
(2004) 03 AHC CK 0075
In the Allahabad High Court
Case No : Special Appeal No. 90 of 1995

Raghvendra Singh

APPELLANT

Vs

Union of India (UOI) and Another

RESPONDENT

Date of Decision : 04-03-2004

Acts Referred:

Central Reserve Police Force Act, 1949 — Section 3
Constitution of India, 1950 — Article 311, 311(2), 311(3)

Citation : (2004) 5 AWC 3984

Hon'ble Judges : Tarun Chatterjee, C.J; Dilip Gupta, J

Bench : Division Bench

Advocate : K.P. Agrawal, for the Appellant; Ajit Kumar Singh, for the Respondent

Final Decision : Dismissed

Judgement

1. By consent of the parties, this Special Appeal is taken-up for final disposal.
2. This appeal arises out of a judgment and order dated 4.1.95 passed by a learned Judge of this Court dismissing the writ petition No.7649 of 1979 of the writ petitioner/appellant.
3. Having heard learned counsel appearing for the parties and after going through the impugned order and other materials on record, we do not find any ground to interfere with the order passed by the learned Judge for the reasons mentioned herein-below.
4. In the writ application, the writ petitioner-appellant had challenged the order of his dismissal from service. He was Naik Radio Operator in the employment of Central Reserve Police Force, constituted u/s 3 of the Central Reserve Police Force Act, 1949. The case against the writ petitioner was that he, along with some other members indulged in acts of insubordination, indiscipline and dereliction of duty and disobeyed lawful command, declared strike and deserted the post and duties on 25th June, 1979. The only plea, which was raised by the learned counsel for the appellant in support of his contention, was that there was

no justification on the part of the authorities to hold that there was reasonable practical reason not to hold any enquiry into the allegations made against the appellant.

5. Article 311 of the Constitution clearly provides for holding an enquiry before any punishment is inflicted on an employee. As noted here in earlier, it is an admitted position that the order of dismissal was passed without holding any enquiry and without giving any reasonable opportunity of hearing to the writ petitioner- appellant. Mr. Agarwal, learned counsel appearing on behalf of the appellant placed implicit reliance on a full Bench decision of this Court in the case of Maksudan Pathak versus Security Officer, Eastern Railway, Mughal Sarai, reported in Lab. I.C. 1981 881 in which it has been held that the enquiry could be dispensed with only on the satisfaction of the concerned disciplinary authority. In Sengara Singh and others Versus State of Punjab and others reported in AIR 1984 S.C. 1499 where no enquiry was held in terms of Article 311(2) of the Constitution, it was held that it was not open to the authority to dismiss the appellant without holding such enquiry.

6. It is true that Article 311(2) of the Constitution lays down that no such 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 or reduced in rank except after holding 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. If we apply this provision of Article 311(2) of the Constitution, then we have no other alternative but to set aside the orders of the learned Judge as well as of the authority. But in our view, such situation has not happened in the instant case. Before we go into this question, we may refer to clause (b) of the Second proviso to Article 311(2) of the Constitution according to which Article 311(2) of the Constitution shall not apply "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." We may also refer to Article 311(3) of the Constitution which provides that if a question arises whether it is reasonably practicable to hold such enquiry 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.

7. If clause (b) of the Second Proviso to Article 311(2) of the Constitution could be made applicable in this case, then we are unable to find any infirmity in the order passed by the learned Judge. To find-out the solution, we have examined the materials on record and also the order passed by the authority regarding his dismissal. While passing the order of dismissal, the authority has stated as follows:-

"And whereas I am satisfied that in the facts and circumstances, any attempt to hold departmental inquiry by serving a written charge sheet and following other procedures in the manner provided in the Central Reserve Police Force Rules,

1955 will be frustrated by the collective action on the part of the aforesaid group. Moreover, most of the witnesses are agitators themselves and have committed act of indiscipline and are unlikely to cooperate and give factual evidence and are likely to put all types of impediments in the conduct of inquiries. It is, therefore, not reasonably practicable to hold an enquiry."

8. Therefore, in our view, the submission of Mr. Agarwal that Article 311(2) of the Constitution should have been followed in the present case cannot be accepted. From the order of the concerned authority it is clear that reason was recorded by him, in writing, in which it has been clearly stated that it would not reasonably practicable to hold the enquiry. Since the authorities have followed the principle laid down in the Second proviso (b) to Article 311(2) of the Constitution, we are unable to interfere with the order passed by the learned Judge. The decision in *Satyavir Singh and Others Vs. Union of India (UOI) and Others*, on which Mr. Agarwal has relied upon also clearly shows that where the disciplinary authority feels that crucial and material evidence will not be available in an inquiry because the witnesses who could give such evidence are intimidated and would not come forward and the only evidence which would be available are of police-men, police officers and senior officers would only be peripheral and cannot relate to all the charges and that, therefore, leading only such evidence may be assailed in a court of law as being a mere farce of an inquiry and a deliberate attempt to keep back material witnesses, the disciplinary authority would be justified in coming to the conclusion that an inquiry is not reasonably practicable.

