
(2011) 07 AHC CK 0365
In the Allahabad High Court
Case No : C.M.W.P. No. 58972 of 2008

Kuldeep Kumar (Cont. No. 940610228)	APPELLANT
Vs	
State of U.P. and others	RESPONDENT

Date of Decision : 27-07-2011

Acts Referred:

Constitution of India, 1950 — Article 311, 311(2)
Uttar Pradesh Police Officers of Subordinate Ranks (Punishment and Appeal) Rules, 1991 — Rule 8, 8(2)

Citation : (2012) 2 AWC 1790 : (2012) 132 FLR 12

Hon'ble Judges : Krishna Murari, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Krishna Murari, J.—Heard learned Counsel for the petitioner and learned Standing Counsel for the respondents.

2. Petitioner was appointed as a constable in P.A.C. Battalion on 10.9.1994. Vide order dated 10.6.2008, he has been dismissed from service. The said order has been passed by Commandant VIIIth Battalion, P.A.C., Bareilly exercising powers conferred under clause (b) of sub-rule (2) of Rule 8 of Uttar Pradesh Police Officers of Subordinate Ranks (Punishment and Appeal) Rules, 1991 (hereinafter referred to as the Rules).

3. Reason recorded in the impugned termination order is that petitioner was found to have absented himself from duty on 6.6.2008 and was found drunk in the morning of 7.6.2008 and the fact was confirmed after medical examination in the morning at 10 O'clock on 7.6.2008.

4. It has been contended by learned Counsel for the petitioner that under clause (b) of sub-rule (2) of Rule 8, the services could be dispensed with where the disciplinary authority was satisfied for the reasons, which are to be recorded in writing that it was not reasonably practicable to hold an inquiry. It has further

been submitted that the services of the petitioner had been dispensed with without holding an inquiry on entirely irrelevant grounds and no reason has been recorded for the same.

5. In reply, it has been submitted by learned Standing Counsel by referring to the averments made in the counter-affidavit that petitioner is habitual of misbehaving under the influence of liquor and unauthorisedly absenting himself and has been penalised and punished on various occasions, as such, he was not found fit to be retained in police force and he has rightly been dismissed from his service and the impugned order does not call for any interference.

6. I have considered the argument advanced on behalf of the learned Counsel for the parties and perused the record.

7. The order of termination indicates that the petitioner had consumed liquor while on duty and his continuance in services was not in public interest and, therefore, the inquiry was being dispensed.

Rule 8 (2) (b) of the Rules reads as under :

8. (2)(b) Where the authority empowered to dismiss or remove a person or to reduce him in rank is satisfied that for some reason to be recorded by that authority in writing, it is not reasonably practicable to hold such inquiry.

8. The language of the aforesaid Rules, is almost similar to 2nd proviso to Article 311 of the Constitution of India. Interpreting the provision of Article 311 of the Constitution, Hon''ble Apex Court in the case of Union of India and Another Vs. Tulsiram Patel and Others, has observed as under :

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....

....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.

9. It has further been held that 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 or because the Department''s case against the Government Servant is weak and must fail.

The second condition necessary for the valid application of clause (b) of the second proviso is that the disciplinary authority should record in writing its reason for its satisfaction that it was not reasonably practicable to hold the inquiry contemplated by Article 311(2). This is a Constitutional obligation and if such reason is not recorded in writing, the order dispensing with the inquiry and the order of penalty following thereupon would both be void and unconstitutional.

It is obvious that the recording in writing of the reason for dispensing with the inquiry must proceed the order imposing the penalty.

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.

10. In *Jaswant Singh Vs. State of Punjab and others*, it has been held as under :

...It was incumbent on the respondents to disclose to the Court the material in existence at the date of the passing of the impugned order in support of the subjective satisfaction recorded by respondent 3 in the impugned order. Clause (b) of the second proviso to Article 311(2) can be invoked only when the authority is satisfied from the material placed before him that it is not reasonably practicable to hold a departmental enquiry. This is clear from the following observation at page 270 of *Tuhiram case* (SCC p.504, para 130).

A disciplinary authority is not expected to dispense with a disciplinary enquiry lightly or arbitrarily or out of ulterior motives or merely in order to avoid the holding of an enquiry or because the department's case against the Government Servant is weak and must fail.

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.

11. In *Sudesh Kumar v. State of Haryana and others*, (2005) 11 SCC 525 the Hon"ble Apex Court has observed as under :

It is now established principle of law that an enquiry under Article 311(2) is a rule and dispensing with the enquiry is an exception. The authority dispensing with the enquiry under Article 311(2)(b) must satisfy for reasons to be recorded that it is not reasonably practicable to hold an enquiry. A reading of the termination order by invoking Article 311(2)(b), as extracted above, would clearly show that no reasons whatsoever have been assigned as to why it is not reasonably practicable to hold an enquiry. The reasons disclosed in the termination order are that the complainant refused to name the accused out of fear of harassment; the complainant, being a foreign national, is likely to leave the country and once he left the country, it may not be reasonably practicable to bring him to the enquiry. This is no ground for dispensing with the enquiry. On the other hand, it is not disputed that, by order dated 23.12.1999, the visa of the complainant was extended upto 22.12.2000. Therefore, there was no difficulty in securing the presence of Mr. Kenichi Tanaka in the enquiry.

A reasonable opportunity of hearing in Article 311(2) of the Constitution would

include an opportunity to defend himself and establish his innocence by cross-examining the prosecution witnesses produced against him and by examining the defence witnesses in his favour, if any. This he can do only if enquiry is held where he has been informed of the charges levelled against him. In the instant case, the mandate of Article 311(2) of the Constitution has been violated depriving reasonable opportunity of being heard to the appellant.

12. Same view has been taken by this Court in Special Appeal No. 1122 of 2001, State of U.P. and others v. Chandrika Prasad decided on 19th October, 2005 as well as in Special Appeal No. (647) of 2009, State of U.P. and others v. Santosh Kumar Gupta.

13. The law, thus, stands settled that it is only on a subjective satisfaction based on material on record, the authority after recording reason why it is not practicable to hold the disciplinary enquiry, can invoke the powers conferred by Rule 8 (2) (b) of the Rules and dispense with the regular departmental enquiry.

14. The reasons disclosed in the termination order are that the petitioner absented himself from duty in the night of 6.6.2008 and was found under the influence of liquor in the morning of 7.6.2008 and, as such, was not found fit to be retained in police service and it was not practicable to hold a disciplinary inquiry. The charges alleged in the impugned termination order can form the basis for terminating his services, but only in case the charges are established in a regular departmental inquiry after opportunity to the incumbent. The same cannot constitute reason for dispensing with regular departmental inquiry.

15. Even the earlier conduct of the petitioner and the fact that he has been awarded censure entry and minor punishment on various occasions, as alleged in counter-affidavit, also cannot constitute a ground for invoking the powers conferred by Rule 8 (2) (b) of the Rules and dispense with regular departmental inquiry.

16. In view of the facts and settled legal position by the decisions referred to above, the impugned order terminating the services of the petitioner without recording any reason for dispensing with departmental inquiry is not liable to be sustained and is hereby quashed.

17. Writ petition stands allowed. Petitioner is liable to be reinstated back in service with all consequential benefits. It shall, however, be open to the disciplinary authority to initiate a regular departmental inquiry against the petitioner under the Rules.