manner provided under the Rules. The petitioner contends that order of dismissal was made as the management wanted to victimise the petitioner on account of his union activities and it is thus mala fide. It has also been contended that the rules are not applicable to the petitioner as he is a workman as defined under Industrial Employment (Standing Orders) Act, the Standing Orders under Industrial Disputes Act, 1947 and as per the definition of workman given in Rule 3(b) of the said Conduct Rules of the Company. The petitioner has also challenged the validity of Rule 30 pleading that the said Rule confers upon the Disciplinary Authority a very drastic arbitrary un channelized power to dismiss an employee without holding any enquiry and without giving any opportunity of being heard by merely stating that it is not reasonably practicable to hold the enquiry. Lastly the petitioner assails the validity of the order of dismissal on the ground that it was made by an authority inferior to his appointing authority.

5. I will first take up the last ground of challenge. The order of dismissal was made by A. K. Raman one of the General Manager of the respondent company. The petitioner has pleaded that he was appointed by the General Manager-cum-director of the respondent company and the pay scale of the post of General Manager-cum-Director was Rupees 2,500-2750. It has been further pleaded that sometime in the year 1983 the designations of the General Managers and Deputy General Managers were changed. The then General Manager-cum-director was promoted as Managing Director in the scale of Rs. 3500-4000. All the then Deputy General Managers were redesignated as General Managers (Finance), I, II, III and IV. The petitioner states that the re designation of the then Deputy Managers as General Managers was without changing their pay scale and without giving them any additional power of appointment or to take any disciplinary action. It has been contended that since the petitioner was appointed by the authority higher than A. K. Raman, Raman could not take disciplinary action and make dismissal order being an authority inferior to appointing authority of the petitioner. The respondent company has denied that the petitioner was appointed by the General Manager-cum-Director but it has not explained much less satisfactorily as to which authority appointed the petitioner. The respondent has simply pleaded that the dismissal order of the petitioner has been made by the competent authority. The letter of appointment issued to the petitioner was signed by the Liaison Officer of the respondent company. The letter of appointment dated 19th May, 1981, inter alia, states that :-

"I am directed to state that you have been selected for appointment to the temporary post of Junior Engineer (Civil)....."

6. The respondent company in the counter-affidavit did not explain as to on

whose directions the letter of appointment was issued and which authority had selected the petitioner for being appointed to the post of Junior Engineer. The respondent company was accordingly given an opportunity to produce the record and clarify as to who had appointed the petitioner, the rank and scale of pay of the Officer/authority who had appointed the petitioner.

7. The respondent company had produced the record. The admitted position now is that the petitioner was selected to be appointed to the post of Junior Engineer by one V. K. J. Rane. According to the respondent Rane at the relevant time in the year 1981 was the General Manager of the respondent company in the pay scale of Rs. 2500-2750. According to the petitioner Rane was the Chief Executive of the Company and was General Manager- cum-Director. Admittedly the impugned order of dismissal was made by A. K. Raman who was in the pay scale of Rs. 2250-2500. Learned counsel for the respondent submits that, as per rules, for the post of Junior Engineer, the Disciplinary Authority was Senior Manager (Rs. 2250-2500) for inflicting major penalties and Senior Manager/Chief Manager (Rs. 2500-2750) was the appellate authority and Managing Director/General Manager was the Reviewing Authority. Learned counsel for the respondent submits that for determining as to who is the appointing and disciplinary authority the relevant factor is the rank of such authority and not the pay scale. Thus it is contended that the order of dismissal was valid made by A. K. Raman as the petitioner had been appointed to the post of Junior Engineer by the General Manager i.e., V. K. J. Rane and Raman when he made order of dismissal was General Manager.

