

THE HIGH COURT OF TRIPURA
AGARTALA

WP(C) 301 of 2010

Sri Jyotilal Debnath

Son of Late Raghunath Debnath
Resident of village- Tulamura,
P.O.- Jitendra Nagar, P.S.- R.K. Pur,
South Tripura District.

.....Petitioner.

- V e r s u s -

- 1. The Union of India,**
Represented by the Secretary,
Home Department, Govt. of India,
C.G.O. Complex, Lodhi Road.
New Delhi-110001.
- 2. The IG of Police,**
Cobra Section, CRPF, Old Secretariat,
Civil Line, Delhi, -54
- 3. The Commandant,**
204 COBRA Bn, Shivpuri(MP)
P.O.- Shivpuri.

.....Respondents.

BEFORE
HON'BLE THE CHIEF JUSTICE MR. DEEPAK GUPTA
THE HON'BLE MR. JUSTICE S. TALAPATRA

For the petitioner	: Mr. Somik Deb, Advocate
For the respondents	: Mr. A. Roy Barman, CGC
Date of hearing	: 29.6.2015
Date of judgment	: 13.10.2015
Whether fit for reporting	: NO.

JUDGMENT & ORDER

(Deepak Gupta, C.J.)

By means of this writ petition, the petitioner has prayed for quashing the order dated 31.8.2009 whereby his services were terminated under Section 11 of the Central Reserve Police Force Act, 1949 read with Rule 27(cc)(ii) of the Central Reserve Police Force Rules, 1955 and his name has been directed to be struck off from the strength of the Unit. The appeal filed by the petitioner before the Inspector General of Police, COBRA Section, CRPF, New Delhi was dismissed on 31.8.2009.

2. At the outset, we may deal with one preliminary objection raised by Sri A. Roy Barman, learned CGC that this Court has no territorial jurisdiction to deal with this issue. A number of judgments for and against were cited by the parties. We, however, refrain from going into a detailed discussion on this aspect of the matter because we are clearly of the view that in view of the fact that the petition was entertained in the year 2010 and we are now in the year 2015 this petition should not be rejected on a technical ground. While taking such a decision, we are also taking into consideration the fact that the CRPF is adequately represented and we rely upon the judgment of the Apex Court in ***Dinesh Ch. Gahtori Vs. Chief of Army Staff and Anr., (2001) 9 SCC 525*** to reject this contention of the respondent.

3. Coming to the merits of the case, the circumstances leading to the dismissal of the petitioner are that he was serving in 204 COBRA unit of the CRPF and was posted at Shivpuri in Madhya Pradesh. The petitioner was deputed to undergo specialized training program w.e.f. 10.8.2009 at Shivpuri in Madhya Pradesh along with many other CRPF personnel. On 23.8.2009 about 200 personnel of the CRPF were allowed to leave the camp to go to the local market to buy necessities and to withdraw cash from the ATM and to do such similar work. They were granted permission to remain out of the camp from 11.00 a.m. to 3.00 p.m. on 23.8.2009 since it was a Sunday. According to the authorities, all these men were instructed to come back in time and not to consume liquor or bring liquor inside the camp.

4. It is further alleged that on 23.8.2009 at 4.00 p.m. check roll call was conducted. Some of the personnel who had gone to the market were found to be drunk. One Sri A.K. Bharti, Second - in-Command ordered that the drunk personnel be got medically examined so that suitable disciplinary action could be taken against them. One of these drunk personnel was Constable Raben Kalita. According to the petitioner, Raben Kalita was beaten up by A.K.Bharti and other officers of the CRPF. The case of the department is that Raben Kalita instead of complying with the orders caught hold of a telephone wire and tried to commit suicide in full view of the assembly in which check roll call was being conducted. There were almost 600 personnel in the assembly. On seeing Raben Kalita

attempting to commit suicide SI U.P. Singh with some other Subordinate Officers rushed to save Raben Kalita who fell down. According to the CRPF, some of the men who were in the assembly felt that Raben Kalita was being manhandled by the officers of the CRPF. We are not going into the merits of this allegation one way or the other because in writ jurisdiction we are not sitting in appeal over the findings of fact.

