

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.7926 of 2020

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Dharmendra Kumar S/o- Late Shiv Kumar Singh Resident of Village-
Parbezabad, P.O. and P.S.- Sonapur, District- Saran (Chapra).

... .. Petitioner/s

Versus

1. The State of Bihar through the Director General of Police, Bihar, Patna.
2. The Director General of Police, Bihar, Patna.
3. The Inspector General of Police (Headquarter), Bihar, Patna.
4. The Inspector General of Police, Excise and Prohibition, Bihar, Patna.
5. The Deputy Inspector General of Police, Saran Range, Chapra.
6. The Superintendent of Police, District- Gopalganj.
7. The Sub Divisional Police Officer, Sadar, District- Gopalganj.
8. The Sergeant Major, Police Kendra, District- Gopalganj.
9. The Superintendent, Divisional Jail, District- Gopalganj.
10. The Deputy Superintendent Divisional Jail, District- Gopalganj.
11. The Medical Officer, Divisional Jail, District- Gopalganj.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.Sanjay Kumar Giri, Advocate
For the Respondent/s	:	Mr.Shiv Shankar Prasad, SC-8
		Mr.Anil Kumar, AC to SC-8

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CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

ORAL JUDGMENT

Date : 11-12-2020

The petitioner was working against the post of Constable at Divisional Jail, Gopalganj assigned with the duty of an armed guard of the escort party for escorting prisoners in case of any medical emergency when, in a surprise inspection of the jail conducted by the Sub-Divisional Police Officer, Gopalganj under the orders of the Superintendent of Police, Gopalganj, the petitioner was found under influence of alcohol.



There being prohibition in the State of Bihar, the petitioner's alleged conduct resulted into :

(i) Registration of a criminal case viz. Thawe P.S. Case No. 71 of 2020 under Section 37(b) of the Bihar Prohibition and Excise Act, 2016 and

(ii) Issuance of a notice to the petitioner by the appointing authority dated 09.05.2020 seeking his explanation against his proposed removal from service invoking clause(b) of the second proviso to Article 311(2) of the Constitution of India. The petitioner was put under suspension with immediate effect by an order of the same date. The petitioner was asked to submit his explanation against the proposed action of removal from service within 24 hours.

2. The petitioner submitted his explanation on the very next day i.e. 10.05.2020, as directed, denying to have consumed alcohol and asserting that only on the basis of smell coming from the petitioner's mouth it was presumed that petitioner had consumed alcohol and that there was no other evidence/examination showing consumption of alcohol. In his defence, he pleaded that he had consumed cough syrup for treating cough, which he was suffering from.

3. By an order issued vide Memo No. 863 dated 12.05.2020, passed by the Superintendent of Police, Gopalganj, who is the Appointing Authority and Disciplinary Authority, the



petitioner has been dismissed from service invoking clause (b) of the second proviso to Article 311(2) of the Constitution of India and Rule 824(a) of the Bihar Police Manual .The said order dated 12.05.2020 is under challenge in the present writ application under Article 226 of the Constitution of India.

4. A counter affidavit has been filed on behalf of the respondents, which is there on record.

5. I have heard Mr. Sanjay Kumar Giri, learned counsel appearing on behalf of the petitioner and Mr. Shiv Shankar Prasad, learned SC-8 for the State of Bihar duly assisted by Mr. Anil Kumar, learned AC to SC-8.

6. Mr. Giri, learned counsel for the petitioner assailing the impugned order has argued that there was no clinching evidence before the Disciplinary Authority to reach a definite conclusion, without any enquiry that the petitioner was drunk when he was spotted by the Sub-Divisional Police Officer in the jail premises. Referring to materials on record he has submitted that without waiting for the scientific report on examination of blood and urine, the Disciplinary Authority passed the impugned order in utter haste for no apparent reasons. He has further argued that there was no such situation which could have warranted the Disciplinary Authority to dispense with the



departmental enquiry. In any event, he has contended, that the impugned order does not record any satisfaction of the Disciplinary Authority that it was not reasonably practicable for him to hold an enquiry in the wake of nature of misconduct alleged and the circumstances leading to issuance of show cause notice seeking his explanation.

7. *Per contra*, it has been argued on behalf of the State of Bihar that the petitioner was found to have consumed alcohol within the jail premises which constitutes as criminal offence and for which an FIR has been registered. According to him, since it was a serious misconduct on the part of the petitioner and the evidence of misconduct was unimpeachable, the Disciplinary Authority, instead of initiating a departmental proceeding in accordance with statutory rules, rightly considered it appropriate to invoke clause (b) of the second proviso to Article 311(2) of the Constitution of India. According to him, since the petitioner was given prior opportunity to explain by way of notice as to why he should not be dismissed from service invoking clause (b) of the second proviso to Article 311(2) of the Constitution, the impugned order passed after considering the petitioner's explanation is just, proper and sustainable as it does not suffer from any legal infirmity.