8. It is not disputed that the order of dismissal was made by Raman when he was in the pay scale of Rs. 2250-2500 and he remained so up to 15th January, 1985 when he was promoted to the scale of Rs. 2500-2750. It is further not disputed that in the respondent company there was change of designations of some posts in the year, 1983. The petitioner has placed on record an office order dated 14th April, 1983 issued by the respondent company. The said office order shows that the designations of the officers named therein were changed with immediate effect and on account of the said office order A. K. Raman came to be designated as one of the General Managers, namely, General Manager/I. The other three officers named in the said order were designated as General Managers/II, III and IV and one officer was designated as General Manager (Finance). It is also not disputed by the respondent that before issue of the office order dated 14th April, 1983 A. K. Raman was one of the Deputy General Managers. It is further not disputed that the scale of pay of the post even after change of designation under the office order dated April 14, 1983 remained the same, namely, Rs. 2250-2500. Further admittedly, the post of the General Manager in the scale of Rs. 2500-2750 was a promotional post for the Deputy General Managers redesignated as General Managers/I, II III and IV. From aforesaid narration of facts it is clear that up to issue of office order dated April 14, 1983 Raman was holding the post of Deputy General Manager. The nomenclature of the posts of Deputy General Managers was changed with effect

from 14th April, 1983 but it does not appear from record that any other change was effected or any power to make appointments and taken disciplinary action was conferred on such change of nomenclature. Reference may also be made to Note I to the Schedule appended to the rules prescribing the Appointing, Disciplinary, Appellate and Reviewing Authorities in respect of various posts. The said note says that "In a Department, where the designation as shown in this Schedule do not exist, officers in the corresponding scales shall exercise the powers". According to the petitioner V. K. J. Rane, when the petitioner was appointed to the post of Junior Engineer, was General-Manager-cum-Director. According to the respondent Rane at that time was the General Manager. Assuming the contention of petitioner as to the nomenclature of the post which Rane was holding is not correct and the contention of the respondent in that regard is correct, one aspect about which there can be no dispute is that Rane was "the General Manager" in the scale of pay of Rs. 2500-2750 and the said post which Rane was holding was the promotional post for Mr. Raman, General Manager I. Raman was only one of the General Managers and not "the General Manager". When the appointment of an official is made by an officer of the rank of "the General Manager" and there are also officers holding the rank of Deputy General managers redesignated as General Managers, I, II, III and IV and post of "the General Manager" is a promotional post for these General Managers, the change of nomenclature would not make these redesignated General Managers competent to dismiss an official without conferring these redesignated posts the power to make appointments and take disciplinary action. For finding out whether the disciplinary action has been taken by an authority inferior to that of the appointing authority the relevant authority is the one which actually makes the appointment and not the authority empowered in the Rules to make the appointment. It is also clear from facts noticed hereinbefore that Raman was not even an officer in the corresponding scale. It may further be noticed that the petitioner in his rejoinder affidavit filed on 1st September, 1988 had specifically pleaded that he was appointed by the Chief Executive (General Manager-cum-Director) who was in the pay scale of Rs. 2500-2750) at that time and as such the impugned order passed by a person employed on a lower scale of pay i.e., Rs. 2250-2500 is void ab initio. In spite of the said specific plea the respondent company has failed to show how Raman could validly make an order of dismissal and has only rested its case on the re-designation of his post which aspect I have already dealt with. The order of dismissal was made by one of General Managers (earlier designated as Deputy General Manager) without conferring power to make appointment and take disciplinary action whereas the appointment had been made by "the General Manager". In view of aforesaid discussion, I hold that the impugned order of dismissal of the petitioner was made by an authority inferior to the one which appointed the petitioner and thus it cannot be sustained.

9. Since counsel for the parties made elaborate submissions, I may also deal with the question as to the validity of the decision to dispense with the enquiry

and whether it was based on relevant material and the connected question as to whether the decision was mala fide with a view to victimise the petitioner for his union activities. Mr. Gupta, learned counsel for the respondent Company, strongly relied upon the decision of Supreme Court in Tulsi Ram Patel's case (Union of India v. Tulsi Ram Patel, 1985 2 CLR 117, in support of the contention that the decision to dispense with enquiry is not liable to be interfered with by this Court. In order to understand the ratio of Tulsi Ram Patel's case it would be useful to first have a glance of the facts of the cases which came up for consideration before the Supreme Court.

