
(2001) 03 GAU CK 0047
In the Gauhati High Court
Case No : Civil Rule No. 2962 of 1993

Atul Chandra Das and Others	Vs	APPELLANT
Abhijit Kumar Sinha Kashyap and Others		RESPONDENT

Date of Decision : 15-03-2001

Acts Referred:

Constitution of India, 1950 — Article 311(2)
Police Act, 1861 — Section 7

Citation : (2001) 1 GLT 471

Hon'ble Judges : D. Biswas, J

Bench : Single Bench

Advocate : Mr. R.P. Sharma, Mr. T.N. Srinivasan and Mr. S.C. Dutta Roy, for the Appellant; Govt. Advocate, for the Respondent

Final Decision : Allowed

Judgement

1. This writ petition has been filed challenging the order of dismissal passed by the Superintendent of Police, Hailakandi on 9.10.1993 in exercise of powers under Article 311(2)(b) of the Constitution of India read with section 7 of the Police Act, 1861 and Rule 66 of the Assam Police Manual Part - III. It is pertinent to mention here that the petitioners also, by way of abundant caution prayed for revocation of the suspension order which preceded the dismissal order.

2. I have heard Mr. RP Sharma, learned senior counsel for the writ petitioners and also Mr. D. Goswami, learned State counsel.

3. The dismissal orders annexed with the writ petition as Annexure II series show that all the five constables were dismissed on the same ground. Hence, for the purpose of adjudication of the dispute raised, it would be convenient to quote here-in-below one of such orders. The order passed in respect of constable ABC/36 Atul Chandra Das reads as follows :

"OFFICE OF THE SUPERINTENDENT OF POLICE :: HAILAKANDI ORDER

Perused the Enquiry report. The report clearly reveals that delinquent constable,

ABC/36, Atul Das and his associates disobeyed the lawful order of the superior officers time and again deliberately and willfully. Their conduct by threatening to shoot their superior officers and refusal to return to the barrack is clearly a proof that they had revolted and were not willing to listen to the authority. Rather, they were found acting under the control and dictate of a private person who had no authority or control over them. This situation led to their disarming first so that necessary action could be taken against them.

The report further reveals that after being disarmed, the said constable and his associates are visiting different Police Stations/ Our Posts/Unit, instigating the armed constabulary to defy and disobey the order of the authority and to go on strike and revolt, thereby spreading disaffection which has caused general indiscipline and insubordination amongst the police personnel of the district which is still prevailing.

Also, perused the other reports wherein it is revealed, the above noted constable and his associates are threatening and intimidating officers who are likely to conduct Inquiry against them with fear of reprisal.

I have again gone through the Enquiry report and other relevant documents/ reports and after much deliberation, due caution and considerable application of mind, I come to the conclusion that it is not reasonably practicable to hold an inquiry against the above named constable as holding of such an inquiry under the present abnormal situation will frustrate the principle of Natural Justice and will vitiate the proceedings.

I, therefore, in exercise of the power conferred upon me by Article 311(2)(b) of the Constitution of India, read together with Section 7 of the Police Act. 1861 (Act V of 1861) and Rule 66 of the Assam Police Manual Part - III, do hereby dismiss ABC/36, Atul Das from the post of AB Constable of Hailakandi D.E.F. with immediate effect.

Sd/- (A, K. Sinha Casshyap) Superintendent of Police, Hailakandi & DISCIPLINARY AUTHORITY."

4. Mr. RP Sarma, learned senior counsel for the petitioners argued that the circumstance which led to the dismissal of the writ petitioners from service do not warrant dispensation of formal enquiry, Elaborating further, Mr. Sarma submitted that the impugned orders show that an enquiry was conducted before the order of dismissal under Article 311(2)(b) of the Constitution was passed. Since an enquiry was conducted before the impugned orders were passed, it cannot be said that it was not reasonably practicable to hold an enquiry as per law. Mr. Sarma also pointed out that all these persons were disarmed and arrested by the District Police and, therefore, there was in fact, no threat to the administrative setup of the District Police. Hence, the action taken by the Superintendent of Police in exercise of powers under Article 311(2)(b) cannot be sustained in law. In support of his contentions. Mr. Sarma has referred to a number of judgments of the Apex Court which will be referred to in due course.