5. The contentious points arise hereinafter. The stand of the department is that the petitioner Ct. Jyotilal Debnath along with Ct. Sanjoy Singha and Ct. Anil Kumar Singha emerged as ring leaders and they along with Raben Kalita incited the personnel of the Unit who were present in the roll call and led a mutiny against the officers. On account of this action of the petitioner and three other, the other members of the constabulary became unruly, turned berserk and ransacked the office and residence of 2 I/C A.K. Bharti. The men of the CRPF, thereafter, attacked the residential accommodation of other officers and pelted stones on the senior officers. Some of the officers had to flee the spot to save their lives while some officers tried to pacify the ring leaders and the other members of the force. The Deputy Commandant Sri Akhilesh Kumar Yadav received serious injuries due to pelting of stones. According to the respondents, this situation continued for about an hour.

6. Keeping in view these facts, the Commandant of 204 Battalion, CRPF passed an order on 31.8.2009 holding that it is not reasonably practicable to hold disciplinary inquiry in the matter. Therefore, in exercise of the powers conferred under section 11 of the CRPF Act, 1949 read with Rule 27(cc)(ii) of the CRPF Rules, 1955 Ct. Sri Sanjoy Singha, Ct. Sri Anil Kumar Singha, Ct. Sri Jyotilal Debnath the petitioner and Ct. Sri Raben Kalita were dismissed from service and their names struck off from the strength of the Unit. This order was challenged by the petitioner by filing an appeal which has also been dismissed by the Inspector General of Police, COBRA section CRPF on 02.11.2009.

7. The main argument raised on behalf of the petitioner is that the services of the petitioner have been terminated without holding any inquiry and complying with the principles of natural justice and, therefore, the two orders be set aside.

8. Before dealing with the submission of Sri Somik Deb, learned counsel for the petitioner, we may make reference to certain provisions of the CRPF Act. Section 9 deals with heinous offences and we may make reference to Section 9(a) and (b) which read as follows:-

***“9. More heinous offences.-Every member of the Force who-
(a) begins, excites, causes or conspires to cause or joins in any mutiny, or, being present at any mutiny, does not use his utmost endeavour to suppress***

it, or knowing, or having reason to believe in, the existence of any mutiny, or of any intention or conspiracy to mutiny or of any conspiracy against the State does not, without delay, give information thereof to his superior officer; or

(b)uses, or attempts to use, criminal force to, or commits an assault on, his superior officer, whether on or off duty, knowing or having reason to believe him to be such; or

.....”

Therefore, the alleged act of the petitioner was a heinous offence covered both under Section 9(a) and (b).

Section 11 deals with minor punishment and it empowers the Commandant of the CRPF to award, in addition to the penalty of dismissal, any one or more punishments.

9. Rule 27 of the CRPF Rules, 1955 deals with discipline in the Force and the Commandant in terms of Rule 27 is entitled to dismiss or remove from the Force all constables and enrolled followers. However, it is also provided that this penalty is to be inflicted after formal departmental inquiry. Rule 27(cc)(ii) with which we are concerned reads as follows:-

“27.(cc)Notwithstanding anything contained in this rule-

***.....
(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 an inquiry in the manner provided
in these rules; or
.....”*

This provision empowers the authority competent to impose such penalty without holding an inquiry in case the authority is satisfied, for reasons to be recorded in writing, that it is not reasonably practicable to hold such an inquiry.

10. In this case the Commanding Officer has come to the conclusion that it was not possible to hold such an inquiry but this decision is under challenge before us. The language of Rule 27(cc) (ii) is *paramateria* similar to the language of the second proviso to Article 311(2) of the Constitution of India. Therefore, we may make reference to some of the decisions cited by the learned counsel for the parties.

11. A Constitution Bench of the Apex Court in ***Union of India and Another Vs. Tulsiram Patel, (1985) 3 SCC 398*** dealt with the second proviso to Article 311(2) and held that this proviso specifically excludes the rules of natural justice and the *audi alteram partem* rule. The relevant observations of the majority decision are as follows:-