10. A number of connected matters were disposed of by Supreme Court by a common judgment. CA 4814/83 was appeal of Union of India against Tulsi Ram Patel 1985 2 CLR 117. It was concerned with clause (a) of Second Proviso to Article 311 of the Constitution of India and Rule 19(i) of Central Civil Services (Classification, Control and Appeal) Rule, 1965. Tulsi Ram Patel had been convicted on a criminal charge u/s 332 of I.P.C. Patel was a permanent auditor in Regional Audit Office, M. E. S. Jabalpur. Orders were issued by Headquarters stopping increment of Patel for one year. One Raj Kumar Jain at relevant time was the Regional Auditor Officer. Patel went to office of Raj Kumar and demanded an Explanation from him as to why he had stopped his increment whereupon Raj Kumar replied that he was nobody to stop increment. Patel then struck Raj Kumar on head with an iron rod; Raj Kumar fell down, his head bleeding. Patel was tried and convicted under S. 332 of the Indian Penal Code by First Class Judicial Magistrate but instead of imprisonment Magistrate gave benefit of S. 332 of the Probation of Offenders Act and released Patel on his executing bond of good behavior for one year. Patel's appeal was dismissed by the Sessions Court. The appropriate authority, in exercise of powers conferred by Rule 19(i), directed the compulsory retirement of Patel from service on considering that conduct of Patel which had led to his conviction in such as to render his further retention in public service undesirable. That order was under challenge. The Supreme Court while dealing with this appeal said that it was fortunate that skull of Raj Kumar who was superior officer of Patel, was not fractured otherwise offence committed would have been the more serious one under S. 333 and Patel was lucky in being dealt with leniently by the Magistrate but these facts clearly show that his retention in public service was undesirable. The Supreme Court said that in fact conduct of Patel merited dismissal but disciplinary authority imposed only penalty of compulsory retirement as the said authority had in mind the fact that Magistrate had released Patel on probation. It was held that clause (i) of Rule 19 was rightly applied. It was not a case of dispensing with enquiry under Rule 19(ii) but was a case where the disciplinary authority exercised power under Rule 19(i) considering that conduct of the employee which led to his conviction was such as to render his further retention in public service undesirable.

11. Civil Appeals No. 3484/82 and 3512/82 related to the members of Central Industrial Security Force who were dismissed from Force after dispensing with disciplinary enquiry by applying clause (b) of Rule 37 of the C. I. S. F. Rules read

with clause (b) of the Second Proviso to Art. 311(2). A large group of member of Central Industrial Security Force of C. I. S. F. Unit Bokaro Steel Company were alleged to have indulged and were continuing to indulge in acts of insubordination and indiscipline, dereliction of duty, abetting from P. T. and Parade, taking out processions and raising many slogans, participating in the gherao of Supervisory Officers, participating in hunger strike and dharna near the Quarter Guard and Administrative Building of the CISF unit Bokaro Steel since 27th May, 1979 in violation of the provisions of the CISF Act, 1968 and instructions of superior officers and in complete disregard of their duties as members of the Force. The said group of members also indulged in threats of violence, bodily harm and other acts of intimidation to supervisory officers and loyal members of the Force. The members of the Force created a situation whereby the normal functioning of the Force at the CISF Unit, Bokaro had been rendered difficult and impossible. The impugned orders of dismissal from service were made on 29th June, 1979 after dispensing with enquiry in exercise of power conferred by sub-rule (b) of Rule 37 of the CISF Rules, 1969 read with clause (b) of Second Proviso to Clause (2) of Art. 311 of the Constitution. It was noticed by the Supreme Court that there was a total break down of discipline in the CISF Force; there was willful and deliberate disobedience of orders of the supervisory officers and gherao of such offices; there was a hunger strike, dharna, shouting of rebellious slogans and threats of violence and bodily harm to supervisory officers and acts done to intimidate the supervisory officers and loyal members of the staff; there were acts of insubordination and deliberate neglect and willful violation of their duties by a large section of the members of CISF force situate at Bokaro are that all these acts virtually amounted to a mutiny. It was further noticed that gravity of the situation can be judged from the fact that the Army had to be called out and a pitch battle took place between the Army and the members of the Force. On these facts the Supreme Court came to the conclusion that no person with any reason or sense of responsibility can say that in such a situation the holding of an enquiry was reasonably practicable.

