

(2019) 02 DEL CK 0075

In the Delhi High Court

Case No : Civil Writ Petition No. 6507 Of 2017

Amit Kumar Singh

APPELLANT

Vs

Union Of India & Ors

RESPONDENT

Date of Decision : 07-02-2019

Acts Referred:

Constitution of India, 1950 — Article 32, 226, 311, 311(2), 311(b)
Central Industrial Security Force Rules, 2001 — Rule 34(i), 36, 37, 38, 39, 39(ii)

Citation : (2019) 02 DEL CK 0075

Hon'ble Judges : S.Muralidhar, J;Sanjeev Narula, J

Bench : Division Bench

Advocate : Naveen R. Nath, Dinesh Yadav, Rahul Jain, Siddarth Agarwal, Shiva Lakshmi, Siddharth Singh

Final Decision : Allowed

Judgement

Dr. S. Muralidhar, J

1. The Petitioner, who was a Sub Inspector ("SI") with the Central Industrial Security Force ("CISF") and was deployed for security duties at the Delhi Metro, CISF Unit, has challenged in this petition an order dated 7th November, 2016 passed by the Deputy Inspector General ("DIG"), CISF Unit, DMRC, Delhi (hereinafter "the Disciplinary Authority" ("DA")) dismissing him from service with immediate effect. He has also challenged the order dated 24th January, 2017 passed by the Inspector General ("IG"), North Sector, rejecting his appeal against the aforementioned dismissal order and the order dated 6th July, 2017 of the Director General ("DG"), CISF, rejecting his revision petition.

2. The trigger for the dismissal order was an incident that took place at around 9.39 am at the MG Road Metro Station on 24th October, 2016 where the Petitioner was the Shift In-charge. A person named Jitendera brutally assaulted a lady passenger with a knife. The allegation against the Petitioner was that he remained a mute spectator to the incident and did not take immediate action to prevent the said Jitendera from attacking the lady. As it transpired, on account of

the repeated stabbing, the lady passenger succumbed to her injuries and the accused was overpowered by the other passengers present at the metro station. The allegation as far as the Petitioner is concerned, is that he did not intervene immediately or forcefully; that he located a metal net and threw it at the offender which did not deter him from proceeding to stab the deceased.

3. The Respondents conducted a preliminary enquiry ("PE") and concluded that the Petitioner had failed to take preventive action to save the life of the lady passenger, despite having arms and ammunition. A perusal of the report of the incident prepared on 28th October, 2016 by the DIG, CISF Unit, DMRC reveals that CCTV footage of the incident was analysed. The report further notes that Constable/GD B. Kunal, who was deployed as "CCTV observer", on noticing the incident, immediately informed the Petitioner through a wireless set and also simultaneously informed the Operation Control Centre ("OCC") at Shastri Park, who in turn conveyed the information to the senior officers. There is also a mention in the said report about Constable/GD Basant Kumar Sundi who was performing baggage checking duty, rushing to the spot and joining the public in overpowering the accused. The report notes that a PE had been ordered and that it was very clear "from CCTV footage itself" that the Petitioner "utterly failed to respond in rescuing the lady despite being well trained and well equipped with arms and ammunition".

4. In the PE that was conducted by the Assistant Commandant, CISF Unit, DMRC, apart from the Petitioner, the statements of six other CISF personnel were recorded and three documents analysed. The PE report sets out the gist of the statements recorded and also the analysis of the CCTV footage. This PE report was submitted on 6th November, 2016. On the very next day, i.e. 7th November, 2016, the DA passed the impugned order dismissing the Petitioner from service "with immediate effect".

5. A perusal of the said order reveals that it contains 7 paragraphs. The first four paragraphs are in the nature of a preamble to the main order. Relevant to the issue that directly arises in the present case is paragraph (04), which reads as under:

"04. AND WHEREAS in view of the facts and sufficient electronic evidence in the form of CCTV footage which clearly proved the sheer negligence and cowardice on the part of CISF No. 140204283 SI/Exe Amit Kumar Singh. The same footage was also viewed by the Sub-Inspector in presence of supervisory officers. Furthermore as the victim (Ms Pinki) has expired and the culprit (Mr.Jitendra) is in judicial custody the eye witnesses i.e. passengers were all of floating population and their whereabouts are not known to this department, it is not, practically possible to hold a regular departmental enquiry by following due procedure as envisaged in Rule 36 of CISF Rules 2001."

