Warder Ram Singh Vs State of Punjab

Court: High Court Of Punjab And Haryana At Chandigarh

Date of Decision: Aug. 22, 2016

Acts Referred: Constitution of India, 1950 - Article 311(2)(b)

Citation: (2017) 1 SCT 364

Hon'ble Judges: Daya Chaudhary, J.

Bench: Single Bench

Advocate: T.N. Sarup, Additional A.G., Punjab, for the Respondents; D.S. Patwalia, Senior Advocate with Gaurav Rana, Advocate, for the Petitioner

Final Decision: Disposed Off

Judgement

Daya Chaudhary, J. - This petition has been filed under Articles 226/227 of the Constitution of India for issuance of a writ in the nature of

Certiorari for quashing impugned order dated 11.11.2014 (Annexure P-3) whereby the services of the petitioner have been dispensed with

without holding an enquiry and without giving an opportunity of hearing. A further prayer has also been made for issuance of a writ in the nature of

Mandamus directing the respondents to reinstate the petitioner in service to the post of Warder and to grant him all consequential benefits.

2. Briefly, the facts of the case, as made out in the present petition, are that the petitioner was appointed on the post of Warder on 12.09.1987

and posted at Sangrur Jail. He continued to work there till 1993. Thereafter, he was transferred to Open Jail, Nabha. He continued there upto the

year 1999 and thereafter again he was transferred to Security Jail, Nabha. He continued there till the year 2004 and then was transferred to the Jail

at Malerkotla where he continued to perform his duties till the year 2011. He remained posted in New District Jail Nabha on deputation.

3. On the night of 4th September, 2014, a raid was conducted in the jail premises, during which, some narcotic substance was alleged to have

been recovered from the pocket of trousers of the petitioner subsequent whereupon a case bearing FIR No.93 dated 5.9.2014 was registered

under Sections 15/18/61/85 of the NDPS Act alleging therein that he was found to be involved in supplying narcotics to the jail inmates, thereby

violated the provisions of para Nos.176, 177 and 206 of the Punjab Jail Manual. The petitioner was suspended on lodging of the above-said FIR

and ultimately dismissed from service as per the provisions of Article 311 (2)(b) of the Constitution of India without conducting an enquiry by

virtue of order dated 11.11.2014 (Annexure P-3), which has been challenged by the petitioner in the present petition.

4. Learned counsel for the petitioner submits that the impugned order has been passed without conducting any regular enquiry and without

affording any opportunity of hearing. The provisions of Section 311(2)(b) of the Constitution of India have been attracted but no reasons

whatsoever have been assigned for not conducting enquiry. It has not been mentioned in the impugned order as to how it was not practicable to

conduct a regular enquiry. Learned counsel also submits that the petitioner was having 27 years of service and neither a single complaint was there

against him nor any punishment was awarded to him at any point of time. Learned counsel also submits that provisions of Article 311 (2)(b) of

Constitution of India have not been complied with whereas said power can be exercised only under the circumstances when it is not practicably

possible to conduct an enquiry. Although, no reasons are necessary to be recorded but it is to be made out as to how the provisions of Article 311

(2)(b) are attracted. In the end, learned counsel submits that the impugned order of dismissal is liable to be quashed being violative of principles of

natural justice and having been passed without conducting any regular enquiry or without recording any finding while attracting the provisions of

Article 311 (2) (b) of the Constitution of India.

5. Learned counsel for the petitioner, in support of his contentions, has relied upon the judgments passed in Union of India v. Tulsiram Patel,

1985 (3) SCC 398, Sudesh Kumar v. State of Haryana and others, 2005 (11) SCC 525, Jaswant Singh v. State of Punjab and others,

1991 (1) SCC 362, Smt. Surinder Kaur v. State of Punjab, 2008 (1) SCT 396 and Ex. Constable Balwinder Singh v. State of Punjab

and others, 2003 (2) SCT 137.

6. In response to notice of motion, reply has been filed which is on record.

7. Learned State counsel submits that the petitioner was found to be involved in a serious offence of NDPS and no regular enquiry was required to

be conducted. It was found that the petitioner was supplying the narcotic substance to the inmates in the jail and thereby violated the provisions of

para Nos.176, 177 and 206 of the Punjab Jail Manual. In such circumstances, no enquiry is required to be conducted as petitioner was caught red

handed in the presence of jail officials. Learned counsel also submits that recovery was effected from the personal search of the petitioner as

narcotic substance was recovered from the pocket of his official uniform and accordingly FIR No. 93 dated 5.9.2014 was registered under the

NDPS Act.

