(2004) 09 AHC CK 0250

Allahabad High Court

Case No: Civil Miscellaneous Writ Petition No. 15989 of 2002

Dharmendra Kumar Rai		APPELLANT
	Vs	
State of U.P. and Others		RESPONDENT

Date of Decision: Sept. 17, 2004

Acts Referred:

- Constitution of India, 1950 - Article 226, 311, 311(2), 311(3), 32
- Criminal Procedure Code, 1973 (CrPC) - Section 161
- Penal Code, 1860 (IPC) - Section 366, 395, 397, 412
- Uttar Pradesh Police Officers of Subordinate Ranks (Punishment and Appeal) Rules, 1991 - Rule 8, 8(2)

Citation: (2004) 5 AWC 5170 : (2005) 1 UPLBEC 1035

Hon'ble Judges: Sunil Ambwani, J

Bench: Single Bench

Advocate: U.N. Sharma and A.K. Bajpai, for the Appellant; Sandeep Mukherjee, Sandeep Misra and S.C., for the Respondent

Final Decision: Allowed

Judgement

Sunil Ambwani, J.
Heard Sri Anil Kumar Vajpayee for petitioner and learned Standing Counsel.

2. Under the directions of this Court, the Standing Counsel has produced the original record relating to the dismissal of petitioner''s services.

3. The petitioner was enrolled as Constable in Civil Police in 1987. At the relevant time in the year 1997-98, he was posted as Security Guard/Gunner to Mohammad Shami, who was at one time Block Pramukh, Mau Aima, District Allahabad. The petitioner was dismissed from service by the order dated 3.1.1998 passed by Senior Superintendent of Police, Allahabad in exercise of powers under Rule 8 (2) (b) of the U.P. Police Officers'' of Subordinate Ranks (Punishment and Appeal) Rules 1991 (in

short the Rules of 1991). The order was challenged in Writ Petition No. 1366/1998, which was allowed by this Court on 12.12.2000 and while setting aside the dismissal order, the Senior Superintendent of Police, Allahabad was directed to decide the matter afresh, and to give reasons on account of which it was not reasonably practical to hold a deparmental enquiry.

4. The Senior Superintendent of Police, Allahabad by his order dated 20.3.2002 reconsidered the matter and once again passed an order under Rule 8 (2) (b) of Rules of 1991, giving reasons this time, for not holding a departmental enquiry. It is stated in the order that a Criminal Case No. 390/1996 under Sections 395 : 397 : 366 and 412 IPC was registered against Mohd. Shami at Police Station, Naurahi, District Faizabad. At the time of commission of the offences, the petitioner Constable 1521 Civil Police was posted as Security Guard/Gunner of Mohammad Shamim Urf Shami and that in the investigation of the crime, it transpired that the petitioner was involved in the offences along with the accused. The applicant was thus found engaged in the serious crime along with criminals which amounts to gross negligence in performance of his duties as well as his criminal nature. The order states that where a member of the police force connives with the criminals and is found engaged in crime, he is not entitled to continue in police department in public interest. Such person is like a cancer to the police force and affects the image of the force. In case, any departmental enquiry is initiated, the applicant with his criminal nature will pressurize the witnesses and thus they will not come forward to record their statements. In these circumstances, the Senior Superintendent of Police, Allahabad recorded his satisfaction, that it was not reasonably practical to hold a departmental enquiry.

5. Learned Counsel for petitioner has confined his argument to the only ground taken in the writ petition that there was no material whatsoever to record the satisfaction that it was not reasonably practical to hold a departmental enquiry. Rule 8 of the Rules, 1991 is quoted as below :

"8. Dismissal and removal.-(1) No police officer shall be dismissed or removed from service by an authority subordinate to the appointing authority.

(2) No police officer shall be dismissed, removed or reduced in rank except after proper enquiry and disciplinary proceedings as contemplated by these rules :

Provided that this rule shall not apply:

(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 is satisfied that for some reason to be recorded by that authority, in writing, it is not reasonably practicable to hold such enquiry; or

(c) Where the Government is satisfied that in the interest of the security of the State, it is not expedient to hold such enquiry."

6. A perusal of the original record shows that a confidential information was received by the Senior Superintendent of Police, Allahabad, from Circular Officer-11, Allahabad dated 2.1.1998, that a Criminal Case No. 390/1996 under Sections 395 : 397 : 366 and 412, IPC has been registered against Mohammad Samim Urf Shami, at Police Station Raunahi, District Faizabad. The petitioner, Sri Dharmendra Kumar Rai, Constable 1521 Civil Police was posted as Security Guard/Gunner for the security of Former Block Pramukh Mohammad Samim Urf Shami in the year 1996 when he was posted in the Armed Police in District Allahabad in the year 1996. During the course of investigation, it has come to light that the said Constable is also involved in the crime along with Mohammad Shami and thus it establishes that the constable is handed in glove with the criminals and is involved with them in serious offences. This report was based upon a fax message received from the office of Senior Superintendent of Police, Faizabad dated 30.12.1997 by which it was reported that the aforesaid crime has been registered on a complaint made by the Driver of Truck No. HR-29-B-2155 carrying cigarettes from I.T.C. Munger to Chandigarh. The truck was apprehended by 6-7 persons in khaki uniforms at 04.00 hours in the night of 5/6.8.1997, these persons were carrying arms and used force to beat the complainant, cleaner Sri Madan, and Mistri Anil and left them in jungle near a village. The petitioner was named as accused No. 18 as Constable Civil Police HC Dharmendra Kumar Rai, Gunner of Mohammad Shami.

