

(2015) 11 PAT CK 0015

In the Patna High Court

Case No : Letters Patent Appeal No. 1238 of 2014 in Civil Writ Jurisdiction Case No. 8682 of 2012

Salam

APPELLANT

Vs

The Union of India and Others

RESPONDENT

Date of Decision : 27-11-2015

Acts Referred:

Constitution of India, 1950 — Article 311, 311(2)
Penal Code, 1860 (IPC) — Section 376, 511

Citation : (2016) 1 PLJR 292

Hon'ble Judges : I.A. Ansari, Actg. C.J. and S.P. Singh, J.

Bench : Division Bench

Advocate : Jay Prakash Singh, for the Appellant

Judgement

S.P. Singh, J.—The appeal is preferred against the order, dated 26.03.2014, passed in C.W.J.C. No. 8682 of 2012, whereby a learned single Judge has dismissed the writ petition preferred by the appellant against punishment of dismissal passed under Rule 39(ii) of CISF Rules, 2001(hereinafter referred to as "the Rules").

2. In the writ petition, the petitioner challenged the order of dismissal from service, primarily, on the ground that the reasons assigned for dispensing with enquiry under Rule 39(ii) of the Rules were not based on any cogent reasons, while dismissing the writ petition. The learned Single Judge observed that "it cannot be said that the grounds, stated in the order of dismissal, were wholly non-existent for dispensing with the disciplinary proceeding". Besides this, the learned single Judge also observed that no mala fide has been alleged against the disciplinary authority.

3. Before we consider the grounds of challenge in this appeal, it would be apposite to notice the relevant facts of the case in brief. The petitioner was a Constable in CISF and, at the relevant time, was deployed in "A" Coy of CISF Unit, Indian Oil Corporation, Barauni. On the alleged date of occurrence i.e.

5.7.2010, he was assigned "B" shift duty from 1 pm to 9 pm at the Barauni unit for "gate checking". The petitioner did not turn up for duty and allegedly remained absent without any intimation to, and prior permission of, the competent authority. He was also not found in the unit barrack. The Shift-in-Charge of the Barauni Unit made a general diary entry to the aforesaid effect at CISF Control Room of Indian Oil Corporation, Barauni. At about 3:00 PM on the same day, the police out post, FCI, Barauni intimidated the CISF Control Room, IOC, on telephone that at about 1.15 AM, the petitioner was apprehended by local people indulging in an act of molestation of a minor girl, aged about 12 years, with an intention to commit rape. The local people handed him over to the police. Simultaneously, on the written complaint of father of the victim, the police registered Barauni P.S. Case No. 227 of 2010 for an offence under section 376 /511 of the Indian Penal Code and took him into custody. On the very next day of incident i.e. 6.7.2010, the appellant was dismissed from service by the Group Commandant, CISF, Group Headquarter, Patna, taking recourse to Rule 39(ii) of the Rules, which bestowed power on the disciplinary authority to dispense with departmental enquiry if, for reasons to be recorded, it is not reasonably practicable to hold an enquiry in the manner as prescribed in the rules.

4. The petitioner, being aggrieved by the order of the Group Commandant dismissing him from service, preferred departmental appeal, which was rejected on 9.9.2010. A revision application, preferred before the IG, CISF, too, was rejected by order, dated 30.10.2010. The writ application filed against order of dismissal also met the same fate on 26.3.2014 and, hence, this appeal.

5. The case of the appellant before the Writ Court was that the grounds, assigned for dispensing with the departmental enquiry under Rule 39(ii) of the Rules, was not based on sound reasoning. It was the further case of the writ petitioner before the learned single Judge that it was imperative and incumbent upon the disciplinary authority to demonstrate that the satisfaction was based on objective facts and it was not a mere outcome of the whims and caprice of the authorities concerned. In support of his submissions, the learned Counsel for the appellant has relied upon the decision in the case of Jaswant Singh Vs. State of Punjab and others, . It has also been the case of the writ petitioner that the disciplinary authority is not expected to dispense with the disciplinary enquiry lightly or arbitrary merely because the department's case against the Civil Servant is weak. In support of this submission, reliance has been placed on the case of Satyavir Singh and Others Vs. Union of India (UOI) and Others, .

6. It has been the further case of the petitioner that as he is acquitted in criminal case, he is entitled to reinstatement on that score alone in absence of any departmental enquiry.

7. On the other hand, the learned Single Judge, while rejecting the submission of the writ petitioner, held that in view of seriousness of misconduct alleged against the petitioner and also the delicate situation, which the force was made to face,

because of his conduct, the authorities rightly dispensed with the departmental enquiry under rule 39(ii) of the Rules. The learned Single Judge, relying upon paragraph 108 of the decision in the case of Satyavir Singh (supra), observed that a Court will not sit on judgment over the reasons of disciplinary authority dispensing with departmental enquiry like a Court of first appeal in order to decide whether or not the reasons are germane for dispensing with the departmental enquiry.

