
(2009) 06 AHC CK 0145

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 44867 of 2008

Subodh Kumar

APPELLANT

Vs

State of U.P. and others

RESPONDENT

Date of Decision : 12-06-2009

Acts Referred:

Penal Code, 1860 (IPC) — Section 394

Citation : (2009) 122 FLR 409

Hon'ble Judges : Sunil Ambwani, J

Bench : Single Bench

Advocate : Vijay Gautam, for the Appellant; Niraj Upadhyay and S.C., for the Respondent

Final Decision : Dismissed

Judgement

Sunil Ambwani, J.—Heard Shri Vijay Gautam, learned Counsel for the petitioner. Learned standing Counsel appears for the respondents.

2. The petitioner a constable in civil police was posted at Police Station, Government Railway Police, Aligarh. He was dismissed from service by the Superintendent of Police, Railways, Agra under Rule 8 (2) (b) of the U.P. Police Officers of Subordinate Rank (Punishment & Appeal) Rules, 1991 (in short the Rules of 1991) after recording reasons that it was not reasonably practicable to hold a departmental enquiry against him. The petitioner has challenged the order on the ground, that the reasons, given for holding that it was not reasonably practicable to hold the departmental enquiry, do not satisfy the test of invoking such powers on the principles of law laid down by Constitution Bench of Supreme Court in Union of India and Another Vs. Tulsiram Patel and Others,

3. Brief facts giving rise to this writ petition are that on 23.8.2008 the petitioner was deputed as a member of security squad in North East Express from Railway Station Delhi to Railway Station Kanpur, with a Government rifle and 30 cartridges. His duties required him to protect the persons and property of the

passenger in the train; to curb the illegal activities of the criminals and anti social elements; to provide help to the persons in case of any incident or accident and specially to help the women and children providing them safety and security. It was reported that the petitioner, while on duty in the train instead of carrying out his responsibilities, indulged in beating passengers; robbed them; behaved indecently with the women and fired on them from Government rifle. The passengers travelling in the train were angered by the conduct of the petitioner. They stopped the train at Railway Station Phaphund, District Auraiya. The entire rail traffic was stopped and was affected for about three hours. The District Magistrate, Auraiya and the Superintendent of Police, Auraiya had to reach the spot to control the demonstration by the passengers of the train. They could, with great difficulty, pacify the passengers and restored the rail traffic.

4. A report of the incident was lodged by complainant Shri Mukhtar son of Shri Niyamak resident of Village and Post Jaitakhanai Police Station, Raniganj District Auraria, Bihar and was registered as Case Crime No. 105 of 2008 Police Station G.R.P. Etawah in which the loot of Rs. 37,750/- from 27 passengers was reported as robbery u/s 394 Indian Penal Code and is under investigation.

5. In the order dated 24.8.2008, the Superintendent of Police, Railways has observed that the police is a disciplined department in which every member of the force takes oath to protect and help citizens; maintain the reputation and follow the rules of the department. The petitioner misused his position as a police man. Instead of protecting the passengers he tortured them both mentally and physically and robbed them. If the policemen appointed to protect the citizens start robbing them, the people will loose their faith in the police department and the criminal justice system of the country. The petitioner not only committed a crime of robbing the passengers but also fired on them from the Government rifle assigned to him. The act was so dangerous that any of the innocent persons could have lost his life. His conduct was wholly unbecoming of a conduct of a Government servant on duty.

6. The Superintendent of Police thereafter observed that the persons travelling in the train were extremely poor and were helpless labourers, who earn their livelihood by working at different places of the country. The snatching of the money from such persons is a very sad incident. The passengers had to suffer irreparable, mental and physical torture. The petitioner not only indulged in illegal activity but that because of him the entire rail traffic on Delhi-Kanpur route was obstructed for three hours causing national loss and delaying the journey of thousands of passengers.

7. The Superintendent of Police has thereafter given the reasons in coming to conclusion that it is not reasonably practicable to hold a departmental enquiry in the matter as follows:--

1. The passengers, who were robbed and subjected to beating and indiscipline behaviour by the petitioners, are all residents of far away States and it is not

possible to secure their presence in the departmental enquiry.