6. Thereafter in paragraph (05), the DA notes that he is satisfied "that it is not reasonably practicable to conduct enquiry into the instant case, hence I am

dispensing with the enquiry for the above reasons". Thereafter, in the same paragraph, the DA proceeded to record his opinion that the Petitioner was guilty of "sheer negligence and cowardice which has not only shocked my conscience but also shattered the sanctity of the Force in public view. Retention of such personnel is not desirable and conducive in the interest of administration in an Armed Force like CISF".

7. At the hearing of this case, on 5th December, 2018, the following order was passed by this Court:

"1. In this case, while dismissing the Petitioner from service as Sub-Inspector (SI) of the CISF, the Respondents have invoked Rule 39 (ii) of the Central Industrial Security Force Rules, 2001 (CRPF Rules) and dispensed with the holding of an inquiry altogether.

2. The Court is not at this stage examining the merits of the dismissal but is confining its examination to the justification for dispensing with the inquiry under Rule 39 (ii) of the CISF Rules.

3. Although several documents have been enclosed with the petition and the counter affidavit filed by the Respondents, what is significant is annexure R- 3 to the counter affidavit which is titled 'Preliminary Enquiry Report'. In a paragraph therein titled 'Proceedings of Inquiry' it is stated that during the enquiry the statements of "the following personnel were recorded." It then proceeds to list out the names of seven personnel including the Petitioner whose statements were recorded. Thereafter it sets out a gist of the statements so recorded. It then proceeds to analyze those statements as well as the documents gathered during the preliminary inquiry.

4. In para 10 of the counter affidavit filed by the Respondents, in seeking to explain the dispensing of the inquiry, it is stated as under:

"That the above CCTV footage was also shown to the Petitioner in presence of the Supervisory Officers. Furthermore, as the victim (Mrs Pinki) had expired, accused (Mf. Jitendra) was in judicial custody and the eye witnesses i.e. passengers were all part of the floating population and their whereabouts were not known to the respondents, it was not practically feasible to hold a regular Departmental Enquiry by following due procedure as envisaged in Rule- 36 of CISF Rules 2001.."

5. A question was put to learned counsel for the Respondents whether in compliance with the requirement of Rule 39 (ii) of CISF Rules 2001, the Disciplinary Authority (DA) recorded in writing the very reasons as noted in para 10 of the counter affidavit for arriving at the conclusion that "it is not reasonably practicable to hold an inquiry".

6. Learned counsel for the Respondents first referred to the order dated 7th November 2016 passed by the Disciplinary Authority (DA) whereby the Petitioner was dismissed from service. All that is stated towards the end of the said order is

that "now, therefore, I am satisfied it is not reasonably practicable to conduct the inquiry in the instant case, hence I am dispensing with the inquiry for the above reasons." In other words, this recording is not prior to the dismissal order. It is set out in the dismissal order itself. However, the requirement of Rule 39 (ii) of the CISF Rules is that prior to passing an order of dismissal/removal etc. by dispensing with an enquiry, an order in writing has to be passed by the DA giving the reasons why he was in terms of Rule 39 (ii) dispensing with the enquiry. In the context of the present case, when a preliminary enquiry was in fact held, a question would arise why a proper enquiry was not reasonably practicable?

7. Learned counsel for the Respondents then referred to the letter dated 28th October 2016 addressed by the Deputy Inspector General, CISF Unit, DMRC, Delhi to the Inspector General giving a report of the incident. Even this communication does not set out the reasons that persuaded the DA to dispense with the enquiry. In fact this communication makes no reference whatsoever to Rule 39 (ii) of the CISF Rules.

8. The Court then inquired from counsel for the Respondents whether there is any noting in the file by the DA, prior to the passing of the dismissal order, in terms of the Rule 39 (ii) of the CISF Rules. Learned counsel for the Respondents stated that she needed time for instructions and also to examine original records.

9. The original records of the case be kept ready for perusal on the next date.

10. It is reiterated that the scope of examination of the present petition at this stage is confined to the above question.