“101. Not only, therefore, can the principles of natural justice be modified but in exceptional cases they can even be excluded. There are well-defined exceptions to the nemo judex in causa

sua rule as also to the audi alteram partem rule. The nemo judex in causa sua rule is subject to the doctrine of necessity and yields to it as pointed out by this Court in J. Mohapatra & Co. v. State of Orissa. So far as the audi alteram partem rule is concerned, both in England and in India, it is well established that where a right to a prior notice and an opportunity to be heard before an order is passed would obstruct the taking of prompt action, such a right can be excluded. This right can also be excluded. Where the nature of the action to be taken, its object and purpose and the scheme of the relevant statutory provisions warrant its exclusion; nor can the audi alteram partem rule be invoked if importing it would have the effect of paralysing the administrative process or where the need for promptitude or the urgency of taking action so demands, as pointed out in Maneka Gandhi case at page 681. If legislation and the necessities of a situation can exclude the principles of natural justice including the audi alteram partem rule, a fortiori so can a provision of the Constitution, for a Constitutional provision has a far greater and all-pervading sanctity than a statutory provision. In the present case, clause (2) of Article 311 is expressly excluded by the opening words of the second proviso and particularly its keywords "this clause shall not apply" As pointed out above, clause (2) of Article 311 embodies in express words the audi alteram partem rule. This principle of natural justice having been expressly excluded by a

Constitutional provision, namely, the second proviso to clause (2) of Article 311, there is no scope for reintroducing it by a side-door to provide once again the same inquiry which the Constitutional provision has expressly prohibited. Where a clause of the second proviso is applied on an extraneous ground or a ground having no relation to the situation envisaged in that clause, the action in so applying it would be mala fide, and, therefore, void. In such a case the invalidating factor may be referable to Article 14. This is, however, the only scope which Article 14 can have in relation to the second proviso, but to hold that once the second proviso is properly applied and clause (2) of Article 311 excluded, Article 14 will step in to take the place of clause (2) would be to nullify the effect of the opening words of the second proviso and thus frustrate the intention of the makers of the Constitution. The second proviso is based on public policy and is in public interest and for public good and the Constitution-makers who inserted it in Article 311 (2) were the best persons to decide whether such an exclusionary provision should be there and the situations in which this provision should apply.”

The Apex Court, however, held that the inquiry could be dispensed with only when one of the three Clauses of the second proviso of Clause 2 of Article 311 were satisfied. In this behalf the relevant observations of the Apex Court are as follows:-

***“44.
When a situation as envisaged in one of the three clauses of the second proviso to clause (2) of Article 311 arises and the relevant clause is properly applied and the disciplinary inquiry dispensed with, the concerned government servant cannot be heard to complain that he is deprived of his livelihood. The livelihood of an individual is a matter of great concern to him and his family but his livelihood is a matter of his private interest and where such livelihood is provided by the public exchequer and the taking away of such livelihood is in the public interest and for public good, the former must yield to the latter. These consequences follow not because the pleasure doctrine is a special prerogative of the British Crown which has been inherited by India and transposed into our Constitution adapted to suit the Constitutional set- up of our Republic but because public policy requires, public interest needs and public good demands that there should be such a doctrine.”***

12. In ***Tulsiram Patel’s*** case the Apex Court also held as follows:-

“130. 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. What is pertinent to note is that the words used are "not reasonably practicable" and not 'impracticable'. According to the Oxford English Dictionary 'practicable' means "Capable of being put into practice, carried out in action, effected, accomplished, or done; feasible". Webster's Third New International Dictionary defines the word 'practicable' inter alia as meaning "possible to practice or perform: capable of being put into practice, done or accomplished: feasible". Further, the words used are not "not practicable" but "not reasonably practicable". Webster's Third New International Dictionary defines the word 'reasonably' as "in a reasonable manner: to a fairly sufficient extent". 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 intimidate

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. The case of Arjun Chaubey v. Union of India is an instance in point. In that case, the appellant was working as a senior clerk in the office of the Chief Commercial Superintendent, Northern Railway, Varanasi. The Senior Commercial Officer wrote a letter to the appellant calling upon him to submit his explanation with regard to twelve charges of gross indiscipline mostly relating to the Deputy Chief Commercial Superintendent. The appellant submitted his explanation and on the very next day the Deputy Chief Commercial Superintendent served a second notice on the appellant saying that his explanation was not convincing and that another chance was, being given to him to offer his explanation with respect to those charges. The appellant submitted his further explanation but on the very next day the Deputy Chief Commercial Superintendent passed an order dismissing him on the ground that he was not fit to be retained in service. This Court struck down the order holding that seven out of twelve charges related to the conduct of the appellant with the Deputy Chief Commercial Superintendent who was the disciplinary authority and that if an inquiry were to be held, the principal witness for the Department would

have been the Deputy Chief Commercial Superintendent himself, resulting in the same person being the main accuser, the chief witness and also the judge of the matter.”