9. We may at this stage also refer to the decision of the Supreme Court in *Shivaji Atmaji Sawant Vs. State of Maharashtra* and another reported in *Shivaji Atmaji Sawant Vs. State of Maharashtra and Others*, In this case the order of dismissal was passed under clause (b) of the Second proviso to Article 311(2) of the Constitution of India. The order of dismissal against Sawant set out the reasons why it was not practicable to hold the enquiry. It was stated in the said order that some members of the Bombay City Police Force, had been instigating others to indulge in acts of insubordination and indiscipline and were instigating them to withdraw from their lawful duties, inciting them to violence and willfully disobeying orders of their superior officers and that these acts had created a situation whereby the normal functioning of the Force in Bombay had been rendered difficult and impossible and thereby any attempt to hold a departmental enquiry would be frustrated by the collective action of those persons. The Supreme Court upheld the termination order.

10. Similar situation has arisen in this case. The writ petitioner appellant along with his associates indulged in acts of insubordination, indiscipline and dereliction of duty, declared strike and deserted their posts on 25.6.1979 in complete disregard of their duties. In the order it has been stated that the petitioner as active participant of the group absented himself from duty unauthorisedly and indulged in various acts of indiscipline and misconduct.

11. It has further been stated that any attempt to hold departmental enquiry will

be frustrated by the collective action on the part of the aforesaid group and the witnesses were unlikely to cooperate and give factual evidence and put all impediments in the conduct of the enquiry. The scope of Cl. (b) of the second proviso to Art. 311(2) and of Art. 311(3) came up for consideration before a Constitution Bench of the Supreme Court in *Union of India and Another Vs. Tulsiram Patel and Others*, While construing the clause "it is not reasonably practicable to hold such enquiry" used in Cl. (b) aforesaid, it was held:-

"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 Cl. (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. 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 intimidates witnesses who are going to give evidence against him with fear of reprisal as to prevent them from doing so"

12. With regard to Art. 311(3) of the Constitution after pointing out that where a Government servant is dismissed, removed or reduced in rank by applying clause (b) or an analogous provision of the service rules and he approaches either the High Court under Art. 226 or the Supreme Court under Art. 32, the Court will interfere on grounds well established in law for the exercise of judicial review in matters where administrative discretion is exercised, it was held :-

"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 Cl. (b) and would take the case out of the purview of that clause and the impugned order of penalty would stand invalidated. In considering the relevancy of the reasons given by the disciplinary authority the court will not, however, sit in judgment over them like a court of first appeal. In order to decide whether the reasons are germane to Cl. (b), the court must put itself in the place of the disciplinary authority and consider what in the then prevailing situation a reasonable man acting in a reasonable way would have done. The matter will have to be judged in the light of the then prevailing situation and not as if the disciplinary authority was deciding the question whether the inquiry should be dispensed with or not in the cool and detached atmosphere of a court room, removed in time from the situation in question. Where two views are possible, the court will decline to interfere."

13. On the material on record, it is not possible for us to take a view that there was an abuse of power by the disciplinary authority in invoking clause (b) The Commandant 3 Signal Battalion CRP Force, Rampur who passed the order of dismissal was the best authority on the spot to assess the situation in the circumstances prevailing at the relevant time and we do not find any good

ground to interfere with the view taken by him in this behalf.

14. As pointed out in the case of *Tulsi Ram Patel (supra)* in such matters the Court will not sit in judgment over the relevancy of the reasons given by the disciplinary authority for invoking clause (b) like a Court of first appeal. The Supreme Court in *Chandigarh Administration and Others Vs. Ex. S.I. Gurdit Singh*, and in the case of *Union Territory, Union Territory, Chandigarh and Others Vs. Mohinder Singh*, clearly upheld that the dismissal orders passed under clause (b) of the second proviso to Article 311(2) of the Constitution after dispensing with the regular departmental enquiry for the reason that witnesses would not come forward to depose against the employee freely.

15. According to Mr. Agarwal, the strike was only for one day and steps for removal of the writ petitioner-appellant was taken after 35 days. It cannot be contended that since the authorities had taken the decision after 35 days to remove the writ petitioner-appellant from service, the provisions of Article 311(2) of the Constitution should have been followed as we are of the firm view that it was not reasonably practicable to hold the enquiry and the gap of 35 days would not have changed the situation.

16. We are, therefore, not inclined to interfere with the order passed by the learned Judge. Accordingly, the appeal is dismissed. There will be no order as to costs.