

Court No. - 18

Case :- WRIT - A No. - 16110 of 2016

Petitioner :- Veer Vikram Singh

Respondent :- State Of U.P. Thru Prin.Secy.Home Govt.Of
Up Lko. And Anr.

Counsel for Petitioner :- Nikita Mishra

Counsel for Respondent :- C.S.C.

Hon'ble Manish Kumar,J.

1. Heard Ms. Nikita Mishra, learned counsel for the petitioner and learned Standing Counsel for the State.
2. The present writ petition has been filed for quashing of the impugned dismissal order dated 18.04.2016 passed by respondent no. 2/Senior Superintendent of Police (S.T.F.), Lucknow and with a further prayer to direct the respondents to reinstate the petitioner in service and to pay him salary regularly every month alongwith all consequential benefits.
3. Learned counsel for the petitioner has submitted that the petitioner was initially appointed as Constable in Civil Police in the year 1997. On 17.04.2016, an FIR was lodged against the petitioner under Section 3/25 of the Arms Act, 1959.
4. It is further submitted that the petitioner is a member of the S.T.F. Team and arrested several smugglers and has been part of several missions conducted by the S.T.F. and for his excellent work, a medal along with appreciation letter was also awarded to him.
5. It is further submitted that on the basis of the FIR, which is totally frivolous, the petitioner has been dismissed from services vide order dated 18.04.2016 without providing any opportunity of hearing to the petitioner and without complying with Rule 8 of U.P. Police Officers of the Subordinate Ranks (Punishment and Appeal) Rules, 1991 (hereinafter referred to as 'the Rules, 1991') and against Article 311(2) of the Constitution of India.
6. It is further submitted that the impugned dismissal order has been passed under Rule 8(2)(b) of the Rules, 1991 read with Article 311(2)(b) of the Constitution of India, which empowers the authority 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 whereas in the impugned order of dismissal, but neither any reason has been assigned by the respondent nor any satisfaction has been recorded by the respondent showing or to establish that

the departmental enquiry against the petitioner is not reasonably practicably possible and in support of his submission, learned counsel for the petitioner has relied upon the judgment of the Hon'ble Apex Court as well this Court in the cases of ***Union of India and another v. Tulsiram Patel; AIR 1985 SC 1416, Chief Security Officer and others v. Singasan Rabi Das; 1991 (1) SCC 729, Jaswant Singh Vs. State of Punjab and others; (1991) 1 SCC 362, Bishambher Singh Bhadoria Vs. State of U.P. and others; 2008(4) ESC 2872 All, Sudesh Kumar v. State of Haryana and others; (2005) 11 SCC 525, Raksh Pal Singh Vs. State of U.P. and another; 2009 (5) ADJ 735 and Yadunath Singh Vs. State of U.P. and others; 2009 (9) ADJ 86 (DB)*** in which Courts have held that even if reason is assigned that has to be based on germane grounds and not *ipse dixit* of the disciplinary authority. It has to be supported by the evidence.

7. On the other hand, learned Standing Counsel has submitted that the petitioner was involved in so many illegal and criminal activities, the continuance in the police services is detrimental in the public interest and the alleged illegalities committed by the petitioner has been mentioned in the impugned dismissal order but very fairly conceded as per the averment made in the counter affidavit that no reason has been assigned or recorded in the impugned order as required under Rule 8(2)(b) of the Rules, 1991 that an enquiry in the matter was not practically possible.

8. After hearing learned counsel for the parties, going through the record of the case and the judgments relied upon by the learned counsel for the petitioner, it has come out that the impugned dismissal order has been passed by mentioning therein the alleged involvement of the petitioner in illegal and criminal activities which is the foundation of the dismissal of the petitioner.

