

(2000) 01 GAU CK 0013
In the Gauhati High Court
Case No : Civil Rule No. 1742 of 1993

Ramesh Kumar Chanchal

APPELLANT

Vs

Asstt. Inspector General of Police and Others

RESPONDENT

Date of Decision : 21-01-2000

Acts Referred:

Central Civil Services (Classification, Control and Appeal) Rules, 1965 — Rule 10(2)
Constitution of India, 1950 — Article 226, 311(11), 311(2)
Penal Code, 1860 (IPC) — Section 376

Citation : (2000) 1 GLT 527

Hon'ble Judges : D.N. Chowdhury, J

Bench : Single Bench

Advocate : P.K. Tiwari, for the Appellant; Govt. Advocate, for the Respondent

Final Decision : Allowed

Judgement

D.N. Chowdhury, J.—This is a petition under Article 226 of the Constitution of India challenging the legitimacy of the order dated 20.11.92 passed by the Asstt. Inspector General of Police, Arunachal Pradesh dismissing the Petitioner from service in resorting to power under Article 311(2)(b) of the Constitution of India in the following circumstances:

2. The Petitioner was working for gain under the Respondents as head constable. Petitioner was arrested in connection with an offence u/s 376 IPC vide Itanagar P.S. case No. 103/92 28.10.92. The Petitioner was thereafter placed under suspension by order dated 18.11.92 in terms of Sub-rule (2) of Rule 10 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965. By order dated 20.11.92 Petitioner was dismissed from service. The impugned order indicates that he was involved in a rape case and was arrested on 28.10.92. Investigation revealed that the victim girl aged about 854 years was raped on the night of 24th October, 1992. Medical examination of the girl confirmed commission of rape. The Petitioner" was identified by the victim girl during the investigation and the order further indicated that the Petitioner admitted those

facts during the investigation. The reason for taking resort to Sub-clause (b) to the proviso to 2nd proviso to Article 311(2) of the Constitution are also indicated in the order which reads as follows:

?The commission of rape of minor girl by H/C R.P. Chanchal, of PHQ Security Cell in the complex of police colony has proved his outrageous and desperate nature which has created horror in the minds of residents of police colony and public. His act has put the very credibility of the Police force in danger. Police men are supposed to be the protector of law and not criminals.

H/C RK Chanchal of Security Cell PHQ, Itanagar appears to be very daring and desperate character, who without caring for duty and having no fear of law has acted in a manner of unbecoming a police man. The involvement of said H/C is not only undesirable but also amounts to a very serious misconduct which has put the image of the police force in danger. He has acted in a most negligent and in disciplined manner of unbecoming a policeman which renders him absolutely unfit to be retained as a member of disciplined force.

Keeping in view the above mentioned circumstances and considering all relevant aspects, the undersigned come to the conclusion that it would not be reasonably practicable to hold such enquiry under the circumstances and it is not uncommon in such cases to find complainant and witnesses turning hostile due to fear of reprisals while the nature of the incident called for expeditious and immediate disciplinary action to restore public confidence and faith.

Keeping in view the overall, facts and circumstances of the case. I, Shri Rajesh Kumar, Asstt. Inspector General of Police. Itanagar, therefore ordered that H/C R.K. Chanchal (U/S) of Security Cell, PHQ, Itanagar is dismissed from the force with immediate effect, under Article 311(1) B of the Constitution of India...

The legitimacy of the said order is under challenge before this Court.

3. Mr. P.K. Tiwari, learned Counsel appearing on behalf of the Petitioner has submitted that the authority in the instance case acted in a most mechanical fashion by resorting to the exception of Article 311(2) without applying its mind to the relevant facts. The learned Counsel referring to the order submitted that the authority passed the impugned order on its ipsi dixit without making any meaningful effort to ascertain as to whether it was reasonably not practicable to hold such enquiry. Mr. Tiwari, learned Counsel submitted that holding of an enquiry is a rule and averting an enquiry is an exception, which is permissible only on fulfilment of the condition specified in any of the clauses mentioned in second proviso to Article 311(2) of the Constitution. Mr. Tiwari, learned Counsel in support of his contention referred to the decision of the Union of India and Another Vs. Tulsiram Patel and Others, Mr. Tiwari, learned Counsel also relied on a decision of the Supreme Court in Jaswant Singh Vs. State of Punjab and others, and Chief Security Officer and Others Vs. Singasan Rabi Das,