2. The victims are extremely poor and helpless persons. They have already been tortured mentally and physically and thus it will be difficult to procure their presence in a departmental enquiry conducted by the same department.

3. It is possible that the petitioner as a police man will use in position to unduly influence the independent evidence to be led in the departmental enquiry.

4. The petitioner, after committing the act and going back to his duties, left the place without any information after leaving rifle and cartridges in the barrack. This fact was reported in the report No. 19 at 11.30 on 24.8.2008. His absence from duties was to avoid the departmental enquiry.

5. A criminal case No. 265 of 2000 under sections 147/452/342/323/506 Indian Penal Code was registered against the petitioner while he was posted at Agra in the year 2000 and that this is the second criminal act of the petitioner establishing that the petitioner is a man of criminal character.

8. It is observed in the order that the act of the petitioner is criminal in nature and it is always possible that he will repeat such acts. He has already tarnished the image of the police department in public, which is difficult to repair. In the circumstances the Superintendent of Police, Railway recorded his satisfaction that it was not reasonably practicable to hold a departmental enquiry against the petitioner.

9. Learned Counsel for the petitioner submits that the petitioner has been dismissed on the ground of dereliction of duty which could not be treated as a serious act of misconduct. The reasons given to dispense with the enquiry are artificial, and are the result of an alleged incident, which was never subjected to any enquiry. In the writ petition it is stated that the petitioner was carrying out his duties to search and interrogate the persons on a suspicion that they were carrying illegal substance like bombs and other such materials. There was a suspect with a long beard, with suspicious activities. When the petitioner started interrogating the persons and tried to search their luggage, the men accompanying him and some women in veil made a complaint that the petitioner was misbehaving with them. They tried to assault the petitioner on which the train was stopped at the Railway Station Phaphund in District Auraiya. The petitioner came to know through the first information report that one Shri Mukhtar son of Shri Niyamak resident of Village and Post Jaitakhanai Police Station Raniganj District Auraria, Bihar had lodged the first information report against him. No enquiry was made of the incident. Shri Gautam submits that the petitioner has been falsely implicated in the crime.

10. In Union of India and Another Vs. Tulsiram Patel and Others, the Constitution Bench of the Supreme Court held in paragraphs 130,131,132,133,134,135,136,136-A and 137 as follows:

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 the 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. 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 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 the 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 case the Court will strike down the order dispensing with the inquiry as also the order imposing penalty. The case of Arjun Chaubey Vs. Union of India (UOI) and Others, is an instance in point. In that case, the appellant, was working as a senior clerk in the office of the Chief Commercial Superintendent, Northern Railway, Varanasi. The Senior Commercial Officer wrote a letter to the appellant calling upon him to submit his explanation

with regard to twelve charges of gross indiscipline mostly relating to the Deputy Chief Commercial Superintendent. The appellant, submitted his explanation and on the very next day the Deputy Chief Commercial Superintendent served a second notice on the appellant saying that his explanation was not convincing and that another chance was, being given to him to offer his explanation with respect to those charges. The appellant submitted his further explanation but on the very next day the Deputy Chief Commercial Superintendent passed an order dismissing him on the ground that he was not fit to be retained in service. This Court struck down the order holding that seven out of twelve charges related to the conduct of the appellant with the Deputy Chief Commercial Superintendent who was the disciplinary authority and that if an inquiry were to be held, the principal witness for the Department would have been the Deputy Chief Commercial Superintendent himself, resulting in the same person being the main accuser, the chief, witness and also the judge of the matter.

131.It was submitted that where a delinquent Government servant so terrorizes the disciplinary authority that neither, that officer nor any other officer stationed at that place is willing to hold the inquiry, some senior officer can be sent from outside to hold the inquiry. This submission itself shows that in such a case the holding of an inquiry is not reasonably practicable. It would be illogical to hold that the administrative work carried out by senior officers should be paralysed because a delinquent Government servant either by himself or along with or through others makes the holding, of an inquiry not reasonably practicable.

