
(2016) 11 GAU CK 0010
In the Gauhati High Court
Case No : Writ Petition (C) No. 448 of 2015

John Tawe

APPELLANT

Vs

State of Arunachal Pradesh

RESPONDENT

Date of Decision : 01-11-2016

Acts Referred:

Arunachal Pradesh Police (Discipline and Appeal) Rules, 1999 — Rule 15(b)
Constitution of India, 1950 — Article 226, Article 311(2)

Citation : (2016) 5 GauLT 409

Hon'ble Judges : Manojit Bhuyan, J.

Bench : Single Bench

Advocate : Mr. D. Soki, Addl. Sr. GA, for the Respondent; Mr. M. Nibo, N. Opo and Mr. N. Kago, Advocates, for the Petitioner

Final Decision : Allowed

Judgement

Manojit Bhuyan, J. - Heard Mr. M. Nibo, learned counsel for the petitioner as well as Mr. D. Soki, learned counsel representing Respondent Nos. 1, 2 & 3.

2. The name of Respondent No. 4 was struck off from the array of the respondents vide order of this Court dated 27.10.2016.

3. The petitioner who was employed as Constable in 5th IRBN was dismissed from service vide order dated 27.05.2015 on grounds of his involvement in criminal acts and also grave acts of indiscipline unbecoming of a member of the disciplined force. The requirement of an enquiry and hearing was dispensed with by taking recourse to Clause (b) of the second proviso to Article 311 (2) of the Constitution of India read with corresponding Rule 15(b) of the Arunachal Pradesh Police (Discipline and Appeal) Rules, 1999. The appeal preferred by the petitioner before the Inspector General of Police (Admn.), Itanagar also stood rejected by order dated 19.08.2015.

4. Mr. Nibo submits that the impugned order dated 27.05.2015 operates as condemning him without any opportunity of hearing being afforded. A major

punishment has been inflicted contrary to the principles of natural justice and that of Article 311 (2) of the Constitution of India. Mr. Nibo also submits that irrespective of facts surrounding the impugned order, the same cannot stand the scrutiny of law as the order dated 27.05.2015 had been rendered by dispensing with the constitutional mandate, in as much as, the State respondents while taking recourse to the exception clause under Clause (b) of the second proviso to Article 311 (2), have utterly failed to record any reason in writing as to why it was not reasonably practicable for the State respondents to hold enquiry against the petitioner. Mr. Nibo submits that on this ground alone the impugned order dated 27.5.2015, cannot stand the scrutiny of law and is liable to be set aside.

5. Mr. Soki, on the other hand, submits that the contentions put forth by Mr. Nibo are misconceived, in as much as, there is no requirement of holding any enquiry as the order had been passed by taking recourse to Clause (b) of the second proviso to Article 311 (2) of the Constitution of India

6. I have heard the learned counsel for the parties and have also perused the materials on record. Notice is also had to the affidavit-in-opposition filed on behalf of Respondent Nos. 1, 2 & 3, more particularly to paragraph 5 thereof, which delineates the facts resulting in the dismissal of the petitioner from service.

7. At the outset, it is made clear that the impugned order dated 27.05.2015 do not record any reasons justifying as to why it is not reasonably practicable to hold an enquiry against the petitioner.

8. In *Union of India v. Tulsiram Patel*, reported in (1985) 3 SCC 398, the Constitution Bench of the Apex Court have held that for valid application of Clause (b) of the second proviso to Article 311(2) the disciplinary authority has to record in writing its reason for its satisfaction that it was not reasonably practicable to hold enquiry contemplated by Article 311 (2). The Apex Court have also held that this is a constitutional obligation and if such reason is not recorded in writing, the order dispensing with the enquiry and the order of penalty following thereupon would both be void and unconstitutional. In *Tulsiram Patel* (supra), the Constitution Bench have also held that it would be no compliance with the requirement of Clause (b) for the disciplinary authority simply to state that it was satisfied any enquiry.

9. In the case of *Jaswant Singh v. State of Punjab*, reported in (1991) 1 SCC 362 the Apex Court, while reiterating the law laid down in *Tulsiram Patel* (supra), have also held that the decision to dispense with the departmental enquiry cannot rest solely on the ipse dixit of the concerned authority. In this connection, it would also be apposite to refer to two other judgments of the Apex Court, that is in the case of *Sudesh Kumar v. State of Haryana & Ors.*, reported in (2005) 11 SCC 525 and in *Ved Mitter Gill v. Union Territory Administration, Chandigarh* & reported in (2015) 8 SCC 86.

10. In the case of *Sudesh Kumar* (supra) the Apex Court have held that it is an established principle of law that an enquiry under Article 311(2) is a rule and

dispensing with the enquiry is an exception. In *Ved Mitter* (supra), the Apex Court referred to the three parameters for valid invocation of Clause (b) to the second proviso under Article 311 (2) of the Constitution of India. Amongst the three ingredients, a valid exercise of Clause (b) must involve the satisfaction of the competent authority that it was not reasonably practicable to hold a regular departmental enquiry and the said satisfaction must be translated by recording the reasons in writing.

11. A close perusal of the impugned order go to show that Clause (b) to the second proviso under Article 311 (2) did not receive valid exercise nor had achieved the bench required for invocation of the said provisions under the Constitution of India.

12. As the case in hand rests on a legal point, i.e. the satisfaction of the parameters of Clause (b) to the second proviso to Article 311 (2) of the Constitution of India, this Court do not consider it necessary to delve into the factual aspects surrounding the case. Without any doubt, the impugned order dated 27.05.2015 is inherently flawed as the same was not preceded by any" enquiry or by affording any opportunity to the petitioner of being heard while dismissing him from service.

13. For the reasons stated above, the impugned order dated 27.05.2015 as well as the appellate order dated 19.08.2015 cannot stand the scrutiny of law. Accordingly, the same are set aside and quashed. This order will, however, not preclude the State respondents to initiate enquiry against the petitioner in accordance with law. This order shall also not be construed as precluding the state respondents to deal with the petitioner pending disposal of the enquiry by placing his services under order of suspension. Monetary benefits as may be due to him shall, however, not stand to be denied.

14. Writ petition stands allowed to the extent indicated above.