Number 710593832 C/DVR Nagendra Pathak Vs Union of India and Ors.

Court: Gauhati High Court

Date of Decision: May 4, 1994

Acts Referred: Central Reserve Police Force Act, 1949 â€" Section 11, 11
Central Reserve Police Force Rules, 1955 â€" Rule 27(6)(cc)(ii), 27(6)(cc)(ii)

Citation: (1994) 1 GLJ 522

Hon'ble Judges: J.N.Sarma, J

Bench: Single Bench

Advocate: P.Prasad, R.P.Kakati, P.Khataniar, Advocates appearing for Parties

Judgement

1. This application under Article 226 of the Constitution of India has been filed to quash the impugned orders dated 12.7.89 Annexure A; 18.8.89

Annexure B; 16.9.89 Annexure C and 16.9.89 Annexure D with a direction to the respondents to reinstate the petitioner in service with all

consequential benefits.

2. Annexure A is an order by the Additional DIG, CRPF, Guwahati by which the petitioner was placed under suspension with immediate effect in

contemplation of a departmental proceeding. This is dated 12th July, 1989.

3. Annexure B is an order dated 18th August, 1989 by the Additional DIOP, CRPF, Guwahati, this order is quoted below :

Whereas the said No. 710593832 Ct/Dvr Nagendra Pathak of this GC while functioning as Ct/Dvr committed an act of indiscipline in the

capacity as a member of the Force U/s 11 (I) of CRPC Act 1949 read with Rule 27 of CRPF Rules 1955 in that

(a) while he was attached with Base HospitalIII CRPF Gauhati for Mt duties, he outraged the modesty and unnaturally misbehaved with a minor

girl aged about 8 to 10 years in the toilet room of DMO of BHIII on 11.3.89 at about 1640 hrs. This act of indiscipline was seen by Dr. KKB

Dhemera GDO, Gr. I of BH III who was on duty.

2. And whereas I am satisfied that it is not reasonably practicable to hold a regular Departmental Enquiry into misconduct for the fact and

cirmumstances set out below :

(i) It would be highly prejudicial in the general interest and discipline of the Force.

(ii) I have met the parents of the child who have expressed their helplessness to come into open for witness because the life of the child (girl) will be

at a stake as the girl has developed a fear of panic in her mind. Also they will be confronted with social difficulties in arranging her marrige if it is

known to the people on his caste/area.

(iii) Dr. KKB Dhemera Medical Officer on duty at the relevant time has seen the misdeed committed by No. 710593832 Ct/D/r Nagendra Pathak

with the minor girl. There is no reason to disbelieve the report of Doctor. The delinquent No. 710593832 Ct/Dvr Nagendra Pathak has also

himself admitted his guilt.

3. And whereas I am satisfied that in the aforesaid facts and circumstances, invoking of the provisions of the Rule 27 (6) (cc) (ii) of the CRPF

Rules 1955 is only practicable and prudent course of action.

4. And whereas on a consideration of the facts and circumstances of the case and the degree of involvement of No. 710593832 Ct/Dvr.

Nageadra Pathak in the aforesaid acts of indiscipline and misconduct, I am satisfied that the penalty of dismissal from the Force would be adequate

punishment.

5. Now, therefore, in the exercise of the powers conferred by subrule 27 (6) (cc) (ii) of the CRPF Rules, 1955, I hereby order that No.

710593832 Ct/Dvr Nagendra Pathak of GC CRPF Gauhati be DISMISSED from service with immediate effect from the date of issue of this

order.

6. His period of suspension will be treated as such and he will not be entitled to draw any thing more than what he has already been paid by way of

subsistence allowance.

7. All medals and decorations earned by the said No. 710593832 Ct/Dvr Nagendra Pathak during his accountable service are hereby ordered to

be forfeited under the provisions of section 12(1) of CRPF Act,1949,

4. Annexure C is an order by the appellate authority rejecting the appeal refusing to interfere with the orders of the disciplinary authority.

5. Annexure D is another order of the appellate authority by the Inspector General of Police, NE Sector, CRPF, Shillong by which the further

appeal which was filed before the authority was rejected.

6. The brief facts are as follows : That petitioner was a Driver in CRPF. On 11.3.89 there was an incident as mentioned in Annexure B which is

quoted above. In connection with it, a suspension order dated 12.7.89 was passed. Subsequently, orders in Annexures B, C and D were passed.

