Santosh Singh Vs State of U.P. and another

Court: Allahabad High Court

Date of Decision: Sept. 9, 2011

Acts Referred: Constitution of India, 1950 â€" Article 226, 311
Uttar Pradesh Police Officers of Subordinate Ranks (Punishment and Appeal) Rules, 1991 â€" Rule 8(2)

Citation: (2011) 9 ADJ 332 : (2012) 1 AWC 820

Hon'ble Judges: Krishna Murari, J

Bench: Single Bench

Final Decision: Allowed

Judgement

Hon"ble Krishna Murari, J.
Heard Sri Vijay Gautam, Learned Counsel for the petitioner and learned Standing Counsel for the State-

respondents.

2. By means of this petition filed under Article 226 of the Constitution of India, the petitioner has challenged the order dated 13.9.2007 passed by

the Superintendent of Police, Ballia dismissing him from service in exercise of powers conferred by Rule 8 (2) (b) of the U.P. Police Officers of

Subordinate Ranks (Punishment and Appeal) Rules, 1991 (hereinafter referred to as 1991 Rules) without holding a regular departmental enquiry

on the allegation that has obtained appointment by making forgery in his date of birth.

3. Facts, in short, giving rise to the dispute are as under:

Petitioner was selected and appointment on the post of Constable in Police Department on 26.6.2005. At the time of appointment, he submitted

his High School Certificate issued by the U.P. Board of High School and Intermediate which recorded his date of birth as 1.6.1986.

The Director General of Police, U.P. Lucknow vide confidential letter dated 26.9.2007 issued directions for reviewing the entire selection made in

the years 2004, 2005 and 2006 on some alleged irregularities being detected in holding the said selection. In compliance of the aforesaid direction

entire selection with respect to the recruits appointed in the said years and physical verification, educational qualification, date of birth, health

certificate and caste certificate etc. were reexamined and reverified. On reverification from the Regional Office, Varanasi of U.P. Board of High

School and Intermediate it was revealed that actual date of birth of petitioner was 10.6.1087. This alleged act of the petitioner was taken as

furnishing a forged certificate at the time of recruitment. The Superintendent of Police found that in such a situation, it was not in public interest to

allow the petitioner to continue in service. He further observed in the order that the petitioner had filled-in the form in his own writing and has also

undertaken that any information given in the application form is incorrect then his selection may be cancelled and whatever legal action can be

taken would be taken for which he has no objection. An affidavit was also filed by him to the effect that if any information was found incorrect after

his selection, the same may be cancelled.

The Superintendent of Police in his wisdom thought that it was not reasonably practicable to hold the enquiry and, therefore, invoking the

provisions of Rule 8 (2) (b) of the 1991 Rules dismissed the petitioner from service without giving him any opportunity of hearing and without

holding any enquiry.

4. It is submitted by the Learned Counsel for the petitioner that the correct date of birth of the petitioner is 1.1.1986 and was recorded as such in

the record of Dev Saran Purva Madhyamik Vidhyalaya, Barahara (Turna), District Ghazipur. Reference has been made to Annexure SA "1", the

transfer certificate issued by the institution which records his date of birth as 1.1.1986. However, in the High School Certificate his date of birth

was wrongly recorded as 10.6.1987 and when the fact came to the knowledge of the petitioner in the year 2004 he applied for its correction

before the Additional Secretary, Madhyamik Shiksha Parishad, U.P. and necessary corrections were made in the date of birth vide order dated

14.6.2004. Reference by the Learned Counsel for the petitioner has also been made to the corrected copy of the mark-sheet and certificate issued

by the U.P. Board of High School and Intermediate on 9.7.2004 filed as Annexure SA "2" which records his date of birth as 1.1.1986.

5. In the counter-affidavit, it has only been stated that on enquiry from the U.P. Board of High School and Intermediate it was verified that the date

of birth of the petitioner was 10th June, 1987 and thus, the appointment was obtained by furnishing a forged document and the same has rightly

been cancelled.

6. It is to be taken note of that specific averments made by the petitioner in his pleadings that after noticing that date of birth was wrongly

mentioned in the High School Certificate, on an application it was corrected vide order dated 14.6.2004 have not been denied by the respondents

and thus, the same are unrebutted. In case, the petitioner would have been afforded an opportunity, the fact would have come on record.

7. The question which arises for consideration is whether in such a situation the provisions of Rule 8 (2) (b) of 1991 Rules would have been

invoked by the authorities dismissing the petitioner from service dispensing the regular departmental enquiry and whether the impugned order of

dismissal fulfils the conditions precedent prescribed under the 1991 Rules for exercise of the said power.