9. From perusal of the impugned dismissal order, the respondent no. 2 who has passed the impugned dismissal order has not recorded any satisfaction on the basis of the evidence to show that the enquiry against the petitioner is not reasonably practicable. For convenience, Rule 8(2)(b) of the Rules, 1991 & Article 311(2)(b) of the Constitution of India reads as under:-

Rule 8(2)(b) of the Rules, 1991

"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."

Article 311 (2)(b) of Constitution of India

"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."

10. By perusal of Rule 8(2)(b) of Rules, 1991 as well as Article 311 (2)(b) of Constitution of India, it is absolutely clear that while dispensing with the inquiry, it is necessary to record reasons in writing, that it was not reasonably practicable to hold such enquiry.

11. Apex Court in the matter of **Tulsiram Patel (Supra)** has considered and ruled that while dispensing with the inquiry it is incumbent upon the authority to record reasons as to why inquiry is reasonably not practicable to hold. Relevant paragraph is being quoted hereinbelow:-

"The language precedent for the application of clause(b) 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 reasonable man taking a reasonable view of the prevailing situation."

".....The reasonable practicability of holding an inquiry is a matter of assessment to be made by the disciplinary authority."

".....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."

12. The Hon'ble Supreme Court further held:-

"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 precede the order imposing the penalty."

13. The Supreme Court further went on to say:-

"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."

14. In **Chief Security Officer (Supra)**, the Supreme Court held that there was a total absence of sufficient material or good ground for dispensing with the inquiry and

accordingly held that the order of termination dispensing with the inquiry was illegal.

15. In the matter of **Jaswant Singh (Supra)**, the Supreme Court held:-

"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 place before him that it is not reasonably practicable to hold a departmental inquiry."

16. The Supreme Court further held:

"The decision to dispense with the departmental inquiry 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 of caprice of the concerned officer."

17. In the matter of **Sudesh Kumar (Supra)**, the Supreme Court observed as follows:-

"It is now established principle of law that an inquiry under Article 311(2) is a rule and dispensing with the inquiry is an exception. The authority dispensing with the inquiry under Article 311(2)(b) must satisfy for reasons to be recorded that it is not reasonably practicable to hold an inquiry. 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 inquiry. 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 inquiry. This is no ground for dispensing with the inquiry. 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 inquiry."

A reasonable opportunity of hearing enshrined in Article 311(2) of the Constitution would include an opportunity to defend 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 inquiry is held where he has been informed of the charges levelled 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."

18. Following the judgment of Apex Court in the matter of **Raksh Pal Singh (Supra)**, this Court observed as follows:-

"10. In the present case the order passed by the Superintendent of Police, Badaun does not give any reason as to why it was not reasonable practicable to hold the inquiry. The impugned order merely refers to the charges leveled against the petitioner but is delightfully vague about the statutory requirement contained in the second proviso to Rule 8(2) of the 1991 Rules relating to dispensing with the inquiry. In such circumstances, the order dated 19th January, 2001 passed by the Superintendent of Police cannot be sustained."

19. From the perusal of the judgments referred hereinabove and the statutory provisions i.e. Rule 8(2)(b) of the Rules, 1991 & Article 311(2)(b) of the Constitution of India, it is very much clear that the dismissal order cannot be passed without holding the enquiry against the petitioner by simply referring Rule 8(2)(b) of the Rules, 1991 read with Article 311(2)(b) of the Constitution of India in the impugned order without recording reasons of satisfaction that it was not practicable to hold the enquiry.

20. In view of the discussions made hereinabove, the impugned order of dismissal dated 18.04.2016 passed by respondent no. 2/Senior Superintendent of Police (S.T.F.), Lucknow is hereby quashed.

21. In the result, the writ petition is allowed.

22. The respondent no. 2/Senior Superintendent of Police (S.T.F.), Lucknow is directed to reinstate the petitioner with all consequential benefits, if there is no other legal impediment, leaving it open to the respondents to proceed with departmental enquiry, in accordance with law, if they so advised.

Order Date :- 10.1.2024
Nitesh