5. Mr. D. Goswami, learned state counsel, however, tried to make out a case arguing that the dismissed police constables were instigating the armed constabulary to defy and disobey the orders of the authority and to go on strike and revolt and, therefore, it was not reasonably practicable on the part of the administration to go for a regular enquiry.

6. The respondents have not submitted any affidavit in this case. Only a copy of the parawise comment is available on file. This parawise comment has been forwarded by the respondent No. 1. From the parawise comment it would appear that there is no specific denial of the prime allegations made against the respondent No. 1 and the administration. In a case where the respondents failed to swear any affidavit denying the allegations made, the law permits a presumption that the allegations made are correct. Therefore, let us now have a glimpse of the allegations made by the five writ petitioners.

7. Shri Benulal Ghosh of Hailakandi filed Civil Rule No. 2375/93 before this court. This court by order dated 25.8.1993 directed the Deputy Commissioner and Superintendent of Police, Hailakandi to provide Shri Benulal Ghosh adequate security in the following manner :

"(1) 2 (two) personal security officers with necessary arms to the petitioner and to the members of his family.

(2) To post 3 (three) Armed Guard immediately at the residence of the petitioner for the protection of the life and properties of the petitioner. This will be done within a period of 10 days from today."

8. The aforesaid order was passed by this court because of the treat that emanated from the political rivalry between Shri Benulal Ghosh and the then Minister, Panchayat and Rural Development, Govt. of Assam. The petitioners were posted in the residence of Sri Benulal Ghosh for his security. Petitioner's specific case is that the respondent 1 offered Rs.100 to each of them for drinking liquor and directed them to molest the female members of the family of Sri Ghosh. The petitioners did not comply with the illegal and inhuman orders of Respondent No. 1 which the petitioners were harassed and eventually dismissed. The allegations made by the writ petitioners better be read in their own language which reads as follows :

"The petitioners however did not comply with the illegal and inhuman orders as a result of which the petitioners and four others had to face inexplicable brutalities of physical torture, abusing in the most filthiest language touching upon the sanctity of the petitioners and their families which the petitioners would be reproducing in the following paragraphs, forcing the petitioners to make incriminating statement both at the police station as well as before the Magistrate, forcibly taking of signatures on blank sheets of paper for trapping the petitioners in false cases and using them as resignation letters, suspension from service, threat to do away the lives of the petitioners as well as their family members if they dared to complain against the Respondents 1, 2 & 3 before any

higher authority, any court or to the police association or to the press."

9. In the subsequent paragraphs they have emphatically asserted that at the behest of the then Minister, Sri Benulal Ghosh has been victimized, harassed, falsely implicated and framed in several false cases. In para 7 of the writ petition, it has been stated that on 5.9.1993 at about 9-30 A.M. the respondent No. 1 called the petitioners and other security personnel attached with Sri Benulal Ghosh to attend for orderly room duty where the respondent No. 1 handed over hundred rupee notes to each of them and ordered them to purchase liquor, drink and misbehave or assault Benulal Ghosh and molest his wife and two young daughters.

10. It is strange that neither the respondent No. 1 nor the other respondents thought it necessary to deny the aforesaid allegation made against the Superintendent of Police. This means that there is some element of truth in the allegation made by the writ petitioners against the respondent No. 1. On this context, the validity and propriety of the impugned orders of dismissal will have to be examined in order to determine whether regular enquiry under the law could be dispensed with.

