

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 286 OF 2015

Kunwar Sen Jain	...Petitioner
Versus	
Union of India & Ors.	...Respondents

Mr. Vishal Kanade i/b. Mr. S. S. Gawde for Petitioner.
Mr. Rui Rodrigues with Mr. P. J. Khosla for Respondents.

**CORAM: SMT. V. K. TAHILRAMANI, Acting C. J. &
M. S. SONAK, J.**

DATE : 17 APRIL 2018

ORAL JUDGMENT :

- 1] Heard the learned counsel for the parties.
- 2] The challenge in this petition is to the judgment and order dated 8th August 2014 made by the Central Administrative Tribunal (CAT) in Original Application No. 667 of 2010 instituted by the petitioner to question his removal from service vide order dated 22nd December 2000.
- 3] Mr. Vishal Kanade, the learned counsel for the petitioner submits that for no justifiable reasons for the period between 6th June 1994 and 13th November 1998, the

petitioner, was transferred four times. Against such transfers, the petitioner submitted representations, which met with no response. In the meantime, on the grounds of prolonged unauthorised absence, services of the petitioner came to be terminated without holding any enquiry whatsoever. Mr. Kanade submits that the order dated 22nd December 2000 terminating the services of the petitioner contains no reasons as to why it was not reasonably practicable to hold enquiry. This, Mr. Kanade submits constitutes breach of Article 311(2) of the Constitution of India as well as the proviso thereto. He relies on the ruling of the Hon'ble Supreme Court in the case of ***Risal Singh vs. State of Haryana & Ors. in Civil Appeal No. 2839 of 2011*** decided on 13th May 2014 to submit that where reasons are not ascribed in the order of termination, the same is vitiated and is required to be struck off.

4] Mr. Kanade submits that the orders rejecting the petitioner's appeal as well as review petition are legally infirm. The authorities have failed to consider whether in the facts and circumstances of the present case, the disciplinary authorities, were precluded from holding an enquiry into the alleged charge of misconduct of

unauthorised absence. He submits that the termination of the petitioner's service is in total breach of the Central Civil Services (Classification, Control & Appeal) Rules, 1965 (said Rules) as also Article 311(2) of the Constitution of India. He submits that principles of natural justice and fair play are in fact, a necessary concomitant of the right not to be treated arbitrarily guaranteed by Article 14 of the Constitution of India. He submits that any decision to dispense with enquiry cannot be taken in such a light and casual manner as has been taken in the present case. On these grounds, Mr. Kanade submits that the removal of the petitioner from service is in violation of Article 14 of the Constitution of India.

5] Mr. Kanade further submits that the CAT has failed to appreciate the matter in its proper perspective and therefore, the impugned judgment and order made by the CAT warrants interference. He submits that the CAT, has focused upon the alleged misconduct of unauthorized absence by the petitioner, even though, there was no enquiry held to establish such misconduct. He submits that the CAT, was required to focus on the issue as to whether

there was any material on record to suggest that it was not reasonably practicable to hold an enquiry in the matter. Mr. Kanade submits that the approach of the CAT is patently illegal and therefore the impugned judgment and order made by the CAT is required to be set aside.

6] Mr. Kanade also submits that in the present case, the termination order has been made out by an authority subordinate to the appointing authority. This, Mr. Kanade submits, amounts to violation of the constitutional guarantee under Article 311 of the Constitution of India.

7] For all these reasons, Mr. Kanade submits that this petition be allowed and the impugned judgment and order made by the CAT be set aside and the reliefs prayed for by the petitioner in his OA before the CAT be granted together with all consequential benefits, now that the petitioner, has already attained the age of superannuation.

8] Mr. Rui Rodrigues, the learned counsel for the respondents whilst countering the contentions of Mr. Kanade submits that there is no error whatsoever in the

impugned judgment and order made by the CAT so as to warrant any interference with the same. He submits that the petitioner was bent upon disobeying the transfer orders and chose to absent himself for more than four years at a stretch, even though, no leave was ever granted to the petitioner and from time to time, the petitioner, was called upon to resume duties. Mr. Rodriques pointed out that on paper, the petitioner, has put in 24 years of service with effect from 24th March 1977 till his removal with effect from 22nd January 2000. Out of this, the petitioner, was under suspension for 8 years. Mr. Rodriques points out that major penalties came to be imposed upon the petitioner. However, the petitioner was quite adamant about not reporting to the transferred places. In these circumstances, consistent with rules and regulations which govern the petitioner's service, the petitioner came to be removed. Mr. Rodriques points out that the removal was very much by the authority equivalent to the petitioner's appointing authority and therefore, there is no violation of Article 311 of the Constitution of India. Mr. Rodriques submits that this petition may therefore be dismissed.