12. Civil Appeals No. 3231/81 and 4067/83 and some other matters related to Railway Servants who were either dismissed or removed from service by applying to their cases either Rule (ii) of Rule 14 of the Railway Servants Rules or Clause (b) of the Second proviso to Art. 311 or clause (ii) of Rule 14 read with clause (b) of the second proviso. The majority of the Railway employees who were dismissed or removed are alleged to have been concerned in incidents which took place in All India Strikes of Railway Employees and many of those employees belonged to the All India Loco Running Staff. One consideration of the gravity of the situation the Supreme Court opined that in the context of an All India Strike where a large number of Railway Servants had struck work, the Railway service paralysed, loyal workers and superiors workers assaulted and intimidated and the country held to ransom, the economy of the country and public interest and public good prejudicially affected, the prompt and immediate action was called for to bring the situation to normal. The Supreme Court said

that in these circumstances it cannot be said that enquiry was reasonably practicable.

13. The other cases considered by the Supreme Court related to Madhya Pradesh Police Force and arose out of the incident which took place on 18th January, 1981 at the Annual Mela held at Gwalior in which one man was burnt alive. Some persons including a Constable from Madhya Pradesh District Force of the Madhya Pradesh Armed Force were arrested. They were remanded into judicial custody. On January 20, 1981 several members of these two Forces indulged in violent demonstrations and rioted at the Mela ground demanding the release of their colleagues. They ransacked the Police Station at the Mela ground and forced the operator to close down the wireless set. The situation became so dangerous that senior Police and District Officers had to approach Judicial Magistrate at night to get the two arrested Constables released on bail. This question was discussed at a Cabinet meeting and a decision was taken and the views of the Council of Ministers was tendered to the Governor of Madhya Pradesh who accepted it and issued the dismissal orders. On further scrutiny some names were deleted from the list of dismissed personnel and some others included. As a result of this, some other members of these forces began an active propaganda against the Government, visiting Jabalpur and other places in State of Madhya Pradesh, holding secret meetings, distributing leaflets and inciting Constabulary in these places to rise against the administration as a body to protest against the action taken by the Government. On this information being received they too were similarly dismissed. The Supreme Court said that these facts leave no doubt that the situation was such that prompt and urgent action was necessary and holding of an enquiry into the conduct of each of the petitioners would not have been expedient in the interest of the security of the State.

14. While considering the validity of the action taken to dispense with the enquiry and coming to the conclusion that it is not reasonably practicable to hold enquiry in the manner provided for in the Rules for imposing the penalty of dismissal one cannot lose sight of the facts and the circumstances which may compel the authorities to have recourse to the exceptional power of dismissal without holding an enquiry. From facts noticed above, it is evident that the cases considered by the Supreme Court were very grave where members of the Security Forces were indulging in large scale insubordination, indiscipline and were posing law and order problem. The members of the force who are the guardians of law and order were themselves the law breakers and indulging in violence, public disorders and inciting others to do the same. On consideration of these circumstances and the law on the subject the power to dispense with the disciplinary enquiry was upheld by the Supreme Court.

15. The power to dispense with enquiry is to be resorted to in exceptional and glaring cases and not in routine. Which cases would fall under this category would depend upon the facts and circumstances of the cases. There cannot be any generalisation. But it is clear that the power to dismiss an employee by

dispensing with enquiry cannot be permitted to be used lightly so as to circumvent the rules and dispense with the services of an inconvenient employee where either it may be difficult to prove a charge in the enquiry proceedings or the enquiry proceeding may entail delay in the action to be taken against the employee. The satisfaction as to whether the facts justify dispensing with enquiry has, however, to be of the disciplinary authority. Where two views are possible it would not be within the domain of the Court to substitute its view for that of the disciplinary authority as if the court is sitting as an appellate authority over the disciplinary authority. Mr. Gupta is right in submitting that while deciding these cases the Court has to put itself in the place of disciplinary authority and consider what in the then prevailing situation a reasonable man acting in a reasonable way would have done and the matter will have to be judged in the light of the then prevailing situation and not as if the disciplinary authority was deciding the question whether the enquiry should be dispensed with or not in the cool and detached atmosphere of a court-room removed in time from the situation in question. At the same time this Court will have to examine the charge of mala fides and victimisation in the light of the facts and circumstances of the case and when come to the conclusion as to whether the decision of the disciplinary authority to dispense with enquiry is or is not abuse of the power conferred by the rules upon the disciplinary authority.

