

Ashish Kumar Vs. Superintendent of Police, (Railways)

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Court : Allahabad

Decided On : Aug-23-2002

Reported in : 2002(4)AWC3231

Judge : Sunil Ambwani, J.

Acts : Uttar Pradesh Police Officers of the Subordinate Ranks (Punishment and Appeals) Rules, 1991 - Rule 8(2); [Constitution of India](#) - Article 311(2)

Appeal No. : C.M.W.P. No. 19352 of 2001

Appellant : Ashish Kumar

Respondent : Superintendent of Police, (Railways)

Advocate for Def. : S.N. Srivastava and ;Ravi Ranjan, Advs. and ;S.C.

Advocate for Pet/Ap. : S.P. Pandey, ;R.G. Padia and ;Prakash Padia, Advs.

Disposition : Petition dismissed

Judgement :

Sunil Ambwani, J.

1. By this writ petition, petitioner has challenged orders passed by Superintendent of Police (Railways), Agra dated 17th February, 2001, by which petitioner has been dismissed from service as Constable Civil Police, posted in Government

Railway Police in exercise of powers under Rule 8 (2) (b) of Uttar Pradesh Police Subordinate Ranks (Punishment and Appeals) Rules, 1991 (in short Rules, 1991) which provides that a police officer of subordinate ranks, could be dismissed, removed or reduced in rank if the authority is satisfied that for reasons to be recorded in writing, it is not reasonably practicable to hold an enquiry.

2. I have heard Sri R.G. Padia, senior advocate, assisted by Sri Prakash Padia and Sri S.N. Shrivastva. Shri Ravi Ranjan, learned standing counsel for respondent.

3. Petitioner was appointed as constable in civil police on 1.8.1989. He joined duties in Government Railway Police in the year 1998. By an order dated 26.12.2000, petitioner was suspended on the charge of patronising criminals for committing crimes in trains and by sharing stolen property, and to benefit monetarily from such source. A preliminary enquiry was held in the matter on the affidavit given by one Sri Virendra Singh alias Pappu son of Vishram Singh, resident of village Kakraull Patti, Police Station Kamalganj, district Farrukhabad stating that the deponent was committing crime in trains during which he came into contact with two constables, namely, petitioner and Shailendra Singh and asked the deponent to involve his entire group for committing robberies in trains and to pay Rs. 50,000 per month to them. The deponent could not contact others, and thus by acting alone with the help of the two constables, he committed crimes and made payment of Rs. 5,000 to each constable within a week. Some other criminals, namely, Jabbar, etc., were involved in committing crimes in trains and had given stolen jewellery worth Rs. 40,000 to these constables. Subsequently, the same Virendra Singh retracted from the affidavit dated 27.5.2000 and submitted another affidavit dated 29.12.2000 stating that he was arrested by G.R.P., Agra on 20.5.2000 and was released after ten days. In between, he was taken to G.R.P., Agra, where he was forcibly required to sign on an affidavit. He denied that he has any contact with petitioner and Shailendra Singh. Both these affidavits were sent to the Deputy Superintendent of Police, Railways, Agra, for preliminary enquiry.

4. An enquiry report dated 26.2.2001 was submitted by the Deputy Superintendent of Police, Railways, Agra, after recording statements of Virendra Singh, Constable Gulbir Singh. P.S. G.R.P., Agra Fort, S.I. Mohd. Shafi ; Sri Ramesh Chandra Yadav, S.H.O., G.R.P., Agra Fort, Dinesh Kumar Dubey, Station Officer, P.S., G.R.P., Mathura Junction ; Head Constable 312 Pyarey Lal ; Constable 3178 Pooran Chandra. These police officials gave statements that Virendra alias Pappu was arrested on 23.5.2000 for offences punishable under N.D.P.S. Act. He admitted before C.O. that petitioner instigated him to commit crimes and assured to patronise him. S.I. Mohd. Shafi also stated that Virendra Singh had admitted before police officers that petitioner instigated crimes in trains, and that the offences were committed in the compartments of the trains on which petitioner, and Shailendra Singh were assigned duties. They were given golden Jewellery worth Rs. 20,000 and Rs. 5,000 by accused on two occasions. Constable Ashish Kumar petitioner was called before all the police personnel. He admitted the complicity before all of them and stated that constable Shailendra Singh had introduced him to the criminals. The report mentions that repeated crimes were being committed in trains by lifting suit-case after offering poisonous substance to the passengers. These crimes were committed with active connivance of constables on duty, and that it may not be possible to get witnesses to prove patronage and complicity of the constables. Petitioner and his colleague Shailendra Singh failed to maintain safety and security of passengers in running trains and Instead of taking preventive measures to arrest criminals, petitioner instigated them to commit crimes and that appropriate action may be taken against him. On the aforesaid report, Superintendent of Police, Railways, Agra, was prima facie satisfied that evidence may not be available against petitioner and thus it was not reasonable and practicable to hold an enquiry. He as such dismissed the petitioner from service by making a reasoned order giving the aforesaid facts, invoking Rule 8 (2) (b) of the Rules, 1991.

