
(2007) 07 DEL CK 0230

In the Delhi High Court

Case No : Writ Petition (C) No. 2295 of 2007

Parveen Kumar

APPELLANT

Vs

Commissioner of Police and Others

RESPONDENT

Date of Decision : 13-07-2007

Acts Referred:

Constitution of India, 1950 — Article 14, 311, 311(2), 311(3)
Penal Code, 1860 (IPC) — Section 395

Citation : (2007) 98 DRJ 433 : (2008) 1 ILR Delhi 168

Hon'ble Judges : S.L. Bhayana, J; Manmohan Sarin, J

Bench : Division Bench

Advocate : Arun Bhardwaj, for the Appellant; Zubeda Begum, for the Respondent

Final Decision : Dismissed

Judgement

S.L. Bhayana, J.—Petitioner has assailed the order and judgment dated 26.07.2005 in O.A. No 2320/04 and order dated 01.08.2006 in RA NO. 207/2005 in the above-mentioned O.A. passed by the Central Administrative Tribunal, Principal Bench, New Delhi. He has further sought quashing and setting aside of orders of the disciplinary authority and the appellate authority passed against him. Through this writ petition, the petitioner has further prayed for reinstatement in service with all consequential benefits including pay, salary, seniority, increments, promotions etc.

2. The brief facts leading to the present petition are that the petitioner joined the Delhi Police as Constable in the year 1998. He claims to have served the department with sincerity and to the utmost satisfaction of his superiors. However, on 5.9.2003, he was arrested for alleged involvement in several criminal cases. FIRs in various police stations were registered against him. He was booked under various provisions of IPC and Arms Act. In one of the cases filed u/s 395 of IPC lodged under FIR No. 171 of 2003, PS Daurala, UP, he was released by CJM, Merrut vide order dated 15.3.2004 on his non-identification by

witnesses in TIP and also in view of there being no evidence against him. Petitioner has averred in the petition that all the criminal cases against him are still pending. The charges have been framed against him in all the cases and the same are fixed for prosecution evidence. Petitioner after being released on bail on 20.03.2004 went to join duty on 22.03.2004 but he was informed that he has been dismissed from service vide order dated 20.09.2003 passed by the Disciplinary Authority on the grounds of his involvement with a gangster in a dacoity case and also on account of pendency of criminal cases against him. Disciplinary Authority during the course of interrogation of a notorious gangster Vikrant @ Vicky came to know that petitioner was also an accomplice and was identified along with the gangster in a police raid against the said gangster. A case of attempt to dacoity and robbery was registered. The said gangster and his accomplices made confessional statements that the petitioner was also one of them. The Disciplinary Authority also came to know that the petitioner was involved in number of cases in Haryana and Uttar Pradesh and FIRs under various Sections of the IPC and Arms Act were registered against him. Disciplinary Authority in view of all the facts and records before it, came to the conclusion that petitioner has committed a heinous crime, a highly abhorrent act and has tarnished the image of the Police. The authority further observed that he instead of discharging his responsibility and upholding the rule of law, he has indulged in heinous crime, lawlessness and shattered the faith of common man and eroded public Trust. The authority held as under:

...After such a shameful and criminal act, which has eroded the faith of common people in police, his continuance in Police force is likely cause an irreparable loss to the functioning and credibility of Delhi Polic....

...it is thus certain that the witnesses would not be in position to muster enough courage to depose against the said police officer due to fear of severe reprisal from him.

During the entire process of departmental proceedings the witnesses would be put under constant fear of threat to their person and property from the delinquent Police officer.

3. With such findings, the disciplinary authority after invoking Article 311(2)(b) of the Constitution of India dismissed the petitioner from the Force with immediate effect.

4. Petitioner against the said order filed a statutory appeal before the appellate authority, which was dismissed vide order-dated 9.7.2004/12.7.2004. The appellate authority in its order observed as under:

...during investigation and on the basis of disclosures made, their involvement in 36 cases of robbery, dacoity, murder and attempt to murder were established. Further enquiries revealed that the appellant himself was also involved in five different criminal cases in Haryana as well as in Uttar Pradesh,

5. After observing the above, the appellate authority came to the following conclusion:

...it is, thus certain that the witnesses would not be in a position to muster enough courage to depose against the appellant during DE proceedings due to fear of severe reprisal at his hands. Under these circumstances, it was reasonably found not practical to conduct a departmental enquiry against the appellant and the disciplinary authority dismissed the appellant from the force under Article 311(2)(b) of the constitution of India.

6. Aggrieved of the said order the petitioner filed an O.A being O.A. No. 2320/2004 before the Central Administrative Tribunal, New Delhi, which was dismissed by the Tribunal vide its order dated 26.7.2005. The Tribunal on the basis of the facts germane and gathered from record such as his alleged involvement in dacoity, pendency of criminal cases against the petitioner and the observations that the petitioner being a desperate and dangerous person may be having associations with people having similar dangerous criminal propensity and also in view of the apprehension that the witnesses may not be in position to depose against the petitioner due to fear of reprisal from him upheld dispensing with the Departmental Enquiry. The learned Tribunal in view of the aforementioned findings and applying the ratio of Union of India and Another Vs. Tulsiram Patel and Others, dismissed the OA.