13. Thereafter, the Apex Court in ***Jaswant Singh Vs. State of Punjab and Others, (1991)1 SCC 362*** held as follows:-

*“5.
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.....”*

14. Thereafter, in ***Chandigarh Administration, Union Territory, Chandigarh and Others Vs Ajay Manchanda and Others, (1996) 3 SCC 753*** the Apex Court dealing with the issue as to when disciplinary inquiry could be dispensed with held as follows:-

“12. We shall first take up the case against Ajay Manchanda. It was December 1993. The complainant Swaran Singh @ Makhan Singh was one of the persons named as accused in the FIR. He was arrested. Admittedly, the respondent was one of the officers investigating the said case. Swaran Singh complained to the SSP of extortion and the

continuing harassment by the respondent. The SSP ordered an enquiry through the DSP who reported that the complaint is true. The DSP reported expressly that the complainant and other witnesses "are so terrorised by the threats given by SI Ajay Manchanda that they have expressed their inability to pursue the matter in the court of law or in any other enquiry against him. They are so terrorised that they have even explained their inability to make any formal statement before me. Keeping in view the above circumstances when the complainant and other witnesses are so terrorised and panic-stricken that they are not willing to come forward the departmental enquiry shall also not serve any purpose". On the basis of the said report, the SSP was satisfied that it was "not reasonably practicable in view of threats and witnesses' inability to come forward to depose against the delinquent officer due to threats of elimination" and accordingly passed the order of dismissal. On the basis of the material placed before us-we have also perused the original record which was placed before us by Ms Kamini Jaiswal pursuant to our direction -it is not possible for us to say that there were no reasonable grounds or relevant material before the SSP for being satisfied that in the circumstances and the situation then obtaining, it was not reasonably practicable to hold a disciplinary enquiry against the

respondent. No one would come forward to depose. The requirement of recording of reasons is also satisfied in this case. Indeed, the dismissal order itself incorporates the reasons. We have also looked into the report of the DSP and the relevant record."

Reliance has also been placed on the judgment of the Apex Court in ***Ex. Constable Chhote Lal Vs Union of India and Others, (2000) 10 SCC 196***. However, that decision is not applicable to the facts and circumstances of the present case.

15. Appealing the law laid down by the Apex Court we can come to the conclusion that normally inquiry/disciplinary proceedings must be conducted and an inquiry must be held against the employee. However, where the authority is satisfied that it is not practicable to hold an inquiry on any of the 3(three) grounds set out in Rule 27(cc)(ii) or second proviso to Article 311 the Court can look into the matter as to whether this decision is a reasonable decision or not.

The first ground under which an enquiry may be dispensed is where a person is dismissed or removed on the ground of mis-conduct which has led to his conviction on a criminal charge. Since the case has been proved in criminal proceedings it is not necessary to hold an inquiry and the employee can be dismissed on the basis of the judgment delivered by the criminal Court without holding an inquiry.

The second ground applies when the disciplinary authority is satisfied for some reason to be recorded in writing that it is not practicable to hold such inquiry.

The third ground is when the President or the Governor is satisfied that in the interest of the security of the State it is not expedient to hold such inquiry.

We are here concerned only with the second clause where the disciplinary authority is satisfied for the reasons to be recorded in writing, that it is not practicable to hold an inquiry.

16. We have perused the entire record which has been produced before us. The occurrence took place and on 23.08.2009. On the same day itself, Sri Akhilesh Kumar Yadav, Dy. Commandant sent a communication to the Commandant and in this communication he has mentioned that at 8.30 a.m. when roll call took place all the jawans who had gathered were informed of the order passed by the senior officers that they can go for outing outside the camp from 11.00 am. to 3.00.p.m. They were also informed that they should not consume liquor nor bring any liquor into the camp and if they do so, action would be taken against them. They were also informed to take outpasses from their Company Havildar Major (CHM). In the evening at 4.00 p.m. when this officer took the roll call he found that some of the jawans were under the influence of liquor and he reported the matter to the higher officers. Thereafter, the senior officers called Sri Raben Kalita and asked him why he had consumed liquor. He was also directed to undergo