8. We have heard counsel for the parties and perused the materials on record.

9. Before we consider the rival submissions of the parties, it would be relevant to notice Rule 39(ii) of the Rules, which empower the disciplinary authority to dispense with the departmental enquiry if it is not reasonably practicable to hold an enquiry as per the Rules. Rule 39 of the CISF Rules, 2001, is quoted hereinbelow for easy reference:

"39. Special Procedure in certain cases. - Notwithstanding anything contained in rules 36 to 38-

(i) where any penalty is imposed on an enrolled member of the Force on the ground of conduct which has led to his conviction on a criminal charge; or

(ii) where the disciplinary authority is satisfied for reasons to be recorded by it in writing that it is not reasonably practicable to hold an inquiry in the manner provided in these rules; or

(iii) where the President is satisfied that in the interest of the security of the State, it is not expedient to hold any enquiry in the manner provided in these rules, the disciplinary authority may consider the circumstances of the case and make such orders thereon as it deems fit:

Provided that the enrolled member of the Force may be given an opportunity of making representation against the penalty proposed to be imposed before any order is made in cause under clause (i)."

10. It is evident from bare perusal of the provisions that the disciplinary authority can dispense with the departmental enquiry if it records reasons for its satisfaction that it is not reasonably practicable to hold an enquiry in the manner prescribed in this rules. In fact, the provision of Rule 39 of the CISF Rules in hand has the constitutional mandate flowing from clause (a) (b) and (c) of second proviso to Article 311(2) of the Constitution of India. The term what is "not reasonably practicable to hold an enquiry" was well explained in the case of Union of India and Another Vs. Tulsiram Patel and Others, . In the aforesaid case, the Constitution Bench of Apex Court was considering the scope and extent of clause (a), (b) and (c) of the second proviso to Article 311 of the Constitution of India. While dealing with clause (b) of Article 311 of the Constitution of India, which is akin to Rule 39(ii) of the CISF Rules, 2001, the Hon'ble Apex Court observed that whether it was practicable to hold an inquiry or not, must be judged in the context of whether it was reasonably practicable to do so in the

opinion of a reasonable man taking a reasonable view of the prevailing situation. The relevant extract of paragraph 130 of the judgment is quoted herein below:

"130. 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 . What is pertinent to note is that the words used are "not reasonably practicable" and not "impracticable". According to Oxford English Dictionary "practicable" means "capable of being put into practice, carried out in action, effected, accomplished, or done; feasible". Webster's Third New International Dictionary defines the word "practicable" inter alia as meaning "possible to practice or perform; capable of being put into practice, done or accomplished; feasible". Further, the words used are not "not practicable" but "not reasonably practicable". Webster's Third New International Dictionary defines the word "reasonably" as "in a reasonable manner: to a fairly sufficient extent". 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....."

11. Whether in a given case, it is reasonably practicable to hold an enquiry or not would solely depend on the facts and circumstances of the case and no general strait jacket formula as an absolute rule can be laid down. Enumerating some of the cases wherein it may not be reasonably practicable to hold an inquiry, the Apex Court observed further as follows in paragraph 130 of the judgment:

".....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 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 government servant concerned 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.....".

12. In light of the law laid down by a Constitution Bench, we would now notice the reasons recorded by the disciplinary authority to at least prima facie satisfy ourselves, that it was not reasonably practicable to hold an enquiry as provided in the Rules. The reasons, assigned by the disciplinary authority for dispensing with the departmental enquiry under rule 39(ii) of the CISF Rules, 2001, are

quoted herein below:

"AND WHEREAS, this is serious misconduct and criminal offence on the part of Constable Md. Salam that has generated communal sentiments among two religious communities.

AND WHEREAS:--

(a) It has tarnished the image of the Force in the public eye. An enquiry will attract a lot of public attention, media coverage and adverse comments. Individual actions like this one are totally contradictory to the i

(b) Calling up evidences like stray passers by Aam Janta (General Public) whose even identity is not known, would be next to impossible.

(c) The individual was nabbed by public while forcibly molesting a minor girl thereby his malafide intention has been amply established.

(d) Swift departmental action against such criminal acts, which go against the basic ethics of a civilized society and of a disciplined Force, shall help in maintaining the discipline and conduct of the members of the Force.

AND WHEREAS, due to above reasons, I am satisfied under the circumstances any attempt to hold departmental enquiry by serving a charge sheet and following due procedures in the manner as prescribed in the Rule-36, 37 and 38 of CISF Rules, 2001 is practicably impossible.

AND WHEREAS, on consideration of the facts and circumstances of the case and also the fact that he has been awarded punishments on 13 different occasions in the past various misconducts, I am of the view that the penalty of Dismissal from Service be imposed upon CISF No. 914492450 Constable Md. Salam."