11. List on 7th February 2019.

12. This order be given dasti under the signatures of the Court Master."

8. Today, Ms. Shiva Lakshmi, learned counsel for the Respondents, has produced before the Court the following documents:

(i) A note sheet dated 7th November, 2016, which records that a PE was conducted;

(ii) The PE report where it is noted that the Petitioner had indulged in an extreme act of sheer negligence and cowardice by being a mute spectator and not reacting to the incident; and that an order under Rule 39 (ii) read with Rule 34 (i) of the CISF Rules, 2001 has been prepared and is placed on file for perusal and signatures.

(iii) A copy of the Rule 39 of the CISF Rules, 2001, which reads as under:

"Special procedure in certain cases:

Notwithstanding anything contained in rules 36 to 38-

(i) where any penalty is imposed on an enrolled member of the Force 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 any 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 enrolled member of the Force may be given an opportunity of making representation against the penalty proposed to be imposed before any order is made in case under clause (i)"

(iv) An extract from the CISF Manual explaining the scope of a PE as under:

"Preliminary Enquiry

15.As the name suggests, Preliminary Enquiry (PE) is a fact finding enquiry. The purpose of PE is to find out whether there is a prima facie case for institution of a regular DE and, if so, to collect evidence thereof. It is not necessary to hold a PE in every case where it is felt that a prima facie case is made out and sufficient evidence is available. The holding of PE does not mean that the disciplinary authority has made up his mind that the suspected CISF personnel are in fact guilty. There is no punitive element in this enquiry and hence, Article 311(2) of the Constitution of India has no application to it. The procedure for holding such an enquiry is not laid down either in the CISF Rules or at any place. In fact, it is an informant type of enquiry without any well-defined form or procedure, though with a definite purpose.

The PE may be held confidentially or ex-parte. Yet sincere efforts should be made to give an opportunity to enrolled member of the Force whose conduct is being enquired into to explain his position as well. Non-participation of CISF personnel in such an enquiry does not disentitle him from taking part in the regular enquiry subsequently. Nor can the regular enquiry be dispensed with on the plea that the suspected CISF personnel had made an admission in the PE. In case the evidence collected during the PE is to be relied upon during the regular proceeding, it should be ensured that the CISF personnel concerned is supplied with the copies of such evidence so that he can put his defence effectively. While holding PE, the departmental officers should obtain signatures of the witnesses on their deposition. While ordering a PE, it must be ensured that PE is not entrusted to an officer who is holding the same rank; and in all cases, the PE should be entrusted to an officer who is senior in rank to the person whose conduct is being enquired into as such enquiry by a junior officer or an officer of the same rank cannot command the confidence which it deserves. It should be further ensured that the officer who conducts the PE should not be entrusted with the regular DE, as he has already prejudged the matter."

9. On a query by the Court whether there was any noting in the file by the DA, prior to passing of the dismissal order, that it was not reasonably practicable to hold an enquiry, Ms. Shiva Lakshmi stated that whatever is available in the relevant record was already before the Court. Clearly, therefore, there is no noting in the file by the DA, prior to passing the dismissal order, setting out the reasons why he did not consider it practicable to hold an enquiry. The question posed by this Court in its order dated 5th December, 2018 to the effect "when a preliminary enquiry was in fact held, a question would arise why a proper enquiry was not reasonably practicable", has also not been answered by the Respondents.

10. As noted in the order dated 5th December 2018, it is only in the dismissal order dated 7th November, 2016 that the DA has stated that it is not reasonably practicable to hold an enquiry. This clearly is not in compliance with the mandatory requirement of Rule 39 (ii) of the CISF Rules. It is very plain that such a satisfaction has to be arrived at by the DA prior to passing an order holding the Petitioner guilty and then proceeding to impose a penalty. There is, therefore, a clear violation of the mandatory requirement of Rule 39 (ii) of the CISF Rules in the present case.