8. I have heard learned counsel for the parties and have also perused the impugned order of dismissal as well as other documents on the file.

9. The facts regarding appointment and posting of the petitioner in different jails are not in dispute. It is also not disputed that his work was

satisfactory as no adverse remarks were ever conveyed. It is also an admitted fact that on recovery of narcotic substance, FIR No. 93 was

registered under Sections 15/18/61/85 of NDPS Act. On lodging of the said FIR, he was also suspended and thereafter he was ultimately

dismissed from service. While dismissing the petitioner from service, the provisions of Article 311(2)(b) of Constitution of India have been

attracted which are reproduced as under:-

311. Dismissal removal or reduction in rank of persons employed in civil capacities under the Union or a State:-

(1) No person who is a member of a civil service of the Union or an all-India service or a civil service of a Stte or holds a civil post under the

Union or a State shall be dismissed or removed by an authority subordinate tot hat by which he was appointed.

(2)No such person as aforesaid shall be dismissed or removed or reduced in rank except after 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

[Provided that where it is proposed after such inquiry, to impose upon him any such penalty, such penalty may be imposed on the basis of the

evidence adduced during such inquiry and it shall not be necessary to give such person any opportunity of making representation on the penalty

proposed.:

(a) where a person is dismissed or removed or reduced in rank on the ground of conduct which has led to his conviction on a criminal charge; or

(b) where the authority empowered to dismiss or remove a person or to reduce him in rank ins satisfied that for some reason, to be recorded by

that authority in writing, it is not reasonably practicable to hold such inquiry; or

(c) where the President or the Governor, as the case may be, is satisfied that in the interest of the security of the State it is not expedient to hold

such inquiry.

(3) If, in respect of any such person as aforesaid, a question arises whether it is reasonably practicable to hold such inquiry as is referred to in

clause (2), the decision thereon the authority empowered to dismiss or remove such person or to reduce him in rank shall be final.]

On perusal of above-said provisions, it is apparent that a safeguard against the misuse of provisions of Article 311 (2)(b) has been provided as it is

specifically required that before summarily dismissing a person, the disciplinary authority must record the reasons for dispensing with the holding of

an enquiry.

10. On perusal of impugned order dated 11.11.2014, it is apparent that no reasons whatsoever have been recorded to show as to how the

provisions of Article 311(2)(b) have been attracted. Without the existence of reasons or without recording the reasons, the application of Article

311 (2)(b) of the Constitution of India cannot be attracted.

11. On perusal of facts of the case, two versions regarding the incident of recovery of narcotic substance from the petitioner have come to the fore.

As per the case of the petitioner, he has falsely been implicated whereas as per respondent-Authority, the petitioner has committed serious offence

while on duty and no enquiry was required to be conducted. After considering both the opinions of the parties, it becomes necessary to know the

truth or to unravel the real factual position so that the legal rights of an employee are not infringed. In the present case, the extraordinary powers

provided under Article 311(2)(b) have been invoked but the essential requirements of the Article qua recording of the reasons for invoking said

provisions have not been complied with. Simply, it cannot be said that the offence was serious and no enquiry was required to be conducted

whereas it is a well settled proposition of law that due reasons are necessary to be recorded as to why it was not practicably possible to conduct

an enquiry or how it was not convenient to the respondent-Authority to conduct an enquiry to invoke clause 2(b) of Article 311 of Constitution of

India. Said provisions are attracted by exercising extraordinary powers under the extraordinary circumstances. The absence of extraordinary

circumstances to invoke provisions of article 311(2)(b) can be termed as misuse of power and therefore, such an action is not sustainable in the

eyes of law. There are two contradictory versions regarding the incident and which one of the two versions was correct cannot be ascertained

without conducting any enquiry. The impugned order is based on the report dated 10.11.2014 prepared by Superintendent of New District Jail,

Nabha. The stand of the petitioner was never considered while preparing the said report. The impugned order of termination of services has been

passed only on the basis of presumption whereas there was no scientific proof to substantiate the allegations and as such, the presumption cannot

be made the basis to breach the rights of an employee. Accordingly, the order passed on presumption cannot be sustained.