Rule 8 (2) (b) of 1991 Rules reads as under:

8. (2) (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 inquiry.

8. The language of the aforesaid Rules is almost similar to 2nd proviso to Article 311 of the Constitution of India. Interpreting the provision of

Article 311 of the Constitution, Hon''ble Apex Court in the case of Union of India and Another Vs. Tulsiram Patel and Others, has observed as

under :

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.....

.....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 reasonably man taking a reasonably view of the prevailing situation.

It has further been held that 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 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.

It is obvious that the recording in writing of the reason for dispensing with the inquiry must proceed the order imposting the penalty.

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.

9. In Jaswant Singh Vs. State of Punjab and others, it has been held as under:

.....It was incumbent on the respondents to disclose to the Court the material in existence at the date of the passing of the impugned

order in support of the subjective satisfaction recorded by respondent No. 3 in the impugned order. Clause (b) of the second proviso to Article

311(2) can be invoked only when the authority is satisfied from the material placed before him that it is not reasonably practicable to hold a

departmental enquiry. This is clear from the following observation at page 270 of Tulsiram case (SCC P. 504, para 130).

A disciplinary authority is not expected to dispense with a disciplinary enquiry lightly or arbitrarily or out of ulterior motives or merely in order to

avoid the holding of an enquiry or because the department''s case against the Government servant is weak and must fail.

The decision to dispense with the departmental enquiry cannot, therefore, be rested solely on the ipse dixit of the concerned authority. When the

satisfaction of the concerned authority is questioned in a Court of law, it is incumbent on those who support the order to show that the satisfaction

is based on certain objective facts and is not the outcome of the whim or caprice of the concerned officer.

10. In Sudesh Kumar v. State of Haryana and others, (2005) 11 SCC 525, the Hon''ble Apex Court has observed as under:

It is now establish principle of law that an enquiry under Article 311(2) is a rule and dispensing with the enquiry under Article 311(2)(b) must

satisfy for reasons to be recorded that it is not reasonably practicable to hold an enquiry. 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 enquiry. The reasons disclosed in the termination order are 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 enquiry. This is no ground for dispensing with the enquiry. On the other hand, it is not disputed that, by order dated 23.12.1999, the visa of the

complainant was extended up to 22.12.2000. Therefore, there was no difficulty in securing the presence of Mr. Kenichi Tanaka in the enquiry.

A reasonable opportunity of hearing in Article 311(2) of the Constitution would include an opportunity to defent 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 enquiry is held where he has been informed of the charges leveled against him. In the instant case, the mandate of Article 311(2) of the

Constitution has been violated depriving reasonable opportunity of being heard to the appellant.

11. Same view has been taken by this Court in Special Appeal No. 1122 of 2001, State of U.P. and others v. Chandrika Prasad, decided on 19th

October, 2005 as well as in Special Appeal No. (647) of 2009, State of U.P. and others v. Santosh Kumar Gupta.

12. The law, thus, stands settled that it is only on a subjective satisfaction based on material on record, the authority after recording reason why it is

not practicable to hold the disciplinary enquiry, can invoke the powers conferred by Rule 8 (2) (b) of the 1991 Rules and dispense with the regular

departmental enquiry.

13. Learned Standing Counsel could not dispute the settled proposition of law by the aforesaid pronouncements.

14. A bare perusal of the impugned order goes to show that no reason has been recorded by the authority for invoking the power conferred by

Rule 8 (2) (b) of 1991 Rules and to dispense with the regular departmental enquiry. Even in the counter-affidavit filed on behalf of the respondents,

no such material has been brought on record on the basis of which, it could be said that the authority was satisfied that it was not reasonably

practicable to hold a regular departmental enquiry.

15. The charges leveled in the impugned order may form the basis for dispensing the services of the petitioner but only in case the same are

established in a regular departmental enquiry held in accordance with the procedure prescribed under the Rules. A mere charge against the

petitioner that he obtained appointment on the basis of forged and fabricated date of birth itself cannot constitute a reason for dispensing with the

regular departmental enquiry.

16. In view of the aforesaid facts and the settled legal position, I am of the considered view that order of dismissal passed against the petitioner

does not fulfill the requirement of Rule 8 (2) (b) of 1991 Rules and, therefore, cannot be sustained and is hereby quashed.

17. Writ petition stands allowed. The petitioner shall be reinstated back in service with all consequential benefits.

However, in the facts and circumstances, there shall be no order as to costs.