

Jagdish Prasad Vs. State of U.P. and Another

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Court : Allahabad

Decided On : Oct-04-2012

Judge : Rajes Kumar

Appeal No. : Civil Misc. Writ Petition No. 1346 of 1998

Appellant : Jagdish Prasad

Respondent : State of U.P. and Another

Advocate for Pet/Ap. : Sri. Siddharth Khare

Judgement :

Rajes Kumar, J.

Heard Sri Siddharth Khare, learned counsel for the petitioner and Sri Pankaj Rai, learned Additional Chief Standing Counsel.

The petitioner was recruited as Constable in the year 1982 and was posted in the Provincial Armed Constabulary on 15.03.1982. The petitioner was transferred to the Civil Police in the year 1988 and was posted in district Budaun. Superintendent of Police, Budaun vide order dated 27.12.1997 dismissed the petitioner from service, which is impugned in the present writ petition. The dismissal order has been passed without making any inquiry exercising the power under Rule 8(2)(b) of U.P. Police Subordinate Rank (Punishment and Appeal), Rules, 1991 (hereinafter referred to as "Rules, 1991"), which gives power to the authority

concerned to award the punishment without inquiry after recording the reasons. In the impugned order, respondent recorded the reasons namely that the petitioner has been asked to arrest one Sri Aaram Singh, involved in case crime no.276 of 1997 under Section 302 I.P.C. but instead of arresting him he allowed him to run away, which establishes the misconduct and the collusion with the criminals, due to the aforesaid reasons the delinquent has been transferred to police lines and he threatened to use political pressure. Apart from this on account of his activity, the local police are in trouble and terror exist in the general public and in case, if he may remain there it may cause some incidence.

Learned counsel for the petitioner submitted that the reasons given for exercising the powers under Rule 8(2)(b) of Rules, 1991 and waiving the inquiry are not justified. The allegations are base-less and without any substance, inasmuch as the petitioner was always available for the interrogation and the inquiry could be made after following the proper procedure and, therefore, the impugned order is bad in law. He placed reliance of this Court in the case of Om Prakash Yadav Vs. State of U.P. and others, reported in 2012 (7) ADJ, 74. He further submitted that this Court while entertaining the writ petition has stayed the operation of the impugned order dated 27.12.1997 passed by Superintendent of Police, Budaun. The petitioner is still working.

Sri Pankaj Rai, learned Additional Chief Standing Counsel submitted that the reasons given in the impugned order for exercising the powers under Rule 8(2) (b) of Rules, 1991 are sufficient. Therefore, the impugned order is justified.

I have considered the rival submissions and perused the impugned order.

Rule 8(2)(b) of Rules, 1991 read as follows:

"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."

Rule 8(2)(b) of Rules, 1991 is exception to the general Rule to hold inquiry before the dismissal. Therefore, it has to adhere to strictly. Recording of reasons is a

condition precedent for violating Rule 8(2)(b) of Rules, 1991 and reasons must be genuine and germane to the material on record.

Merely because the delinquent's act was in the nature of misconduct which may lead to the dismissal or reduction in the rank may not be sufficient to waive the inquiry. The authority has to give the reasons why it is not possible or practicable to hold such inquiry.

In the present case the authority has only stated that the act of the delinquent amounts to misconduct but no reason has been given that why holding of inquiry was not practicable. Therefore, in my view, the order is not sustainable and is liable to be set aside.

Apex Court in the case of Om Prakash Yadav Vs. State of U.P. and others (Supra) held as follows:

"9. The Rule 8(2)(b) is para materia to second proviso to Article 311 of the Constitution of India. The clause (b) of the second proviso to Article 311 of the Constitution of India came to be considered in several Judgments of the Supreme Court. The Supreme Court in the case of Satyavir Singh v. Union of India, (1985) 4 SCC 252, has considered in detail the amendment of second clause of Article 311 of the Constitution by the Constitution (Forty-second Amendment) Act, 1976. The relevant portion of the Judgment in the case of Satyavir Singh (supra) at page 280 is as follows:

"(104) Where a clause of the second proviso to Article 311 (2) or an analogous service rule is applied on an extraneous ground or a ground having no relation to the situation envisaged in such clause or rule, the action of the disciplinary authority in applying that clause or rule would be mala fide and, therefore, bad in law and the Court in exercise of its power of judicial review would strike down both the order dispensing with the inquiry and the order of penalty following thereupon."

10. In the case of Jaswant Singh vs. State of Punjab, (1991) 1 SCC 362, the Supreme Court held that the decision to dispense the departmental inquiry is an exceptional case and the concerned authority must record its reason for its

satisfaction to dispense the disciplinary proceedings. The relevant part of the Judgment in the case of Jaswant Singh (supra) at page 369 is as under:

"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. In the counter filed by respondent 3 it is contended that the appellant, instead of replying to the show-cause notices, instigated his fellow police officials to disobey the superiors. It is also said that he threw threats to beat up the witnesses and the Inquiry Officer if any departmental inquiry was held against him."