9] The petitioner was removed from service by order dated 22nd December 2000 while he was posted as Inspector in the Textiles Committee, Government of India, Ministry of Textiles. The statutory appeal against the removal order was dismissed by the appellate authority on 24th May 2001. Review petition was dismissed on 18th December 2001. The CAT, by the impugned judgment and order dated 8th August 2014 has dismissed the petitioner's OA No. 667 of 2010 questioning his removal from service.

10] As regards the contention based upon breach of Article 311(1) of the Constitution of India, we find from the record that the petitioner was appointed by the Secretary, Textiles Committee in the year 1977. Even the Regulations of 1968 contemplate that appointment to a post carrying a salary of Rs.560/- were to be made by the Secretary. At the stage of appointment, the petitioner, was appointed in the pay scale of Rs.550/- clearly, therefore, the Secretary, was the appointing authority in so far as the petitioner was concerned. The petitioner, on the basis of such appointment, continued in service only till the date of his removal. At no stage, did the petitioner raise any issue that

the Secretary was not a competent authority to appoint the petitioner. Now that the removal order has been made by the Secretary, we are unable to accept the contention of Mr. Kanade that there is any breach of Article 311(1) of the Constitution of India. The appellate authority as well as the CAT has considered this issue in great detail and we do not find that there is any illegality or perversity so as to warrant any interference.

11] On the aspect of breach of principles of natural justice and consequently breach in the matter of compliance of the constitutional mandate under Article 311(2) of the Constitution of India, in the peculiar facts and circumstances of the case, we agree with the CAT that no case of any such breach has been made out by the petitioner.

12] In order to appreciate the contention based upon breach of principles of natural justice, it is necessary to make reference to certain undisputed facts as are borne out from the record.

13] From the terms of the petitioner's appointment as an Inspector of Textile Committee, he was liable to be posted anywhere in India and accordingly, he was posted mostly in Mumbai but on some occasions in Amritsar, Kannur, New Delhi and Kanpur. During his term from 1977 to 2000, the petitioner was placed under suspension on three occasions for the following terms:-

S.No.	From	To	Remarks
1.	11.05.1978	20.07.1985	Not treated as duty. (seven years)
2.	01.06.1994	01.01.1995	Treated as duty (six months)
3.	23.05.1996	15.10.1996	Regularised by granting leave (five months)

14] From the aforesaid, it is apparent that from out of the total service of about 23 years, for a period of almost 8 years, the petitioner, has been under suspension. This also means that during this entire period of 8 years, the petitioner, has not worked but has drawn allowances.

15] There is also ample material on record which in fact, has not been disputed by the petitioner which establishes

that no sooner the petitioner used to be transferred from Mumbai, the petitioner, would avoid reporting to the transferred position. Instead, he would enter into correspondence and insisting upon his retention in Mumbai. Since, the petitioner was not reporting for duties to the transferred position, several letters were addressed to the petitioner to so report. Several letters were addressed to the petitioner to show cause as to why disciplinary proceedings should not be initiated against the petitioner. The petitioner, would neither show any cause nor report to the transferred position but only while away the time, enjoy salary and other benefits but refused to discharge any duties. The petitioner did not appear to be bothered about the consequence of being placed under suspension or even imposition of penalties upon him. The entire objective appeared to be to avoid reporting to the transferred position and in the meanwhile, enter into correspondence. The record indicates that in the year 1987 a marginal penalty of reduction to one stage in the time scale was imposed upon the petitioner. Similarly, in the year 2000 a major penalty of withholding one increment for 2 years with permanent effect was imposed upon the petitioner. In 1994 penalty of

censure was imposed upon the petitioner. Despite all this, the petitioner continued to avoid reporting for duties citing one reasons after the other. As noted earlier, for almost 8 years, the petitioner remained under suspension.

16] By order dated 22nd December 2000, the petitioner was removed from service. The removal order states in detail not only the circumstances which prompted the removal but also, the reasons as to why it is not practicable to hold any formal enquiry. The removal order also states that time and again opportunities have been afforded to the petitioner but the petitioner has failed to avail the same. The removal order also states the efforts made by the respondents in the matter of compliance with principles of natural justice and fair play and the *modus operandi* adopted by the petitioner himself to frustrate all such attempts. Taking into consideration all this material, the CAT, has held that there is more than sufficient material on record for the disciplinary authority to form a subjective opinion as regards dispensation of the enquiry. The scope of judicial review in such matters is quite limited and there is really no perversity or illegality in the view taken by the

CAT in the facts and circumstances of the present case.