132.It is not necessary that a situation which makes the holding of an inquiry not reasonably practicable should exist before the disciplinary inquiry is initiated against a Government servant. Such a situation can also come into existence subsequently during the course of an inquiry, for instance, after the service of a charge-sheet upon the Government servant or after he has filed his written statement thereto or even after evidence has been led in part. In such a case also the disciplinary authority would be entitled to apply Clause (b) of the second proviso because the word "inquiry"" in that clause includes part of an inquiry. It would also not be reasonably practicable to afford to the Government servant an opportunity of hearing or further hearing, as the case may be, when at \$ the commencement of the inquiry or pending it the Government servant absconds 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. Therefore, even where a part of an inquiry has been held and the rest is dispensed with under Clause (b) or a provision in the service rules analogous thereto, the exclusionary words of the second proviso operate in their full vigour and the Government servant cannot complain that he has been dismissed, removed or reduced in rank in violation of the safeguards provided by Article 311(2).

133.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.

134. It is obvious that the recording in writing of the reason for dispensing with the inquiry must precede the order imposing the penalty. The reason for dispensing with the inquiry need not, therefore find a place in the final order. It would be usual, to record the reason separately and then consider the question of the penalty to be imposed and pass the order imposing the penalty. It would, however, be better to record the reason in the final order in order to avoid the allegation that the reason was not recorded in writing before passing the final order but was subsequently fabricated. The reason for dispensing with the inquiry need not contain detailed particulars, but the reason must not be vague or just a repetition of the language of Clause (b) of the second proviso. For instance, it would be no compliance with the requirement of Clause (b) for the disciplinary authority simply to state that he was satisfied that it was not reasonably practicable to hold any inquiry. Sometimes a situation may be such that it is not reasonably practicable to give detailed reasons for dispensing with the inquiry. This would not, however, per se invalidate the order. Each case must be judged on its own merits and in the light of its own facts and circumstances.

135. It was vehemently contended that if reasons are not recorded in the final order, they must be communicated to the concerned Government servant to enable him to challenge the validity of the reasons in a departmental appeal or before a Court of law and that failure so communicate the reasons would invalidate the order. This contention too cannot be accepted. The constitutional requirement in Clause (b) is that the reason for dispensing with the inquiry should be recorded in writing. There is no obligation to communicate the reason to the Government servant. At Clause (3) of Article 311 makes the decision of the disciplinary authority on this point final, the question cannot be agitated in a departmental appeal, revision or review. The obligation to record the reason in writing is provided in Clause (b) so that the superiors of the disciplinary authority may be able to judge whether such authority had exercised its power under Clause (b) properly or not with a view to judge the performance and capacity of that officer for the purposes of promotion etc. It would however, be better for the disciplinary authority to communicate to the Government servant its reason for dispensing with the inquiry because such communication would eliminate the possibility of an allegation being made that the reasons have been subsequently fabricated. It would also enable the Government servant to approach the High Court under Article 226 or, in a fit case, this Court under Article 32. If the reasons are not communicated to the Government servant and the matter comes to the Court, the Court can direct the reasons to be produced, and furnished to the Government servant and if still not produced, a presumption should be drawn that the reasons were not recorded in writing and the impugned order would then stand invalidated. Such presumption can, however, be rebutted by a

satisfactory explanation for the non-production of the written reasons.

136. It was next submitted that though Clause (b) of the second proviso excludes an inquiry into the charges made against a Government servant, it does not exclude an inquiry preceding it, namely, an inquiry into whether the disciplinary inquiry should be dispensed with or not, and that in such a preliminary inquiry the Government servant should be given an opportunity of a hearing by issuing to him a notice to show cause why the inquiry should not be dispensed with so as to enable him to satisfy the disciplinary authority that it would be reasonably practicable to hold the inquiry. This argument is illogical and is a contradiction in terms. If an inquiry into the charges against a Government servant is not reasonably practicable, it stands to reason that an inquiry into the question whether the disciplinary inquiry should be dispensed with or not is equally not reasonably practicable.

