
(2016) 10 AP CK 0033
In the Andhra Pradesh High Court
Case No : Writ Petition No.12353 of 2011

G. Narayan Rao

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 14-10-2016

Acts Referred:

Central Industrial Security Force Rules, 2001 — Rule 36, Rule 39(iii)

Citation : (2017) 1 ALT 135 : (2017) 1 AndhLD 552 : (2017) 152 FLR 956

Hon'ble Judges : Sri. P. Naveen Rao, J.

Bench : Single Bench

Advocate : Smt. S. Siva Kumari, Learned Standing Counsel, for the Respondent;
Sri J.M. Naidu, Advocate, for the Petitioner

Final Decision : Disposed Off

Judgement

Sri. P. Naveen Rao, J. - The petitioner was appointed as CISF Constable on 16.09.1989. Later, while working as Constable at Kalpakam in the State of Tamilnadu, he was promoted as Head Constable and was transferred to Visakhapatnam in November, 2010. On 14.04.2011, the petitioner was deployed for day shift. The allegation against the petitioner was that he was involved in illegal money transfer of an amount of Rs.500/- with a civilian, P. Anand Rao, at Labour Out Gate of BC Gate, which was not his duty post, and the said act was noticed by the Sub-Inspector, by name Mr. Arun Kumar, and on his complaint, a preliminary enquiry was ordered. The Preliminary Enquiry Officer called upon the petitioner to give deposition of what transpired on 14.04.2011. The petitioner avoided appearing and giving deposition. On detailed analysis of the material available, on 18.04.2011, the Enquiry Officer has come to a prima facie conclusion that the petitioner indulged in illegal activities of leaving his duty post without permission and disobeying lawful orders issued by his superiors and submitted a report to that effect. Based on the said report, the competent authority passed an order on 21.04.2011 dismissing the petitioner from service, which is impugned in this Writ Petition. The grievance of the petitioner is that the

said order is passed without following due procedure of conducting enquiry as required under Rule 36 of the Central Industrial Security Force Rules, 2001 (for short, "the Rules") and by invoking the provision under Rule 39 (ii) of the Rules.

2. Heard Sri J.M. Naidu, learned counsel for the petitioner, and Smt. S. Siva Kumari, learned Standing Counsel for the respondent.

3. Learned counsel for the petitioner would submit that there is no truth in the allegation levelled against the petitioner and based on the preliminary enquiry report and without conducting regular enquiry, the petitioner was dismissed from service. Learned counsel would further submit that the reasons assigned in the order impugned would show that the disciplinary authority resorted to the provision under Rule 39 (ii) of the Rules. In fact, the allegation against the petitioner, in substance, is that he was seen to have been passing of an amount of Rs.500/- to a civilian by going out of duty to an unmarked place, which is only a prima facie view of the disciplinary authority and the same was not proved. Learned counsel would also submit that the disciplinary authority assumed that the petitioner was avoiding to participate in the enquiry, even before disciplinary action was initiated against him; that the petitioner would bring further political pressure and that he instigated the labourer to file a complaint against the Sub-Inspector, Arun Kumar, and the labourer turned hostile. These allegations should have been subjected to proper enquiry to prove the allegations. The contingency provided under Rule 39 of the Rules cannot be invoked in a case of this nature. It is not a case where it is not possible to hold an enquiry, as is assumed by the disciplinary authority. Thus, the action of the respondent is illegal, arbitrary and liable to be set aside.

4. In support of the said contentions, learned counsel has placed reliance on a decision of the Hon'ble Supreme Court in Jaswant Singh v. State of Punjab (1991) 1 SCC 362 and a decision of this Court in V. Bhushanam v. Divisional Security Commissioner, Railway Protection Force, Vijayawada 2003 (3) ALD 150.

5. Learned Standing Counsel for the respondent would submit that the reasons assigned in support of the dismissal order are self-explanatory and therefore it was impracticable to conduct enquiry against the petitioner. She would further submit that the petitioner is a native of Vizianagaram, which is very proximate to Visakhapatnam. The petitioner was indulging in bringing of political pressure and he also managed the labourer to turn hostile. She would further submit that the respondent being a Police Organisation such conduct of the petitioner has to be dealt with very sternly at the threshold itself and no disobedience of this nature can be tolerated. She would also submit that there was no justification on the part of the petitioner in not appearing before the Preliminary Enquiry Officer to give deposition and this would show the attitude of the petitioner and he would not have cooperated, even if an enquiry is held. On the contrary, he sought to create discontent among the officers by instigating the labourer to file a complaint against the Sub-Inspector, who was a witness to the illegal transaction between the civilian and the petitioner.

6. The only issue for consideration in this Writ Petition is,

"Whether, in the given facts of this case, the disciplinary authority was justified in invoking the provision under Rule 39 (ii) of the Rules?"