5. Sri R.G. Padia, senior advocate, assisted by Sri Satya Prakash Pandey, has challenged impugned orders on the ground that no enquiry was made on the charges levelled against petitioner. The material, on which the competent authority recorded its satisfaction for not holding enquiry, was not sufficient. Virendra Singh withdrew his earlier affidavit, making complaint against petitioner. There was no

material on record to connect petitioner with criminals. The affidavit against petitioner was obtained while Virendra Singh was in police custody. It is further submitted that the other constable Shailendra Singh, facing same allegations, was transferred, and that the petitioner was singled out arbitrarily for punishment of dismissal from service. He has relied upon State of Orissa and Ors. v. Dinabandhu Behera and Ors., (1997) 10 SCC 383 and Ex. Constable Chhote Lal v. Union of India and Ors., 2000 SCC (L & S) 315.

6. In Union of India v. Tulsi Ram Patel, 1985 (3) SCC 398, the Supreme Court has exhaustively considered the 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 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. 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 members 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.

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 or 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 enquiry 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 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).

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 mala fides, 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 the courtroom, removed in time from the situation in question. Where two views are possible, the Court will decline to interfere.'

7. In the present case, initially petitioner was suspended on the same allegations. A preliminary enquiry was conducted in which recommendations were made on 10.2.2001 to keep watch over his activities. A second affidavit was given by Virendra Singh to the Superintendent of Police, Railways, Agra, denying the aforesaid statements to the police officers. All the aforementioned police personnel gave statements that petitioner and one Shailendra Singh were involved in forming a gang and in patronising criminals to commit crimes in trains and to share in the booty. A perusal of statements of those police personnel shows that petitioner and Shailendra Singh were involved with criminals in committing crimes in trains and that it was not feasible to collect direct evidence of their complicity. In case the departmental authority is satisfied from the material available on record that it is not reasonably practicable to procure evidence in support of the charge, the satisfaction can only be challenged where there is no material, or the material is

not relevant for consideration. All the police personnel examined by the Deputy Superintendent of Police supported the allegations against petitioner. In my opinion, there was sufficient material on record to support the fact that the petitioner was actively involved in forming a gang and harbouring the criminals for committing crimes in trains on which he was assigned duty ; that it was not possible to procure direct evidence against his complicity and that in the prevailing situation, the enquiry was rightly dispensed with. In the gravity of the situation and in public interest, the only possible course of action available was followed by the disciplinary authority. There is no pleading nor any submission was advanced that there was any ulterior motive or mala fides in taking the action. The order dismissing the petitioner states the facts and reasons in great detail Justifying the invocation of Rule 8 (2) (b).

8. Dr. R.G. Padia, senior advocate, next submitted that Virendra Singh had retracted from his deposition made in his first affidavit, and that in any case, an affidavit procured in police custody should not have been relied upon by the competent authority. From the inquiry report, I find that affidavit of Virendra Singh alias Pappu was not the only material, which was made subject-matter of recording satisfaction. After taking statement of those police personnels, who had occasion to witness the circumstances and also the examination of Virendra Singh alias Pappu, the competent authority came to the irresistible conclusion that it may not be possible to obtain direct evidence of petitioner's complicity and that immediate steps were required to stop the activity to save any further damage to reputation of Railway Police.

9. In the facts and circumstances of the case, I am satisfied that there was sufficient material on record to form an opinion according to the provisions provided under Rule 8 (2) (b) of Uttar Pradesh Police Officers of the Subordinate Ranks (Punishment and Appeals) Rules, 1991. The decisions, cited by Dr. R.G. Padia are not applicable in the present case. In *State of Orissa and Ors. v. Dinabandhu Behera and Ors.* (supra), it was held that there was no material at all to form an opinion. In *Ex. Constable Chhote Lal v. Union of India and Ors.* (supra), the Court held that on the facts the exercise of power was not justified. The facts, however, have not been given in the report. The facts leading to such conclusion

are distinguishable, and as such I have taken recourse to the principles of law elucidated in Tulsi Ram Paters case.

10. The writ petition has no force and it is accordingly dismissed. There shall be no order as to costs.

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