13. It would appear from the impugned order of the disciplinary authority that prime reason, for not holding departmental enquiry, was an apprehension that initiation of an enquiry may generate communal sentiments among two religious communities. The disciplinary authority was also of the view that the enquiry would attract a lot of public attention, media coverage and adverse comments, which may tarnish the image of the force. On the other hand, swift departmental action would help in maintaining the discipline and conduct of the members of the force. Further-more, it was improbable to summon the witnesses, who were strangers and passerby.

14. The learned Single Judge took the view that the disciplinary authority has assigned reasons for not holding departmental enquiry and it is not permissible for the Courts to sit on judgment over the reasons assigned by the disciplinary authority like a Court of first appeal and sift the reasons assigned in order to decide whether or not the reasons are germane to dispensing with departmental enquiry. There cannot be any dispute to this proposition of law. In fact, this proposition of law is fully supported by the decision in the case of Satyavir Singh (supra) that in considering the relevancy of the reasons given by the disciplinary

authority for dispensing with the departmental enquiry, the Court would not, however, sit on judgment over the reasons like a Court of first appeal. Equally, it is also not in dispute, as observed in the case of Southern Railway Officers Assn. and Another Vs. Union of India (UOI) and Others, , that if the employee and his associates threaten, intimidate or terrorize all the officers and put on volatile posters, it would not be possible to hold departmental enquiry.

15. But the facts of the instant case are different. It is not the case of the respondents that the appellant ever tried or attempted to threaten, intimidate or terrorize the witnesses. It is well settled that even subjective satisfaction is to be based on objective consideration.

16. The learned Single Judge, however, agreed with the reasons of the disciplinary authority that swift departmental action would help in maintaining discipline and conduct of the force, whereas the enquiry will attract a lot of public attention, media coverage and adverse comments, which would be detrimental of the image of the Force.

17. In our view, the reasons, assigned for dispensing with the departmental enquiry, are irrelevant and cannot be a ground for dispensing with the departmental enquiry. Merely because the enquiry would attract public attention and media coverage, the same cannot be a ground for dispensing with departmental enquiry inasmuch as such a reason can be assigned for dispensing with any enquiry, which a disciplinary authority may not desire to hold, on its own fancies and whims. Similarly, on the ground of taking swift action, the disciplinary authority cannot take away the valuable right of a citizen to defend his case unless it is not reasonably practicable to hold such enquiry; but, if the satisfaction of the disciplinary authority, recorded in writing that it is not reasonably practicable to hold an enquiry, is based on some cogent reasons, the Court, as held in the case of Satyavir Singh (supra), would not sit on judgment over the reasoning as the court of first appeal. However, where the reasoning assigned are totally irrelevant or no nest or the disciplinary authority has relied upon materials not germane to the circumstances or considered materials, which is extraneous to the facts of the given case, the Court, in appropriate cases, can consider whether the reasoning is based on objective facts and is not an out come of the whims and caprice as held in the case of Jaswant Singh (supra). Even in the case of Satyavir Singh (supra), the Supreme Court observed, in paragraph 60, that the disciplinary authority is not expected to dispense with the disciplinary enquiry lightly or arbitrarily or out of ulterior motive merely in order to avoid holding of an enquiry or because the department's case against the civil servant is weak. The relevant observation, appearing in Satyavir Singh (supra), reads as under :

"60. The disciplinary authority is not expected to dispense with the disciplinary inquiry lightly or arbitrarily or out of ulterior motives merely in order to avoid the holding of an enquiry or because the departments case against the civil servant is weak and must fair.

61. XX XX XX

62. It will also not be reasonably practicable to afford to the civil servant an opportunity of a hearing or further hearing, as the case may be, when at the commencement of the inquiry or pending it, the civil servant absents and cannot be served or will not participate in the inquiry. In such cases, the matter must proceed ex parte and on the materials before the disciplinary authority."

18. Here, it is not the case of the respondents that the father and daughter were not willing to depose in an enquiry against the appellant. No reason has been assigned as to why the father or the victim girl, who could be the best witnesses, were chosen not to be examined. Further-more, there is no material on record to even remotely come to the conclusion that the appellant either threatened the victim, her father or the officials. On the other hand, even as per the respondents, the appellant was, immediately, handed over to the police, who took him in custody. Even, no preliminary enquiry was held and the order of dismissal was passed in utter haste on the next day of incident itself, when the appellant was in custody.

19. For the foregoing reasons, we are of the considered view that the learned Single Judge erred in upholding the case of the respondents that it was not reasonably practicable to hold a departmental enquiry. We accordingly set aside the order, dated 26.3.2014, passed by the learned Single Judge, in C.W.J.C. No. 8682 of 2012. Consequently, the order, dated 06.07.2010, passed by the disciplinary authority, is set aside and quashed. We also set aside and quash the orders passed in the appeal and revision, upholding the decision of the disciplinary authority. We leave the disciplinary authority with liberty to the authorities to initiate a regular departmental enquiry in accordance with law.

20. The appellant herein shall be reinstated in service and if the disciplinary authority decides to hold enquiry, the appellant may be placed under suspension until the time, the enquiry is concluded.

I.A. Ansari, Actg. C.J.

I agree.