medical examination. Thereafter, Raben Kalita took a telephone wire and tied it around his neck and tried to commit suicide. The officers of the CRPF caught hold of Raben Kalita who fell down and some of the members of the force, who were attending the roll call, felt that Raben Kalita had been purposely felled by the officers. Thereafter, some people including the petitioner started inciting the assembled jawans to rebel against the senior officers leading to a mutiny like situation. These jawans led by the four ring leaders (Ct. Jyotilal Debnath, Ct. Sanjoy Singha, Ct. Anil Kumar Singha, Ct. Raben Kalita) thereafter, caused damage to the office and residence of the second-in-command and they threw been throwing stones at the superiors and one Sri Akhilesh Kumar Yadav sustained injuries on his head. The ring leaders incited violence and some members rampaged the residences of officers, uprooted small plants and trees, broke windowpanes and also caused damage to the residence of the second-in-command.

17. On 24.8.2009 i.e. on the next day Sri Alok Kumar Singh Deputy Commandant also sent a report to the Commandant. The report is similar in nature in which he stated that at about 4.00 p.m. roll call was held in the ground and they heard loud noise from there. When they went towards the ground and reached near the office they saw that about 250 jawans had gathered and were shouting and causing damage to the office of the second-in-command. The office was badly damaged. The members of this gathering were also raising slogans against the officers. Thereafter the mob went

towards the houses of the officers and on the way they broke some branches of the trees and some gathered stones. Some officers tried to pacify the agitated jawans but the jawans did not listen to them. The jawans were being led by Ct. Sanjoy Singha, Ct. Anil Kumar Singha, Ct. Raben Kalita, Ct. Jyotilal Debnath etc. According to Sri Alok Kumar Singh they tried to reason with the jawans, and tried to persuade them to stop the violence but they did not listen to them and after damaging the house of the Deputy Commandant they went to the Officers' Mess. Someone out of the crowd threw a stone which hit Akhilesh Kumar Yadav on his head. However, Sri Akhilesh Kumar Yadav along with other officers continued to resist the mob. Thereafter, the mob was deflected towards another direction and taking advantage of the situation Sri Alok Kumar Singh was able to rescue the family of the second-in-command.

18. The disciplinary authority came to the conclusion that it is not possible in the facts and circumstances to hold an inquiry. While coming to the conclusion, it has given certain reasons and these reasons are that since the entire mob engaged in assaulting the senior officers, pelting stones, ransacking the office and residences of the officers, there was a strong possibility that nobody would give any clear statement as all of them were collectively responsible. It was also felt that in case inquiry is held depositions may not be truthful since blame would be put by one on the other.

19. This is a rather unusual case, where in a disciplined force like the CRPF the petitioner and 3/4 persons became rebellions and incited the jawans to rebel against their senior officers. Thereafter, the senior officers were assaulted, their houses and their mess were ransacked. In these circumstances it would be inappropriate to take action against all the jawans who were more than 200. The department rightly took action only against the ring leaders. It would not be possible to conduct fair and free inquiry when the ring leaders are charged because the jawans would still be under fear and would not be able to give truthful statements.

20. We are clearly of the view that the behaviour of the petitioner clearly indicates that the petitioner acted as a ring leader to incite violence in a disciplined force like CRPF. These circumstances are similar to the circumstances existing in ***Chandigarh Administration, Union Territory, Chandigarh and Others Vs Ajay Manchanda and Others, (1996) 3 SCC 753*** wherein the Apex Court held that in such a situation inquiry cannot be ordered. We are clearly of the view that the decision to dispense with the inquiry is a reasonable and valid decision and such decision cannot be said to be arbitrary. True it is, that rules of natural justice must be followed but Rule 27 Clause(cc)(ii) is an exception to the said rule and the conditions set out in the said clause are satisfied. We are, therefore, clearly of the view that the Department was fully justified in not conducting any disciplinary proceedings or holding any inquiry.

21. The conduct of the petitioner is such that no mercy can be shown to him. We, therefore, find no merit in the writ petition which is, accordingly, dismissed. No order as to costs.

JUDGE

CHIEF JUSTICE

amrita