11. The impugned order shows that the Superintendent of Police was of the opinion that the writ petitioners deliberately and willfully disobeyed the lawful orders of the superior officers time and again. The details of the orders disobeyed and the identity of the superior officers who had passed the orders have not been disclosed in the impugned orders. It has been alleged in the orders that the writ petitioners threatened to shoot their superior officer. But neither the date of occurrence nor the identity of the superior officers who were threatened are available in the impugned orders. The orders indicate that an enquiry was conducted before the impugned orders of dismissal were passed. The file relating to the enquiry was also not placed before this court for reappraisal of the situation in order to determine whether dispensation of regular enquiry was a necessity in the given circumstance of the case. Since an enquiry was conducted, it is not understood as to why a regular enquiry was not possible.

12. Dispensation of a regular enquiry is permissible when the authority is satisfied from the materials placed before him that it is not reasonably practicable to hold a departmental enquiry. It is incumbent on the authority to show that the satisfaction is drawn for adequate reasons and not the outcome of whim and caprice of the concerned authority. This otherwise requires materials to justify dispensation of adequacy of enquiry under Article 311(2)(b). In *Union of India and Another Vs. Tulsiram Patel and Others*, in para 130, the Supreme Court held as follows :

"It is not possible to enumerate the cases in which it would not be reasonably practicable to hold the inquiry, but some instances by way of illustration may, however, be given. It would not be reasonably practicable to hold an inquiry where the government servant, particularly through or together with his

associates, so terrorizes threatens or intimidated witnesses who are going to give evidence against him with fear of reprisal as to prevent them from doing so or where the government servant by himself or together with or through others threatens, intimidates and terrorizes the officer who is the disciplinary authority or members of his family so that he is afraid to hold the inquiry or direct it to held. It would also not be reasonably practicable to hold the inquiry where an atmosphere of violence or of general indiscipline and insubordinate prevails, and it is immaterial whether the concerned government servant is or is not a party to bringing about such an atmosphere. In this connection, we must bear in mind that numbers coerce and terrify while an individual may not. The reasonable practicability of holding an inquiry is a matter of assessment to be made by the disciplinary authority. Such authority is generally on the spot and knows what is happening. It is because the disciplinary authority is the best judge of this that clause (3) of Article 311 makes the decision of the disciplinary authority as this question final. A disciplinary authority is not expected to dispense with a disciplinary inquiry lightly or arbitrarily or out of ulterior motives or merely in order to avoid the holding of an inquiry because the Department's case against the government servant is weak and must fails".

13. The ratio laid down by the Apex Court in *Tulsiram*" case (supra) clearly indicate that the disciplinary proceedings cannot be dispensed with at the whim and caprice of the concerned officer. There must be sufficient materials before him to decide objectively that it no reasonably practicable to hold an enquiry in the instant case.

14. Going back to the materials on record and the inadequacy of reasons apparent on the face of the impugned orders, it would not be permissible to hold the conduct of the five constables in the given circumstance of the case was so grave and disturbing that the district administration was not in a position to hold enquiry in regular process. Omission on the part of the respondents, particularly respondent No. 1 against whom serious allegations have been made, to file affidavit controverting the allegations indicates that the authority concerned acted mala fide in order to teach the petitioners a lesson for their admitted refusal to carry out the illegal orders passed by the respondent No. 1. The writ petitioners were posted in the residence of Benulal Ghosh to protect the life and property as per direction of this court, and certainly it was not their duty to carry out the illegal orders of their superior officers designed to humiliate and harass Sri Ghosh and the members of his family. In my opinion, the respondents have not been able to justify that there was no alternative but to take recourse to the provisions of Article 311(2)(b) in the instant case. In the touch-stone of the principles elaborated by the Supreme Court in *Tulsidas* (supra), the impugned orders cannot be sustained. Consequently, I allow this writ petition and set aside the suspension orders dated 26.9.1993 and the orders of dismissal dated 9.10.1993 and direct that the petitioners be taken back to service forthwith and be paid their backwages keeping their seniority position intact.