16. Reverting, to the present case let me first notice a few facts anterior to the making of the order of dismissal and about which there cannot be any serious controversy. The Ircon Employees Union was registered under the Indian Trade Unions Act, 1926 on 9th November, 1983. The certificate of registration of Trade Union issued by the Deputy Commissioner of Trade Union, Delhi has been placed on record. The petitioner was the first President of the said Union and V. K. Talwar was its General Secretary. On 10th November, 1983 a letter was sent by the petitioner to V. K. J. Rane stating that the said union had been formed and registered under the Indian Trade Unions Act and requesting for grant of recognition to the Union. On 10th November, 1983 the respondent order the transfer of the petitioner from Delhi to Ampere (M. P.). The respondent has not disputed the receipt of letter dated 10th November, 1983 on 10th November, 1983 itself. The respondent has, however, pleaded that the letter was received after issue of orders of transfer. The petitioner disputes it and says that the transfer was ordered to victimise the office bearers of the union. The petitioner and Talwar filed a suit for permanent injunction to restrain the respondent from transferring them from Delhi. An ex parte order of injunction was made by the Civil Court on 15th November, 1983 staying the operation of the transfer orders dated 10th November 1983 while issuing notice to the respondent returnable for 22nd December, 1983. According to petitioner the management was further annoyed on receipt of the restrain order and sought to take other measures to victimise the petitioner and other office bearers of the Union. By letter dated 28th November, 1983 with reference to earlier letter dated 10th November, 1983 a reminder was sent for grant of recognition to the Union. The letter dated 30th

November, 1983 was sent by Talwar as General Secretary of the union to the respondent. Reference in this letter was made to earlier letters dated 10th November, 1983 and 29th November, 1983. In this communication Talwar requested for fixing up of a meeting of the Union with the Management. It was, inter alia, stated that the employees were being harassed by officers and that some responsible officers were indulging in anti-union activities and that : (i) officer bearers were transferred from Corporate office on receipt of letter requesting for recognition; (ii) several are being forced to write that they are not members of the Union; (iii) inspire of two letters requesting for recognition of the Union no action had been taken; (iv) warning letters had been given to the Chief Executive of the Union; (v) threat to staff about removal from service. The receipt of letters dated 28th November, 1983 and 30th November, 1983 has not been denied by the respondent though the allegations contained therein have been refuted. The petitioner has also placed on record two letters dated 5th December, 1983. By letter dated 5th December, 1983 written by Talwar to Minister for Railways a complaint regarding unfair labour practice by the Management of the respondent was made. It has been inter alia, stated in this letter that some responsible officers of the company are trying continuously to break the Union by calling the staff one by one to force them to sign blank papers and also threatening the staff about their removal/transfer from services. A copy of that letter seems to have been sent to the respondent. The other letter dated 5th December, 1983 is a communication from Mr. Lalit Maken to Minister for Railways. Along with the said communication copy of the aforesaid letter dated 5th December 1983 written by Talwar to the Minister was sent. Copy of the letter sent by Mr. Maken to Minister of Railways was also sent to V. K. J. Rane, Managing Director of the respondent. There is no specific denial about the receipt of aforesaid letters. It may also be noticed that photocopy of the letter dated 5th December, 1983 placed on record by the petitioner contains an endorsement and stamp of the respondent company in token of its having received the same on 6th December, 1983. There was then the alleged incident of 6th December, 1983 leading to the making of the impugned dismissal order on 7th December, 1983 in exercise of power under Rule 30 by forming the opinion that it is not reasonably practical to hold an enquiry in the manner provided under Rule 25 of the Rules. The case of the respondent is that the order of dismissal was made on account of misbehavior of the petitioner and Talwar within the office premises in abusing and threatening S. L. Gupta a senior officer of the company and in assaulting him, which according to the respondent is a grave offence and serious misconduct calling for sever disciplinary action against them in the interest of the company.

