
(2004) 11 GAU CK 0019
In the Gauhati High Court
Case No : Writ Appeal No. 311 of 1999

Union of India (UOI) and Others

APPELLANT

Vs

Nripen Das

RESPONDENT

Date of Decision : 25-11-2004

Acts Referred:

Central Industrial Security Force Rules, 1969 — Rule 34, 37
Constitution of India, 1950 — Article 311(2)(B)

Citation : (2005) 1 GLR 718

Hon'ble Judges : D. Biswas, Acting C.J.; B.P. Katakey, J

Bench : Division Bench

Advocate : Y. Doloi, for the Appellant; None, for the Respondent

Final Decision : Dismissed

Judgement

D. Biswas, Actg. C.J.

1. Head Mr. Y. Doloi, the learned Addl. CGSC appearing for the appellants. None appears for the sole respondent.

2. It appears that notice could not be served on the respondent despite efforts made. Thereafter, on the report of the Lawazima Court, the service has been declared as complete on the sole respondent by the order dated 14th September, 2004.

3. The Union has assailed the judgment and order dated 3rd May, 1999 passed in Civil Rule No. 2060/97. In the writ petition, the sole respondent as petitioner challenged the order of dismissal from service issued by the respondent authority invoking the provisions of Rule 34 of the CISF Rules, 1969 which is similar to the provisions of Article 311(2)(B) of the Constitution of India.

4. The respondent was in the service of the CISF as Countable. In the night between 5th & 6th June, 1993, there was an incident of pilferage of Government property in the CISF Camps at Lalmatia in Burdwan district of West Bengal.

Three persons were apprehended by CISF personnel of the Unit to which the respondent was attached. One Sri Rais Ansari was also picked up by the CISF personnel. The dead body of said Rais Ansari was later on recovered from a road side culvert. After preliminary enquiry, responsibility amongst others was also fixed on the respondent. It was in this context that the respondent authority issued the order of dismissal of the respondent from service by invoking the provisions of Rule 37(b) of the CISF Rules, 1969.

5. There is no dispute at the Bar that the order of dismissal was issued by the authority on the basis of the preliminary report and that no formal disciplinary proceeding was initiated as is required under the law. The learned Single Judge was of the view that formal disciplinary enquiry could not be dispensed with in a case of this nature and, therefore, passed the impugned judgment setting aside the order of dismissal. The learned Single Judge relied upon the decisions in Chief Security Officer and Others Vs. Singasan Rabi Das, , Union Territory, Chandigarh and Others Vs. Mohinder Singh, and Jaswant Singh v. State of Punjab and Ors., AIR 1991 SC 385. We have gone through the ratio available in the aforesaid judgments and are of the opinion that dispensation of formal enquiry must rest on two conditions, namely, (1) There must exist a situation which renders holding of any enquiry not reasonably practicable and (2) The disciplinary authority must record in writing its reasons in support of its satisfaction. The office file produced by Mr. Doloi, the learned Addl. CGSC show that no reason has been recorded by the disciplinary authority in dispensing with a formal enquiry in the attending facts and circumstances. The record produced by Mr. Doloi contains the preliminary report which indicates there were sufficient materials for initiation of formal departmental proceedings against the respondent. Despite that, disciplinary authority issued the order of dismissal dispensing with the requirement of formal disciplinary proceedings indicating therein that there was no evidence to proceed against the sole respondent. The reasons given in the order of dismissal are apparently contrary to what is available in the office file.

6. This Court is unable to agree with the observation of the disciplinary authority that depending on the fact situation and other circumstances, it was not reasonably practicable on their part to proceed with a formal enquiry. Clause (b) of Rule 37 of the CISF Rules required the disciplinary authority to record reasons in writing. The absence of reasons leads to the irresistible conclusion that the order of dismissal impugned in the writ petition warrants reversal. We are therefore not inclined to interfere with the judgment and order of the learned Single Judge.

7. In the result, the appeal is dismissed. No costs.