11. In *Union of India v. Tulsiram Patel* (1985) 3 SCC 398, a similar question of dispensing with an enquiry in the context of the second proviso to Article 311 (b) of the Constitution of India arose for consideration. The Supreme Court in that instance observed as under:

"130. The condition precedent for the application of clause (b) is the satisfaction of the disciplinary authority that it is not reasonably practicable to hold the inquiry contemplated by clause (2) of Article 311. What is pertinent to note is that the words used are 'not reasonably practicable' and not 'impracticable'. According to Oxford English Dictionary practicable means capable of being put into practice, carried out in action, effected, accomplished, or done; feasible. Webster's Third New International Dictionary defines the word practicable *inter alia* as meaning possible to practice or perform; capable of being put into practice, done or accomplished; feasible. Further, the words used are not practicable but not reasonably practicable. Webster's Third New International Dictionary defines the word reasonably as in a reasonable manner: to a fairly sufficient extent. Thus, whether it was practicable to hold the inquiry or not must be judged in the context of whether it was reasonably practicable to do so. It is not a total or absolute impracticability which is required by clause (b). What is requisite is that the holding of the inquiry is not practicable in the opinion of a reasonable man taking a reasonable view of the prevailing situation.

12. Further, in paragraph 134, it was observed as under:

"134. It is obvious that the recording in writing of the reason for dispensing with the inquiry must precede the order imposing the penalty. The reason for dispensing with the inquiry need not, therefore, find a place in the final order. It would be usual to record the reason separately and then consider the question of

the penalty to be imposed and pass the order imposing the penalty. It would, however, be better to record the reason in the final order in order to avoid the allegation that the reason was not recorded in writing before passing the final order but was subsequently fabricated. The reason for dispensing with the inquiry need not contain detailed particulars, but the reason must not be vague or just a repetition of the language of clause (b) of the second proviso. For instance, it would be no compliance with the requirement of clause (b) for the disciplinary authority simply to state that he was satisfied that it was not reasonably practicable to hold any inquiry. Sometimes a situation may be such that it is not reasonably practicable to give detailed reasons for dispensing with the inquiry. This would not, however, per se invalidate the order. Each case must be judged on its own merits and in the light of its own facts and circumstances."

13. In the present case, as already noticed, there was no recording by the DA of the reasons for dispensing with the enquiry at any stage prior to passing the order dismissing the Petitioner. Rule 39 (ii) of the CISF Rules, which has been extracted before, required the DA to do so. In coming to that conclusion, the DA would have had to apply his mind to what had been gathered till then by way of evidence and assess the situation based on some objective criteria. Specific to the present case, a PE was held during which not only the statements of seven CISF personnel, including the present Petitioner were recorded, but also three documents as well as the CCTV footage were analysed. While it may be possible to argue, as was done repeatedly before this Court by learned counsel for the Respondents, that it was not practicable to expect to get the passengers present at the platform to participate in the enquiry, surely the six CISF personnel whose statements were recorded in the PE, would have been available for participation in an enquiry.

14. Also from the explanation given of the PE in the CISF Manual itself, "the holding of PE does not mean that the disciplinary authority has made up its mind that the suspected CISF personnel are in fact guilty". It is further clarified that "in case the evidence collected during the PE, is to be relied upon in the regular proceedings, it should be ensured that the CISF personnel concerned is supplied with the copies of such evidence so that he can put up his defence effectively." The above explanation itself makes it clear that a regular enquiry cannot be dispensed with on the plea that the suspect CISF personnel has made an admission in the PE. In other words, for all practical purposes, a PE cannot be a substitute for a regular enquiry and what is gathered during the PE can hardly constitute "evidence" for the purposes of determining the guilt of the CISF personnel charged with "misconduct".

15. In the present case, apart from the PE itself, there appears to be no basis for the DA to decide on the guilt of the Petitioner and to proceed to punish him on that basis. In the circumstances, it was all the more necessary for the DA to properly apply his mind on the crucial aspect of dispensing with the regular enquiry. This he failed to do. Relevant to the present case, from perusal of the

impugned orders, it is plain that the CCTV footage was one of the crucial pieces of evidence relied upon by the DA to find the Petitioner to be guilty of misconduct. In a regular enquiry, it would have been possible for a copy of the said CCTV footage to be provided to the Petitioner, for it to be played out during the enquiry and for witnesses to be asked about what was visible in the CCTV footage. In other words, there should have been no difficulty not only in playing out the CCTV footage during the regular enquiry but also in recording statements of witnesses in relation thereto. The evidence of the persons entrusted with overseeing the operation of the CCTVs installed at the station would have been relevant in this context. Needless to say, the Petitioner would have had a full opportunity to cross-examine those witnesses as well.