12. It was held in Jaswant Singh''s case (supra) that there must be a subjective satisfaction of the Punishing Authority supported by independent

reasons/material. Threats, if any, on the part of the delinquent do not correlate to the cause. Order dispensing with the holding of enquiry was

found to be illegal and same was quashed. By relying upon the judgment of the Hon''ble Apex Court in case Divisional Personnel Officer

Southern Railway v. T.R. Challappan, (1976) 1 SCR 783, it was held that there must exist a situation which renders holding of an enquiry ""not

reasonably practicable"".

13. The disciplinary authority must record the reasons in writing in support of its satisfaction. It was also held that the question of practicability

would depend upon the existing fact, situation and also surrounding circumstances but the question of reasonable practicability must be adjudged in

the light of the circumstances prevailing at the date of passing of the order. In Tulsiram Patel''s case (supra), it was held that the disciplinary

authority is not expected to dispense with the conduct of regular enquiry rightly or arbitrarily or out of an ulterior motive or merely in order to avoid

the holding of an enquiry or because of the fact that the department case against the Government servant is weak and it must fail. Same view was

taken by this Court in Smt. Surinder Kaur''s case (supra). In Constable Balwinder Singh''s case (supra), the petitioner was dismissed from service

after dispensing with the holding of regular departmental enquiry as no regular departmental enquiry was possible. Appeal filed by the petitioner

was accepted and departmental enquiry was ordered against him. It was held in said judgment that there was no reason as to why the holding of

regular enquiry was dispensed with by invoking Article 311 (2) (b) of Constitution of India. The writ petition was allowed and impugned order of

dismissal was set aside. It was held by the Hon''ble Apex Court in Sudesh Kumar''s case (supra) that an enquiry under Article 311(2)(b) is a rule

and dispensing with the enquiry is an exception. The authority dispensing with the enquiry under Article 311 (2)(b) must satisfy by recording

reasons as to why it is not reasonably practicable to hold an enquiry. In that case, the order of dismissal was set aside. The relevant portion of

judgment in the above said case is reproduced as under:-

11. It is now established principle of law that an inquiry under Article 311(2) is a rule and dispensing with the inquiry is an exception. The authority

dispensing with the inquiry under Article 311 (2)(b) must satisfy for reasons to be recorded that it is not reasonably practicable to hold an inquiry.

A reading of the termination order by invoking Article 311(2)(b), as extracted above, would clearly show that no reasons whatsoever have been

assigned as to why it is not reasonably practicable to hold an inquiry. The reasons disclosed in the termination order is that the complainant refused

to name the accused out of fear of harassment; the complainant, being a foreign national, is likely to leave the country and once he left the country,

it may not be reasonably practicable to bring him to the inquiry. This is no ground for dispensing with the inquiry. On the other hand, it is not

disputed that, by order dated 23rd December, 1999, the Visa of the complainant was extended upto 22nd December, 2001. Therefore, there was

no difficulty in securing the presence of Mr. Kenichi Tanaka in the inquiry.

12. A reasonable opportunity of hearing enshrined in Article 311(2)(b) of the Constitution of India would include an opportunity to defend himself

and establish his innocence by cross-examining the prosecution witnesses produced against him and by examining the defence witnesses in his

favour, if any. This he can do only if inquiry is held where he has been informed of the charges levelled against him. In the instant case, the mandate

of Article 311 (20 of the Constitution has been violated depriving reasonable opportunity of being heard to the appellant.

14. In the present case also, no reason whatsoever or findings have been recorded by the Punishing Authority as to why it was not practicably

possible to hold an enquiry. Simply it has been mentioned that the offence is serious and enquiry was not necessary to be conducted.

15. In view of the facts and the law position as discussed above, the present petition deserves to be allowed. Accordingly, the present writ petition

is allowed and impugned order of dismissal dated 11.11.2014 (Annexure P-3) is set aside. However, the respondents are at liberty, if so advised,

to hold regular enquiry against the petitioner by affording him a reasonable opportunity of hearing and thereafter, to pass fresh orders as may be

deemed fit and proper, in accordance with law.