7. On the very next day after receiving information from Circle Officer, the Senior Superintendent of Police, Allahabad by his order dated 3.1.1998 dismissed petitioner from service under Rule 8(2)(b) of the Rules of 1991. The order was served upon the petitioner by passing at his permanent residence on 9.1.1998. The order was set aside by this Court on 12.12.2000 and that a fresh order was passed, without calling for any report or collecting any further material whatsoever. On the same material, which did not even include case diary or any evidence or material, which may have been collected by the police during the investigation of the crime, once again the order under Rule 8 (2) (b) of Rules of 1991 was passed by the Senior Superintendent of Police, Allahabad on 20.3.2002.

8. The original record shows that absolutely no effort was made to find out whether there was any material on record implicating the petitioner in the crime and the fact whether the petitioner was actually involved and was present at the time of commission of crime. Further there is nothing on record either in the shape of the report, note and any other material which could be the basis of the satisfaction about the implication of the petitioner in such crime and his connection with the criminals and that it will not be possible for the department to get evidence against him in the departmental enquiry.

9. In Union of India and Another Vs. Tulsiram Patel and Others, , the Supreme Court exhaustively considered the pari materia provisions of Article 311(2), and held as follows :-

"Thus, whether it was practicable to hold the inquiry or not must be judged in the context if 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 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 terrorized; 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 or 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 a case the Court will strike down the order, dispensing with the inquiry as also the order imposing penalty.

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 of 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 vigor and the Government Servant cannot complaint that he has been dismissed, removed or reduced in rank in violation of the safeguards provided by Article 311(2). 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 inquiry is not binding upon the Court. The Court will also examine the charge of malafide, 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 Court-Room, removed in time from the situation in question. Where two views are possible, the Court will decline to interfere."

10. In Bhola Nath Deobanshi v. Deputy Inspector General of Police, Kanpur and Anr. (2002) AWC 3507, this Court held in Para 10 as follows :

"10. The aforesaid conclusions have been followed in Deep Narain v. Deputy Inspector General, Gorakhpur (1994) 3 UPLBEC 1717 , Balvir Singh v. State of U.P. 1996 AWC 245 , Brijendra Singh Yadav Vs. State of U. P. and others, , Shiv Kumar, Mukhya Arakshi Vs. State of U.P. and another, and various cases which need not be reiterated. In Union of India v. Tulsi Ram Patel (supra), the power of judicial review

with regard to the material to justify dispensing of enquiry has been settled. The two conditions that there must exist a situation which runs holding of enquiry "not reasonably practicable" and the disciplinary authority recording in writing its reasons in support of its satisfaction, must be present to justify the order."

11. From perusal of the original record, I find that apart from the report received from the office of Senior Superintendent of Police, Faizabad, which intimated the fact of registration of an FIR in which the petitioner was one of the accused at Serial No. 18, there was absolutely no material, till the date the order was made, to record the finding of petitioner''s involvement in the crime and his complicity with the criminals or that the witnesses will not be available to depose against him in the departmental enquiry. The Senior Superintendent of Police, Allahabad did not cause any enquiry and did not even care to call for a case diary or the statement recorded by the police u/s 161 Cr. P.C. or any other material, which may have been collected during the investigation of the crime involving petitioner with the criminals.

12. The reasons given in the impugned order have been recited mechanical, and or without application of mind. There was no material available on record to justify the conclusion. While it is true that lately there are several reported instances in which officers of civil police are found involved with criminals and conniving with them in criminal activities, the extreme step of dismissing a police officer from service, cannot be justified unless there is some material, which may satisfy the competent authority, to arrive at a conclusing and record reasons that it is not reasonably practicable to hold a departmental enquiry. In such cases unless there is sufficient material to justify the extreme step of dismissing the officer from service, the exercise of powers under Rule 8 (2) (b) of Rules of 1991 must be avoided.

13. The writ petition is allowed. The order dated 20.3.2002 passed by Senior Superintendent of Police, Allahabad dismissing the petitioner from service under Rule 8 (2) (b) of Rules of 1991 is set aside. It will be open to the respondents to place the petitioner under suspension, and to initiate a departmental enquiry against him and in case the petitioner has been convicted in the crime, the Senior Superintendent of Police, Allahabad may proceed to take disciplinary action against the petitioner on such conviction under Rule 8 (2) (a) of the Rules of 1991. There shall be no order as to costs. Petition allowed.