11. The three division Benches of this Court in the Cases of State of U.P. and others v. Chandrika Prasad, 2006 (1) ESC 374, Pushpendra Singh and others v. State of U.P., 2008 (3) ADJ 689 (DB) and Yadunath Singh v. State of U.P. and others, 2009 (9) ADJ 86, have followed the principles laid down by the Supreme Court in the aforementioned cases. In the case of Pushpendra Singh (supra), this Court held as follows:

"Thus, in order to dispense with the regular departmental proceeding for inflicting punishment of dismissal, removal or reduction in rank, recording reasons is condition precedent. The idea or object of recording reasons is obviously to prevent arbitrary, ca-pricious and mala fide exercise of power. Therefore, recording of reason is mandatory and in its absence the order becomes laconic and cannot sustain. Onus is on the State or its authorities to show that the order of dismissal has been passed strictly as per prescription of the statutes. The Hon'ble Apex Court in the case of Union of India v. Tulsi Ram Patel, AIR 1985 SC 1416, while considering Articles 310 and 311 of the Constitution of India held that two conditions must be satisfied to uphold action taken under Article 311 (2) of the Constitution of India, viz., (i) there must exist a situation which renders holding of any enquiry not reasonably practicable, (ii) the disciplinary authority must record in writing its reasons in support of its satisfaction. The Hon'ble Apex Court further observed that though Clause (3) of Article 311 makes the decision of the

disciplinary authority in this behalf final, yet such finality can certainly be tested in the Court of law and interfered with if the action is found to be arbitrary or mala fide or motivated by extraneous considerations or merely a rule to dispense with the enquiry.

The satisfaction that it is not reasonably practicable to hold such enquiry has to be spelled out either in the order itself or at least it has to be available on record. Learned Standing Counsel also during his submission could not show us any such reason recorded by the competent authority in the record to show any ground or reason for invoking the provisions contained in Rule 8 (2)(b) of the Rules. It is well settled legal position that when a statutory functionary makes an order based on some reasons or grounds, its validity is to be tested on the ground or reasons mentioned therein and cannot be supplemented by giving reasons through affidavit filed in the case (See *Mohinder Singh Gill and another v. Chief Election Commissioner, New Delhi and others*, AIR 1978 SC 851, para 8)."

12. The similar view has been taken by the another Division Bench in *Yadunath Singh v. State of U.P. and others*, 2009 (9) ADJ 86. In the said case also the disciplinary proceeding was dispensed with without any plausible reason. The only reason mentioned in the order was that the departmental inquiry shall consume sufficient time and on the said ground the Rule 8(2)(b) was invoked. This Court set aside the order of the disciplinary authority and held as under:

"Here in the present case, the disciplinary authority had recorded its satisfaction but it is well settled that satisfaction has to be based on germane grounds and no ipse dixit of the disciplinary authority. Here the only ground to dispense with the inquiry is that if the writ petitioner-appellant is allowed to continue in service, a departmental inquiry shall consume sufficient time and, therefore, such continuance will have bearing on the moral of the other police personnel. We are of the opinion that the ground recorded by the disciplinary authority while dispensing with the inquiry is not germane nor is it on any material that may be relevant, as such, the ground set forth cannot justify dispensing the inquiry at all.

5. The provisions contained under Rule 8(2)(b) have been incorporated keeping in view the provisions of Article 311 (2)(b) of the Constitution of India. The power

conferred on the authority to dispense with an inquiry in a given situation where it is reasonably not practicable to hold an inquiry, has been envisaged therein. The Apex Court in the case of *Union of India and another v. Tulsiram Patel*, (1985) 3 SCC 298, had the occasion to consider the scope of the aforesaid provision and the Apex Court laid down the test of reasonableness in the said case to be reflected by the authority while proposing to dispense with an inquiry. Paragraph 130 of the said decision is reproduced below:

"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 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 terrorizes, 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 member of 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. The case of Arjun Chaubey v. Union of India, is an instance in point."

13. The aforesaid decision of the Division Bench have been followed in other cases namely Kuldeep Kumar vs. State of u.P. And others, 2011 (9) ADJ 23 (NOC); Dharam Pal Singh Chauhan v. State of U.P. and others, 2011 (4) ADJ 851; Gulabadhar v. State of U.P. and others, 2011 (5) ADJ 835; Ram Yagya Saroj v. State of U.P. and others, 2010 (4) AWC 3495; Umesh Kumar v. State of U.P. and others, 2009(5) ADJ 405 and Bishambher Singh Bhadoria v. State of U.P. and others, 2008(8) ADJ 566.

In the result, the writ petition is allowed. The impugned order dated 27.12.1997 passed by Superintendent of Police, Budaun is hereby quashed. It is open to the Superintendent of Police, Budaun either to pass a fresh order exercising powers under Rule 8(2)(b) of Rules, 1991 or to proceed for making an inquiry and thereafter, pass appropriate order in accordance to law.

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