4. Mr. N. Sinha, learned Counsel appearing on behalf of the Respondents on the

other hand submitted that the authority referred to the facts that led the authority in taking the decision and the despicable manner in which the outrage was committed. The learned Government advocate Mr. Sinha submitted that authority on consideration of the materials on record was duly satisfied that it was not reasonably practicable to hold such enquiry. The answer to the question therefore hinges on the issue as to whether the present case is of the nature in which it was not reasonably practicable to hold the enquiry. Administration of discipline is in the realm of the Employer. The service regulation more particularly the Central Civil Services (Classification, Control and Appeal) Rules, 1965 empowers the employer to adopt disciplinary measures for removal or dismissal of a Government servant in conformity with Constitutional mandate provided under Article 311(2). The Constitution also provided an exception and enquiry can be avoided only on those cases where it is not reasonably practicable to hold enquiry. It is for the authority to satisfy itself that it is not reasonably practicable to hold enquiry.

5. A judicial review is not an appeal in disguise submitted Mr. Singh, learned Govt. counsel, and pointedly referred to the limits of judicial review. The Court is not to assess the facts like that of the Appeal but nonetheless the authority is required to prima facie satisfy itself that it is not reasonably practicable to hold such enquiry. As mentioned earlier under the service Rules an enquiry is required to be held and it can be given go by when it is not reasonably practicable. The reason assigned by the authority has already been indicated. I have also considered the further materials submitted by learned Counsel for the Respondents Mr. Sinha from the records. The records only point out that the Petitioner was involved in the offence u/s 376 IPC. In fact he was arrested in connection with Itanagar P.S. Case No. 103/92 and statement of witnesses was also recorded. A decision not to hold a departmental enquiry cannot be left to the ipse dixit of the authority concerned. It is obligatory on the authority to justify the reasonableness of the decision by making process. The concerned authority must record its reasons in writing, which must ex facie demonstrate that it was not reasonably practicable to hold the enquiry and that the said decision is taken bonafide having regard to the relevant consideration. The Constitution as well as service rules provided a minimal protection to the Civil Servants. This safeguards cannot be whittled down some whimsically and/or capriciously. The reasonable practicability or for that matter impracticability is required to be balanced with the constitutional safeguard guaranteed to such civil servant An enquiry can be dispensed with only on materials that for some good reason be recorded by the authority in writing, that it is not reasonably practicable to hold such enquiry. The power conferred on the authority is no doubt extra ordinary but that power is conferred on the authority with responsibility. Before passing the order it is incumbent on the authority to judge the situation by ascertaining the facts objectively lest it may turn into a vehicle of oppression exuding whims or caprices of the authority.

6. I have already indicated the reason on which the Respondents passed the

order wherein it was mentioned that the delinquent officer was of daring and desperate character who without caring for his duty and without having any fear or law acted in the manner unbecoming of a police.; The impugned order does not disclose any relevant reason for dispensing with the enquiry save and except the prognostication of the officer that "it is not uncommon in such cases to find out complainant and witnesses turning hostile due to fear of reprisals". What is/ are the situation that rendered holding of any enquiry not reasonably practicable? The authority did not come forward to disclose the facts circumstances as to why it would not be reasonably practicable to hold such enquiry under such circumstances. "On their own showing the delinquent officer was detained in custody on 20.10.92 and vide order dated 18th of November, (Annexure BP.22) it was directed that during the operation of the said order he was to remain in the Security Cell, Police Headquarter, Itanagar "on being released from custody on bail". The order sheets show that during the course of investigation the delinquent was identified by the victim girl. No grounds, to speak of good grounds could be put forth by the Respondents for its forecast and/or projection mat "it is not uncommon in such cases to find complainant and witnesses turning hostile due to fear or reprisal". A disciplinary authority is not expected to forego a disciplinary enquiry readily or thoughtlessly and/or to abridge and/or over ride the requirement of Article 311(2) as a device or stratagem. Reference Satyavir Singh and Others Vs. Union of India (UOI) and Others, , Ikramuddin Ahmed Borah Vs. Superintendent of Police, Darrang and Others, Singhasan Ravidas supra and Jaswant Singh (supra). The satisfaction recorded in the impugned order does not find any support from the materials produced to dispense with the enquiry enjoined in Article 311(2) of the Constitution.

7. For the reasons stated above the impugned order is set aside, leaving it open to the department to initiate departmental enquiry, if it is so advised. The petition is allowed, there shall however be no order as to costs.