7. Rule 39 (ii) of the Rules reads as under:

"39. Special procedure in certain cases.-

Notwithstanding anything contained in rules 36 to 38-

(i) ? ?

(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"

8. The afore stated Rule is a special procedure envisaged vesting power in the disciplinary authority to dismiss a subordinate working under him without following the detailed procedure as envisaged in Rule 36 of the Rules. The Rule requires (i) satisfaction of the disciplinary authority, (ii) recording of reasons in support of the satisfaction and (iii) that it is not reasonably practicable to hold an enquiry in the manner provided in the Rules.

9. As noticed from the order impugned, the allegations against the petitioner appear that he was involved in handing over an amount of about Rs.500/- to a civilian. This is assumed by the disciplinary authority as an illegal transaction by a Constable deployed to a shift duty. Whether the said transaction was made, whether that amount allegedly given to a civilian was illegal transaction, whether the petitioner instigated the civilian to file a complaint against the Sub-Inspector, Mr. Arun Kumar, and whether the petitioner was responsible to make the civilian turn hostile require consideration in a regular enquiry. Even before an enquiry is held, the disciplinary authority cannot assume, merely based on a complaint made by the Sub-Inspector, who claimed to have witnessed the transaction, as illegal monetary transaction. Furthermore, there is nothing in the order to show that the petitioner was bringing political pressure. The statement is vague. When specifically asked, learned Standing Counsel fairly submits that no material on record is available to show that political pressure was brought on by the petitioner. Disciplinary authority also assumes that the petitioner would bring further political pressure. The further reasons assigned are also not germane to invoke such draconian provision.

10. The disciplinary authority can take extreme course of action as required under Rule 39 (ii) of the Rules only in case the petitioner does not cooperate during the course of enquiry and indulges in illegal activities alleged in the order impugned to thwart the disciplinary proceedings. Merely because, petitioner did not appear before the Preliminary Enquiry Officer is not a ground to invoke this provision. It is to be noted that within three days of submission of preliminary enquiry report, the disciplinary authority could not assume so many things

against the petitioner to invoke such provision.

11. As noticed above, Rule 39 (ii) of the Rules is an extraordinary power and can be invoked and resorted to only in extraordinary circumstances, where it is impossible to conduct an enquiry.

12. The case of *Ved Mitter Gill v. Union Territory Administration, Chandigarh* 2015 (8) SCC 86 can be taken as an example when such power can be invoked. In the said case, the employee was working as a Deputy Superintendent and was responsible for safe custody of the prisoners, but four under trial pensioners, who were accused of assassination of a Chief Minister, escaped from jail. In the said factual background, the Court upheld the decision to dispense with the enquiry and imposing the punishment of removal from service.

13. In *Risal Singh v. State of Haryana* 2014 (13) SCC 244 the Supreme Court objected to invoke such provision. In the said case, based on sting operation reported in a local television channel, the disciplinary authority straight away removed the employee from service on the allegation of corruption.

14. In *Jaswant Singh* (supra), the Supreme Court observed as under:

"The decision to dispense with the departmental enquiry cannot, therefore, be rested solely on the ipse dixit of the concerned authority. When the satisfaction of the concerned authority is questioned in a court of law, it is incumbent on those who support the order to show that the satisfaction is based on certain objective facts and is not the outcome of the whim or caprice of the concerned officer?."

15. In *V. Bhushanam* (supra), this Court held that the action of the disciplinary authority in dispensing with the departmental enquiry against petitioner therein is totally unjustified and illegal. In the said case, a charge was framed and thereafter without conducting enquiry, the special provision was resorted to dismiss the employee from service.

16. In the instant case, no charge was framed against the petitioner and within three days of submission of report by the Preliminary Enquiry Officer, the impugned order was passed. The reasons assigned are assumptions of disciplinary authority. Based on such assumptions no penal action can be taken. Hence, the order of disciplinary authority impugned in the Writ Petition is not sustainable and the same is liable to be set aside.

17. The Writ Petition is accordingly allowed and the impugned order is set aside. However, this order does not come in the way of the respondent in taking disciplinary action and it is open to the respondent to take disciplinary action against the petitioner in accordance with the Central Industrial Security Force Rules, 2001. In the event of respondent deciding to take further disciplinary action, the petitioner shall be deemed to be under suspension from service from the date of order of dismissal. If no disciplinary action is initiated against him, the petitioner shall be entitled to all consequential benefits. A decision with

reference to initiation of disciplinary action or otherwise shall be taken within a period of two months from the date of receipt of a copy of this order. There shall be no order as to costs.

Miscellaneous Petitions, if any, pending in this Writ Petition shall stand closed.