17] In this case, there is sufficient material on record on basis of which, the disciplinary authority has recorded subjective satisfaction with regard to reason-ability and practicability of holding an inquiry against the petitioner. It is not permissible for the MAT or for that matter this court to reassess or re-appreciate such materials as if, they were appellate courts. The issue of sufficiency of evidence is also, to a great extent, irrelevant in a matter of this nature. There are no *mala fides* as such alleged. Once, we come to the conclusion that there was enough material before the disciplinary authority to arrive at a reasonable conclusion that it was not reasonably practicable to hold an inquiry as contemplated by Article 311 (2) of the Constitution of India, there is no good reason to fault the invocation of powers conferred by sub-clause (b) of the second proviso to Article 311 (2) of the Constitution of India.

18] Besides, it is necessary to appreciate that disciplinary authority, was the man on the spot and was required to satisfy himself as to the reasonability and practicability of

holding an inquiry into incident and the involvement of the petitioner therein. As long as no *mala fides* have been alleged or proved, normally it is not for this Court to re-appreciate or reassess the material available before such authority as if, this Court were exercising any appellate jurisdiction.

19] In *Tulsiram Patel (supra)*, the Constitution Bench of the Supreme Court has held that *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. 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.

20] Further, in *Tulsiram Patil (supra)*, the Constitution

Bench has held that a government servant who has been dismissed, removed or reduced in rank by applying to his case clause (b) or an analogous provision of a service rule is not wholly without a remedy. Such officer, can claim in a departmental appeal or revision that an inquiry be held with respect to the charges on which the penalty of dismissal, removal or reduction in rank has been imposed upon him unless the same or a similar situation prevails at the time of hearing of the appeal or revision application. In the present case, the petitioner, has availed the remedy of appeal and review. Both the parties, have considered in details the various contentions raised by and on behalf of the petitioner. In such circumstances, the petitioner, can hardly complain of in violation of principles of natural justice or fair play.

21] In *Tulsiram Patel (supra)*, the Constitution Bench had held that the courts and tribunals exercising powers of judicial review in such matters, 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 a court-room, removed in time from the situation in question. Where two views are possible, the court will decline to interfere.

22] In ***Southern Railway Officers Association & Anr. vs. Union of India & Ors. - (2009) 9 SCC 24***, the Hon'ble Supreme Court has held that the satisfaction to be recorded by the disciplinary authority for dispensing with the enquiry must be based upon objective material. The Court is required to consider what a reasonable man taking a reasonable view would have done in the situation then prevailing. An order of disciplinary authority in a case of this nature must be judged by a court exercising power of judicial review by placing itself in the disciplinary authority's armchair. The disciplinary authority was a man at the spot. He acted on the basis of a material before him.

23] In this case, the CAT, has also taken cognizance of several opportunities granted to the petitioner and the manner in which the petitioner has responded to such opportunities. In this case, the factum of absence has not at all been disputed. From the record, there is overwhelming material that the petitioner was not really interested in reporting for duties but the sole interest was to continue in service and draw allowances without discharging actual duties. From the material on record, it is apparent that more than ample opportunities for showing cause were granted to the petitioner. The petitioner's response was also considered from time to time.

24] In case of ***Viveka Nand Sethi vs. J. & K. Bank Ltd. & Ors. (2005) 5 SCC 337***, the Hon'ble Supreme Court has held that in case of removal on account of prolonged unauthorised absence, it is true that principles of natural justice were required to be complied with. However, the same would not mean that a fulledged departmental proceedings were required to be initiated. The limited enquiry as to whether the employee concerned had

sufficient explanation for not reporting to duties after the period of leave had expired or failure on his part of being asked so to do is considered sufficient compliance with the requirements of proof for natural justice. In this case, it was held that principles of natural justice is no unruly harsh. Where the facts are admitted an enquiry would be an empty formality.

25] In case of ***Punjab & Sind Bank vs. Sakattar Singh (2001) 1 SCC 124***, the Hon'ble Supreme Court has held that where an employee is given an opportunity to rejoin duties within a stipulated period, or to explain his position to the satisfaction of the management and the employee concerned fails to do either, a presumption can be drawn that the employee does not require the job any more. From the material on record, we cannot find any fault in the impugned judgment and order made by the CAT.

26] In the case of *Risal Singh* (supra), no reasons whatsoever were stated in the order by which the employee was removed from service for dispensing with the enquiry.

27] In ***Jaswant Singh vs. State of Punjab & Ors. (1991) 1 SCC 362***, there was no independent material on record to justify reliance on clause (b) of the second proviso to Article 311(2) of the Constitution of India. Since, this is not the position in the present case, this decision, will not assist the petitioner.

28] For all the aforesaid reasons, we dismiss this petition. There shall be no order as to costs.

(M.S. SONAK, J.)

(ACTING CHIEF JUSTICE)

CHANDKA