136-A. A government servant who has been dismissed, removed or reduced in rank by applying to his case Clause (b) or an analogous provision of a service rule is not wholly without a remedy. As pointed out earlier while dealing with the various service rules, he can claim in a departmental appeal or revision that an inquiry be held with respect to the charges on which the penalty of dismissal, removal or reduction in rank has been imposed upon him unless the same or a similar situation prevails at the time of hearing of the appeal or revision application. If the same situation is continuing or a similar situation arises, it would not then be reasonably practicable to hold an inquiry at the time of the hearing of the appeal or revision. Though in such a case as the Government servant if dismissed or removed from service, is not continuing in service and it reduced in rank, is continuing in service with such reduced rank, no prejudice could be caused to the Government or the Department if the hearing of an appeal or revision application, as the case may be, is postponed for a reasonable time.

137. 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 Article 226 or this Court under Article 32, the Court will interfere on grounds well established in law for the exercise of power of judicial review in matters where administrative discretion is exercised. It will consider whether Clause (b) or an analogous provision in the service rules was properly applied or not. The finality given by Clause (3) of Article 311 to the disciplinary authority's decision that it was not reasonably practicable to hold the inquiry is not binding upon the Court. The Court will also examine the charge of mala fides, if any made in the writ petition. In examining the relevancy of the reasons, the Court will consider the situation which according to the disciplinary authority made it come to the conclusion that it was not reasonably practicable to hold the inquiry. 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. 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 Clause (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 courtroom, removed in time, from the situation in question. Where two views are possible, the Court will decline to interfere.

11. In the present case the Superintendent of Police, Railways has, after narrating the facts of the incident, given reasons to dispense with the departmental enquiry and has found that it was not reasonably practicable to hold a departmental enquiry. The nature of incident, in which the petitioner as a constable on squad duty, misbehaved with the passengers and robbed them and thereafter fired upon them with the Government weapon on which the train was stopped at Police Station Phaphund, for three hours and that the railway traffic could be resumed only on the intervention of the District Magistrate and Superintendent of Police, Auraiya, was a serious act of indiscipline. A police officer on squad duty is required to provide security and safety to the passengers. If he himself starts extracting money and looting the passengers and starts firing to terrorise them and to stop them from making protest, the law and order will completely break down. The passengers, while travelling in a train, are mostly travelling alone helpless against criminals and anti-social elements. They have to be protected by the State. In a case where the constables deputed in a squad to protect them become criminals and start looting the passengers, they will not be left with any safety at all.

12. The reasons given in the order that it will be difficult to secure the presence of the poor people, or victims of the crime committed on them, to be called from far away States and that they would not have faith in an enquiry conducted by the police against one of their constables, that petitioner will use his influence and that the conduct of the petitioner in leaving the barracks after the incident without information, were sufficient to dispense with the departmental enquiry. The petitioner has not denied that he had fired from Government weapon and that the passengers did not resort to demonstration on which the train traffic was stopped for three hours at the next Railway Station. His explanation, that he was searching for suspicious activities of the passengers, is not only vague but appears to be a story set up to cover the crime committed by him. He does not say that he had reported such activity to his superior officers. The demonstration made by the angry passengers and the intervention of the District Magistrate and the Superintendent of Police, Auraiya were sufficient proof of the incident. The nature of the indecent and the gravity of the situation on the spot were taken into consideration by the disciplinary authority. The tests laid down in *Tulsi Ram*

Patel's case to dispense with the departmental enquiry, to record the finding that it is not reasonably practicable to hold the enquiry, are fully satisfied.

13. The reasons recorded by the Superintendent of Police, Railway, Agra as disciplinary authority, in the prevailing situation, finding that it was not reasonably practicable to hold disciplinary enquiry, do not suffer from any error of law. He has applied his mind to the relevant facts and has recorded good and sufficient reasons to exercise the authority vested in him to dismiss the petitioner from service under Rule 8 (2) (b) of the Rules of 1991.

The writ petition is dismissed.