16. These aspects are highlighted only to emphasise that the decision that has to be taken by the DA in relation to Rule 39 (ii) of the CISF Rules cannot be a mechanical one. It has to be for proper reasons given the nature of the incident and the kind of evidence gathered. There has to be a proper justification for the conclusion that it is not reasonably practicable to hold an enquiry. In the present case, that step has been bypassed by the DA.

17. Rule 39 (ii) of the CISF Rules only underscores the importance of the principles of natural justice. It places a very high threshold on dispensing with compliance of those principles and it is only for the reasons to be recorded in writing that such an enquiry can be dispensed with. Even then, such an order dispensing with an enquiry would be subject to judicial review. It has to satisfy the test of reasonableness.

18. As regards the scope of judicial review of an order passed by the DA that it is not reasonably practicable to hold an inquiry, the Supreme Court in *Union of India v. Tulsiram Patel* (supra), observed:

"Where a government servant is dismissed, removed or reduced in rank by applying clause (b) or an analogous provision of the service rules and the approaches either the High Court under Article 226 or this Court under Article 32, the court will interfere on grounds well established in law for the exercise of power of judicial review in matters where administrative discretion is exercised. It will consider whether clause (b) or an analogous provision in the service rules was properly applied or not. The finality given by clause (3) of Article 311 to the disciplinary authority's decision that it was not reasonably practicable to hold the inquiry is not binding upon the court. The court will also examine the charge of mala fides, if any, made in the writ petition. In examining the relevancy of the reasons, the court will consider the situation 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, then the recording of its satisfaction by the disciplinary authority would be an abuse of power conferred upon it by clause (b) and would take the case out of the purview of that clause and the impugned order of penalty would stand invalidated. In considering the relevancy of the reasons given by the disciplinary authority the

court will not, however, sit in judgment over them like a court of first appeal. In order to decide whether the reasons are germane to clause (b), 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 way would have done. 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 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."

19. It is trite that the graver the charge and resultantly the more severe the consequence of finding the person guilty of such charge, the stricter has to be standard for viewing infractions of the principles of natural justice. In the present case, the basic procedural requirement for a regular enquiry could not have been dispensed with, as was done by the DA, without complying with mandatory requirement of Rule 39 (ii) of the CISF Rules.

20. For all of the aforementioned reasons this Court holds that the impugned order dated 7th November, 2016 dismissing the Petitioner from service by dispensing with a regular enquiry is bad in law and is hereby set aside. The order of the Appellate Authority dated 24th January, 2017 and Revisional Authority dated 6th June, 2017 are consequently set aside. It may be noted that neither of those orders notice the glaring illegality vitiating the dismissal order dated 7th November, 2016.

21. As regards the consequential order that should be passed, Mr. Naveen Nath, learned counsel for the Petitioner has drawn the Court's attention to the decision in *Reena Rani v. State of Haryana* (2012) 10 SCC 215 where a police constable was dismissed from service without holding an enquiry. There the Supreme Court set aside the said dismissal order, and issued consequential directions as under:

"12. In the result, the appeal is allowed. The impugned judgment as also the order passed by the learned Single Judge are set aside and the writ petition filed by the Appellant is allowed with the direction that she shall be reinstated in service and given all consequential benefits. However, it is made clear that this order shall not preclude the competent authority from taking action against the Appellant in accordance with law. At the same time, we deem it necessary to observe that liberty given by this Court shall not be construed as a mandate for initiation of disciplinary proceeding against the Appellant and the competent authority shall take appropriate decision after objectively considering the entire record."

22. Accordingly, this Court while directing the Petitioner to be reinstated forthwith with all consequential benefits, makes it clear that the Respondents shall not be precluded from taking action against the Petitioner in accordance with law. Further, the liberty given by this Court shall not be construed as a mandate for initiation of disciplinary proceedings against the Petitioner and the

competent authority shall take an appropriate decision after objectively considering the entire record.

23. The petition is allowed in above terms. No costs.