7. An affidavitinopposition has been filed on behalf of the respondents and at the time of hearing Shri RP Kakati learned Advocate for the

respondents also produced before me the original record and I have perused the original record also.

8. Shri Prasad learned Advocate appearing for the petitioner submits as follows :

(i) That the order of dismissal cannot be passed in exercise of the power under section 11 of the Central Reserve Police Force Act.

(ii) That the exercise of power under Rule 27 (6) (cc) (ii) is also not proper.

(iii) That the enquiry should not have been dispensed with in exercise of the power under the Rule read with Article 311 (2) (b) of the Constitution.

Article 311 (2) (b) of the Constitution reads as follows :

311 (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.

9. Section 11 of the Central Reserve Police Force Act 1949 reads as follows :

11. Minor Punishments (1) The commandant or any other authority or officer as may be prescribed, may, subject to any rules made under this

Act, award in lieu of, or in addition to, suspension or dismissal any one or more of the following punishments to any member of the force whom he

considers to be guilty of disobedience, neglect of duty, or remissness in the discharge of any duty or of other misconduct in his capacity as a

member of the Force, that is to say

(a) reduction id rank :

(b) fine of any amount not exceeding one month''s pay and allowances;

(c) confinement to quarters, lines or camp for a term not exceeding one month;

(d) confinement in the quarter guard for not more than twenty eight days, with or without punishment drill or extraguard, fatigue or other duty; and

(e) removal from any office of distinction or special emolument in the force.

10. Rule 27 of the Central Reserve Police Force Rules, 1955 is in Chapter VI and the heading of the Chapter is discipline. Rule 27 (6) (cc) (ii)

reads as follows

27. (cc) (ii) Where the authority competent to impose the penalty is satisfied for reasons to be recorded by it in writing that it is not reasonably

practicable to hold any enquiry in the manner provided in these rules.

11. The argument of Shri Prasad is that section 11 deals with minor punishment and as such in exercise of this power, no order for suspension

and/or dismissal can be passed by the authority as was done in the instant case. This matter is not res integra as it came for consideration earlier

before the Courts. The points "in lieu of or ""in addition to suspension or dismissal"" appearing in subsection 1 of section 11 of the clauses (a) to (e)

so the authorities mentioned therein are empoweied to award punishment of dismissal or suspension to the member of the force in addition to or in

lieu of the manners of punishments mentioned in clauses (a) to (e). A perusal of sections 9, 10 and 11 of the Act would normally show that the

delinquent can be punished with dismissal even if he had not been prosecuted for an offence under section 9 or 10 of the Act.

12. It may be pointed out that section 9 of the Act mentions serious and heinous offence and also prescribes penalty which may be awarded for

them. Section 10 deals with less heinous offence. (See : (i) AIR 1965 Rajasthan 140 (Samsingh vs. DIG, CRPF), (ii) 1974 LIC 929 (J&K),

(Dindayal Yadav vs. DIG, CRPF).

13. So, this argument of Shri Prasad that no order of dismissal and/or suspension can be passed in exercise of the power under section 11, does

not hold good.

14. Next let us take up the question as to whether the exercise of power under Rule 27 (6) (cc) (ii) of the Rules is a valid exercise of power.

Article 311 (2) (b) came up for conideration before the Apex Court in a number of cases.

(i) In (1991) 1 SCC 362 (Jaswant Singh vs. State of Punjab & others), the Supreme Court pointed out as follows:

Ã¯Â¿Â½Clause (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

504, para 130)

A disciplinary authority is not expected to dispence 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 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 certaiu objective facets and is not the outcome of the whim or caprice of the concerned officer.

(ii) In (1985) 3 SCC 398 (Union of India vs. Tulsi Ram Patel), the Supreme Court pointed out as follows :

The condition precedent for the application of clause (b) of second proviso is the satisfaction of the disciplinary authority that "it is not reasonable

practicable to hold the inquiry contemplated by Article 311 (2). 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 inquiry is not practicable in the opinion of a reasonable man taking a reasonable view of the prevailing situation. The reasonable

practicality 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 and is the best judge of the situation.

A disciplinary authority is not expected to dispense with the 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. Arjun Chaubey vs. Union of India (1984)

2 SCC 578 : 1984 SCC (L&S) 290 : (1984) 3SCR 302, referred to.

It 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. It would also not

be reasonably practicable be 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 exparte 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 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).