17. The order of dismissal is based on the alleged incident of 6th December, 1983 of petitioner and Talwar having abused and assaulted S. L. Gupta, an officer of the company. On 6th December, 1983, according to respondent the petitioner and Talwar entered the room of S. L. Gupta at 2.30 p.m. and they wanted to know as to what Gupta was talking to Dalip Kumar, a messenger,

Gupta says that Dalip Kumar had been called by him for some official work and he told the petitioner and Talwar that they had no business to know as to what he was talking with any member of the Company. On this the petitioner and Talwar alleged to have threatened Gupta with dire consequences stating that they will see him at 5 p.m. when he goes out of the office. They allegedly threatened Gupta and left the room. Again at 5 p.m. petitioner and Talwar along with 6/7 persons alleged to have entered the room of Gupta and started abusing and beating him and Talwar allegedly also removed purse of Gupta lying on the table containing approximately Rs. 500/-. Gupta says that he managed to escape from the room and entered in the room of P. A. of Managing Director where Kohli, P. A. of Managing Director was sitting and Kohli locked him inside the room to save his life. A report dated 6th December, 1983 was lodged by S. L. Gupta with S. H. O. Karol Bagh Police Station, New Delhi, complaining about the acts committed by the petitioner and Talwar and requested for appropriate action being taken against them. The report lodged with the Police also states that a move was being gathered in the undertaking among Class III and Class IV employees for forming an Association and as a matter of policy the Managing Director had rejected their request for recognition of any Association of the nature. It also states that since Gupta is holding the office of the Manager in the Managing Director's Secretariat, he has to ensure that the policies of the undertaking are implemented and not allowed to be flouted in any manner. It seems that the Management was opposed to the forming of Union and Gupta as an Officer in the Managing Director's Secretariat was responsible for ensuring the implementation of the said policy. On 7th December, 1983 as per the documents, placed by the company on record, Gupta wrote to General Manager, Administration, bringing to his notice the incident of 6th December, 1983. The respondent has also placed on record reports made by three other employees to the General Manager, Administration, in regard to incidents of 6th December, 1983 and one report dated 9th December, 1983 to the similar effect. A. K. Raman on consideration of report given by S. L. Gupta and the other four employees, namely, Anita Ahuja, P. A. to Managing Director, Ram Krishna a photostat operator and Nand Kishore messengers, formed the opinion that the petitioner and Talwar were guilty of grave offence and serious misconduct calling for sever disciplinary action against them in the interest of the company by dispensing with disciplinary enquiry. This opinion, as per documents placed on record was formed on 7th December, 1983. The respondent has not explained how Raman could rely upon and refer to the report of Ram Krishan on 7th December, 1983 when the report of Ram Krishan is dated 9th December 1983. For forming the opinion that it is not reasonably practical to hold an enquiry in the manner provided under Rule 25 of the Rules, Raman has considered the following aspects :-

" (a) The delinquents have taken the extreme step of freely using abusive language and assaulting Shri S. L. Gupta right in the centre of the activities of the Corporate Office of the Company. With such high-handed and recalcitrant

attitude of the delinquents, I am convinced that they can indulge in such intimidating and violent acts against other employees when they come forward to give evidence during the course of the enquiry. It will Therefore be difficult to hold a proper enquiry and witnesses may not come forward to give frank and true evidence.

(b) The holding of the enquiry will take some time and with the attitudes of the delinquents mentioned above, I am convinced that they will continue to indulge in such violent activities which will seriously disrupt the functioning of the Company apart from affecting the safety of the employees.

(c) The delinquents have threatened the life of the Senior Officer of the rank of a Manager in scale of Rs. 1500-2000 openly in the office premises after hurling abuses. This assault appears to have been intentional and deliberately executed. It can reasonably be inferred that the delinquents can resort to such methods against other higher officers also in case an enquiry is held".

18. The order of dismissal by dispensing with disciplinary enquiry is based on the sole incident of 6th December, 1983. I am not suggesting that under no circumstances the appropriate authority on the basis of a sole incident can come to the conclusion that it is not reasonably practical to hold a departmental enquiry into the misconduct of an employee. In a given case a sole incident itself may be so grave and serious as to call for immediate disciplinary action by dispensing with disciplinary enquiry but such a case would require careful and close scrutiny when challenged in a Court of law. It would depend upon facts and circumstances of each case. The resort to disciplinary action without enquiry, however, is to be had, in exceptional and glaring cases and not in routine.