7. Against the said order, the petitioner filed a review application and the learned Tribunal vide order dated 01.08.2006 held that:

the error apparent in the face of record has to be such ,as can be seen by any one, who reads it and there is obvious and patent mistake and not something which can be established by long debatable process of reasoning. The tribunal cannot sit in appeal over its own judgment.

8. With these observations, the learned Tribunal dismissed the review application of the petitioner.

9. Aggrieved of the order and judgment and also the review order of the learned Tribunal, the petitioner has filed the present petition on the grounds that the action of respondents is illegal, arbitrary, mala fide and against the settled law and principles of natural justice. He has further urged that dispensation of the departmental enquiry without any valid reasons is arbitrary and reflection of mala fide intention of the respondents. The petitioner has challenged the findings of the disciplinary authority as well as the Tribunal. The petitioner has further stated that act of the respondents in dispensing with the departmental enquiry and dismissing the petitioner by following a shortcut procedure is highly disproportionate and based on presumptions and not on cogent facts.

10. The respondents in their counter affidavit before the learned Tribunal stated that on 05.09.2003, on receipt of information from reliable sources that a notorious gangster would commit dacoity in Delhi State Cooperative Bank,

Shahabad Daulatpur, Delhi, the Police became alert and decided to stall the devious plan of the gangster. In order to stall the plan of dacoity and to curb and check the mishap, the raiding party cordoned the area and after an extensive police action nabbed the said gangster and his associates. Hand made pistols, a dagger and knives were also recovered from them. The petitioner was also identified as one of the associates. During the interrogation, it was disclosed that said gangster was involved in 36 criminal cases and the petitioner was also involved in five criminal cases in Haryana and Uttar Pradesh. The respondents on the basis of involvement of petitioner in the said incident and also on the ground that said petitioner is required in number of other criminal cases, observed that involvement of petitioner in such unlawful acts which are even otherwise of heinous nature and reflect lawlessness, has tarnished the image of the Delhi police and shattered faith of common people, eroded public trust and strongly indicated that the petitioner is a habitual offender and has indulged in heinous acts even before. The respondents also stated that involvement in criminal cases and association of the petitioner with the gangster reflects that he is highly desperate and dangerous type of person who may have several associates with similar dangerous propensity.

11. Counsel for the petitioner Mr. Arun Bharadwaj submits before the court that mere involvement of the petitioner in criminal cases does not provide a ground to the authorities to by-pass the protection of enquiry enshrined under Article 311(2)(b) of the Constitution of India. He further submitted that the petitioner has been acquitted in one of the cases and trial is going on in other cases where witnesses are appearing and, thus, apprehension of the respondents that witnesses would not appear and depose against the petitioner is misconceived. He has further submitted that the authorities have proceeded on the basis that petitioner is a desperate character and it is assumed as if the petitioner has actually committed the offences. This could not have been done without an enquiry being conducted or without there being finding of guilt in any of those criminal cases. There is no basis for the assumption that the petitioner would threaten the respondents' witnesses. He further submitted that there was violation of principles of natural justice inasmuch as the order of dismissal invoking Article 311(2)(b) has been passed while there was no possibility of his holding out any threat to the witnesses, petitioner being in judicial custody. The learned Counsel for the petitioner has placed reliance on *Satyavir Singh and Others Vs. Union of India (UOI) and Others*, and *Tulsiram Patel's case (supra)* in support of his submissions.

12. We have heard learned Counsel for the parties and have given our anxious consideration to the submissions made at the Bar.

13. It is vehemently argued on behalf of the petitioner that powers granted under Article 311(2)(b) of the Constitution of India have been used in most mala fide and arbitrary manner and the authority have dispensed with the enquiry on basis of surmises and conjectures and on baseless and unsubstantiated

assumptions, thereby depriving a hearing to the petitioner, which is contrary to principles of natural justice.

14. Let us notice the legal position with reference to Article 311(2)(b) of Constitution of India. It reads as under:

311. Dismissal, removal or reduction in rank of persons employed in civil capacities under the Union or a State.-

(1) No person who is a member of a civil service of the Union or an all-India service or a civil service of a State or holds a civil post under the Union or a State shall be dismissed or removed by an authority subordinate to that by which he was appointed.

(2) No such person as aforesaid shall be dismissed or removed or reduced in rank except after an inquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges:

Provided that where it is proposed after such inquiry, to impose upon him any such penalty, such penalty may be imposed on the basis of the evidence adduced during such inquiry and it shall not be necessary to give such person any opportunity of making representation on the penalty proposed:

Provided further that this clause shall not apply

(a) Where a person is dismissed or removed or reduced in rank on the ground of conduct which has led to his conviction on a criminal charge; or

(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; or

(c) Where the President or the Governor, as the case may be, is satisfied that in the interest of the security of the State it is not expedient to hold such inquiry.