(iii) In (1986) 2 SCC 112 (Shivaji Atmaji Sawant vs. State of Maharastra & others), the Supreme Court pointed out as follows :

The third contention was that the reasons for dispensing with the inquiry did not accompany the order. In Tulsiram Patel case this Court held that

the recording of the reason for dispensing with the inquiry is a condition precedent to the application of clause (b) of the second proviso and if such

reasons are not recorded in writing the order dispensing with the inquiry and the order of penalty following thereupon would both be void and

unconstitutional. The Court also held that though it was not necessary that the reasons should find a place in the final order imposing penalty, it

would be advisable to record them in the final order so as to avoid an allegation that the reasons were not recorded in writing before passing the

final order but were subsequently fabricated. What had happened in Sawant''s case was that either along with the order or soon thereafter reason

in writing for dispensing with the inquiry were served upon Sawant. A perusal of the reasons shows that they were recorded later. Were the

impugned order of dismissal one which merely imposed a penalty, it would have been bad and would require to be struck down in view of the

decisions in Tulsiram Patel case. The position is, however, different. The impugned order of dismissal itself sets out the reasons why it was not

reasonably practicable to hold the inquiry."" (Quoted from the head note)

(iv) In 1987 (Supp) SCC 164 (SJ Meshram vs. Union of India). There the order for which the inquiry was dispensed with has been quoted in

paragraph 2 of the judgment ie quoted below :

If the normal procedure of removal from service is followed, it is likely that the evidence may be destroyed and members of Manila Samiti being

lady folk may not come up to ad luce evidence for fear of threat and harassment. Further, it has also been proved beyond doubt that Sh. Meshram

has willfully lost the Bill Register which is the vital document to bring out the actual amount of misappropriation. I am, therefore, satisfied in this

particular case, it is not reasonably practicable to hold an inquiry in which he can be informed of charges against him and given a reasonable

opportunity of being heard in respect of these charges.

15. In view of that order, it was held by the Supreme Court that the grounds mentioned in paragraph 6 of the order altogether relevant and ex facie

for dispensing with the enquiry and the Supreme Court was satisfied that this is not a matter where a departmental enquiry on the charges levelled

against the petitioner is not reasonably practicable.

(v) In (1985) 4 SCC 252 (Satyavir Singh vs. Union of India & others) wherein the Supreme Court on consideration of a. number of cases

summarised the law laid down in Tulsi Ram Patel in paragraph 55 to 64. In paragraph 6 of the judgment and on the facts of that case held that the

power under clause (b) of the second proviso to Article 311 (2) and Rule 19 of the Central Civil Services (Classification, Control and Appeal)

Rules, 1965 were properly applied to the case of the appellants and the impugned orders of dismissal were validly passed against them.

16. It is settled law that in exercise of the power under Article 226, this Court cannot sit as an appellate authority for the reasons recorded by the

authority for dispensing with the inquiry. The power of this Court to look at the validity of the reasons is absolutely circumscribe. It can quash the

order by exercising the power for judicial review only when it does not comply with the requirement as laid down in the aforesaid cases. A perusal

of the facts of this case and on perusal of the original record will show that the petitioner Shri Nagcndra Pathak himself admitted his guilt by writing

in the complaint in his own hand writing in Hindi wherein he admitted that the incident occurred and he wanted mercy from the authority. This also

finds place in Annexure B to the writ application which has been quoted above. In the writ application nowhere it has been denied that this

petitioner did not make such an admission as mentioned in Annexure B. So, it must be held that he admitted the guilt. If the guilt is admitted by him,

the question of holding he inquiry does not arise. Further, the reasons which have been recorded for dispensing with the inquiry are also valid

reasons and they cannot be said to be irrelevant and exfacie inadequate for dispensing with the inquiry. Whether an inquiry is possible or not must

be judged by applying touchstone of a reasonable mind.

17. In the instant case, the authority having considered the entire materials and taking into consideration, the admission of the delinquent came to

the finding that holding of inquiry is not reasonably a practicable in the manner provided in the rules. There is a difference in the language of Article

311 (2) (b) and the present rules under consideration. The present rules show that it is not reasonably practicable to hold an inquiry in the manner

provided in these rules. The authority in consideration of the materials on record came to the finding that this is valid exercise of power.

18. In that view of the matter, there is no merit in this writ application and accordingly, the same is dismissed. I leave the parties to bear their own

costs.