19. The entire circumstances of the case have to be seen to determine whether it is a bona fide exercise of power to dispense with the enquiry or is it a case of victimisation and colourful exercise of power. The impugned action was taken because of incident of 6th December 1983. The mere fact that holding of the enquiry will take some time by itself is not very relevant. There is no material for forming the opinion that the petitioner would continue to indulge in such violent activities. The petitioner does not have past adverse record of any significance. On facts it stands admitted that as a matter of policy the management was opposed to the union activities of the employees and S. L. Gupta who was working as Manager in the Managing Director's Secretariat was obliged to ensure the implementation of the policies of the management. It is S. L. Gupta who is alleged to have been manhandled and assaulted on 6th December, 1983 which resulted in the impugned action. In his report to SHO on 6th December, 1983 Mr. Gupta, inter alia says that :-

"a move was being gathered in the undertaking amongst Class III & IV employees, for forming an association, by the aforesaid particularised persons. As a matter of policy framed by the undertaking, the Managing Director had rejected their request for recognition of any association of the nature.

I am since holding the office of the Manager in the Managing Director's Secretariat have to ensure the policies of the undertaking implemented and not allowed to be flouted in any manner".

20. Later, no one pursued the matter with the Police.

21. To recapitulate salient dates :- 9th November, 1983 - Registration of Union; 10th November, 1983 - Request for recognition of the Union; 10th November, 1983 petitioner and the Secretary of the Union ordered to be transferred; 15th November, 1983 - Ex-parte order of civil Court staying the operation of the order of transfer and notice issued to the management for 22nd December, 1983; Between 10th November 1983 and 6th December, 1983 - Number of communications sent to the management spelling out the apprehensions that the management was planning to dispense with the services of the office bearers of the union; 6th December, 1983 incident of misbehavior and assault and; 7th December, 1983 - Impugned order of dismissal of the petitioner from service and formation of the opinion that it is not reasonably practicable to hold an enquiry in the manner provided under the Rules. The order containing reasons was given to the petitioner after the writ petition was filed. As per Tulsi Ram Patel's case 1985 2 CLR 117 it is better if the reasons are given to the employee at the time of dismissal in order to avoid a charge being made that reasons were recorded later though the requirement is only to record reasons and not to give the same to the employee at the time of dismissal. Further, the reasons dated 7th December, 1983 refer to a report dated 9th December, 1983 of an employee about the incident of 6th December, 1983. How could report dated 9th December, 1983 be considered on 7th December, 1983 has not been explained. The sequence of events and swiftness of action in the totality of circumstances are pointing towards lack of bona fides on the part of respondent company. On considering the entire circumstances of the case to my mind the impugned action smacks of victimisation, colourable exercise of power and is mala fide. The charge of victimisation and mala fides has to be seen in the light of the totality of the circumstances as ordinarily it is not possible to have direct evidence in respect of such matters. All the circumstances when seen collectively show that the decision to dispense with enquiry was made by the management to victimise the petitioner for his union activities and was mala fide and is liable to be quashed.

22. Counsel for the respondent contended that the writ petition is not competent as the petitioner did not avail the alternative remedy of departmental appeal. According to the petitioner the appeal did not lie as no charges were served on the petitioner and the petitioner was not told as to why he was being dismissed and as such he could not file the appeal against the impugned order of dismissal and, in any case, no appeal lay against the decision dispensing with disciplinary enquiry. From the reading of the Rules it seems that no appeal lay against the order dispensing with disciplinary enquiry. Assuming the appeal against dismissal order in such case was competent the filing of it without knowing the charges would have been an idle formality. Further this by itself, would not make the writ

petition incompetent. The availability of alternative remedy does not affect the constitutional power of this Court under Art. 226 of the Constitution of India. The rule which requires the exhaustion of alternative remedy is a rule of convenience and discretion rather than a rule of law. This rule does not bar the jurisdiction of the Court. On the facts and circumstances of the case the writ petition, at this late stage, after about 10 years, is not liable to be dismissed on the ground of availability of assumed alternative remedy of appeal.

23. As the petitioner succeeds on the questions dealt with hereinbefore, it is not necessary to decide other contentions urged on behalf of the petitioner including the contention about the invalidity of Rule 30.

24. For the aforesaid reason the writ petition is allowed, rule is made absolute and the impugned order dated 7th December, 1983 is set aside. The petitioner would also be entitled to all consequential benefits. The parties shall, however, bear their own costs.

25. Petition allowed.