(3) If, in respect of any such person as aforesaid, a question arises whether it is reasonably practicable to hold such inquiry as is referred to in Clause (2), the decision thereon of the authority empowered to dismiss or remove such person or to reduce him in rank shall be final.

15. The aforementioned article has been discussed in catena of cases and particularly in *Tulsiram Patel's* case, wherein the Supreme Court while upholding the constitutionality of the second proviso to Clause (2) of Article 311 observed that:

Principles of natural justice have been expressly excluded by the constitutional provision, namely, the second proviso to Clause (2) of the Article 311, there is no scope of reintroducing it by a side door to provide once again the same inquiry which the constitutional provisions has expressly prohibited. Where a clause of second proviso is applied on an extraneous ground or a ground having no

relation to the situation envisaged in that clause, the action in so applying it would be mala fide, and Therefore, void. In such a case the invalidating factor may be referable to Article 14. This is, however, the only scope which Article 14 can have in relation to the second proviso, but to hold that once second proviso is properly applied and Clause (2) of Article 311 excluded, Article 14 will step into to take the place of Clause (2) would be to nullify the effect of the opening words of the second proviso and thus frustrate the intention of makers of the constitution. The second proviso is based on the public policy and is in public interest and for public good and the constitution makers who inserted it in Article 311(2) were the best persons to decide the whether such an exclusionary provision should be there and the situations in which this provision should apply.

Where the second proviso applies, though there is no prior opportunity to the government servant to defend himself against the charges made against him, he has the opportunity to show in an appeal filed by him that the charges made against him are not true. This would be sufficient compliance with the requirements of principle of natural justice.

16. The Supreme Court further observed:

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. 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 intimidate 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 be held. It would also not be reasonably practicable to hold the inquiry where an atmosphere of violence or of general indiscipline and insubordination 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 that disciplinary authority is the best judge of this that Clause (3) of Article 311 makes the decision of the disciplinary authority on 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 or because the Department's case against the government servant is weak and must fail. The finality given to the decision of the disciplinary authority by Article 311(3) is not binding upon the court so far as its power of judicial review is concerned and in

such a case the court will strike down the order dispensing with the inquiry as also the order imposing penalty.

17. In view of the above legal pronouncements and observations of the Supreme Court, the disciplinary authority was well-within its rights, to dismiss the petitioner. The only question that remains to be answered is whether the said decision was in accordance with the above provisions of law and whether grounds to dispense with the enquiry were present. The Supreme Court in S.R. Bommai and others Vs. Union of India and others etc. etc., , held that realms of judicial review are limited to the decision-making process and not open to the merits of the decision. The courts can look into the material on the basis of which a particular decision has been reached however since the decision arrived at is under exclusive domain of the decision making authority which in turn is based on subjective satisfaction of the authority, Therefore, in view of lack of judicially manageable standards to scrutinize the decision, the courts refrain from transgressing into administrative domain of decision making. This Court is in agreement with the aforesaid observations.

18. From the foregoing, it is apparent that the Disciplinary Authority on the basis of the material on record, namely, interrogation in the dacoity case revealing petitioner's involvement as also the factum of his facing five criminal cases in which charges have been framed and also the attendant circumstances reached the conclusion that petitioner was a desperate person having criminal propensities. Further on account of his association with other criminals and the discharge of the petitioner in one case due to non identification by the witnesses and lack of availability of other evidence, the prospect of witnesses shying away from proceedings and not deposing due to fear of severe reprisal at his hands would be a genuine apprehension and not a mere possibility.

19. Further the petitioner, being a Constable of Delhi Police having sanctimonious duty to protect the citizens and maintain law and order, has in violation of his sworn obligation involved himself in most heinous and reprehensible acts of lawlessness. The Disciplinary Authority on the basis of the facts borne from records and attending circumstances dispensed with the enquiry and dismissed the petitioner from Force. The said decision of the Disciplinary Authority is based on material record and not on assumptions or conjectures. A police Constable or an official who is found to have strayed from his obligation and duty ought to be dealt with sternly in accordance with law. The petitioner in present case is a delinquent who has been involved in heinous act of crime and has associations with people having criminal propensity. If the law keeper becomes lawbreaker, quick and expedient action ought to be taken, to maintain transparency, accountability and above all to maintain public trust and faith in the Police. This is an imperative requirement of a civilized society. The decision to dispense with the enquiry and proceedings was taken having regard to the gravity of offence and its possible and probable fall-outs. To our mind, this is a fit case for invoking Article 311(2)(b) of the Constitution.

20. In view of foregoing discussion, we do not find any infirmity with the decision of the Disciplinary Authority or the Tribunal. The present petition is devoid of merit and is, Therefore, dismissed.