8. I have examined the pleadings on record and have given my careful consideration to the rival submissions advanced on behalf of the parties.

9. I consider it apt to reproduce Article 311 of the Constitution of India, clause (1) of which prohibits any authority subordinate to the appointing authority to dismiss or remove a person who is a member of civil service of the Union or an All-India service or civil service of a State or holds a civil post under the Union or State. Clause (2) of Article 311 makes it mandatory that an action of dismissal or removal from service of such person must precede an enquiry in which the person has been given a reasonable opportunity of being heard in respect of those charges. Clause (b) of the second proviso to Article 311(2), however, carves out an exception and authorises the concerned authority to dispense with the enquiry before taking action stipulated in Article 311(2) in certain exigencies after recording reasons in writing.

10. Article 311 of the Constitution of India reads as under :-

“311. Dismissal, removal or reduction in rank of persons employed in civil capacities under the Union or a State-
(1) No person who is a member of a civil service of the Union or an all-India service or a civil service of a State or



holds a civil post under the Union or a State shall be dismissed or removed by an authority subordinate to that by which he was appointed.

(2) No such person as aforesaid shall be dismissed or removed or reduced in rank except after an inquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges [Provided that where it is proposed after such inquiry, to impose upon him any such penalty, such penalty may be imposed on the basis of the evidence adduced during such inquiry and it shall not be necessary to give such person any opportunity of making representation on the penalty proposed:

Provided further that this clause shall not apply—]

(a) where a person is dismissed or removed or reduced in rank on the ground of conduct which has led to his conviction on a criminal charge; or

(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; or
(underlined for emphasis)

(c) where the President or the Governor, as the case may be, is satisfied that in the interest of the security of the State it is not expedient to hold such inquiry.

(3) If, in respect of any such person as aforesaid, a question arises whether it is reasonably practicable to hold such inquiry as is referred to in clause (2), the



decision thereon of the authority empowered to dismiss or remove such person or to reduce him in rank shall be final.”

11. The language used in clause (b) of the second proviso to Article 311(2) of the Constitution is unambiguous. It empowers the concerned authority to dispense with the mandatory enquiry as stipulated under Article 311(2) of the Constitution before dismissing/ removing or reducing a person in rank if the authority ‘is satisfied’ that for some reason to be recorded by that authority in writing, it is not reasonably practicable to hold such enquiry. Evidently, there are two mandatory constitutional requirements for an authority to adhere to while invoking its power under clause(b) of the second proviso to Article 311(2) of the Constitution of India i.e.

(i) The authority is satisfied that for some reason it is not reasonably practicable to hold such enquiry and

(ii) The satisfaction that it is not reasonably practicable to hold such enquiry is recorded by that authority in writing.

12. I have perused the impugned order passed by the Superintendent of Police, Gopalganj, who is the Appointing Authority as well as the order of the Appellate Authority whereby the petitioner’s appeal has been dismissed. I have also



perused the show cause notice which was issued to the petitioner by the Superintendent of Police asking him to explain as to why he should not be dismissed from service with immediate effect invoking clause(b) of the second proviso to Article 311(2) of the Constitution of India. The petitioner was given 24 hours by the Appointing Authority-cum-Disciplinary Authority to submit his explanation. The Superintendent of Police had not recorded his satisfaction that it was not reasonably practicable to hold enquiry as stipulated in clause (2) of Article 311 of the Constitution of India. In the impugned order No. 549/2020 dated 12.05.2020, passed by the Superintendent of Police, Gopalganj too, there is no whisper that it was not reasonably practicable to hold enquiry. This aspect has not been gone into even by the Appellate Authority. In my opinion, the impugned order of the Disciplinary Authority, in view of clear constitutional provision as noticed above, suffers from lack of jurisdiction. If the Constitution requires exercise of power in a particular manner by a competent authority, the said power exercised in breach of the said constitutional requirement is manifestly beyond jurisdiction.

13. The necessity of recording of reasons, while dispensing with enquiry has been reiterated by the Supreme



Court in a series of decisions. It has been held in the Constitution Bench decision in case of *Union of India and another vs. Tulsiram Patel* reported in (1985) 3 SCC 398 that what is requisite to invoke clause (b) of the second proviso to Article 311(2) is that holding of the enquiry is not practicable in the opinion of a reasonable man taking a reasonable view of the prevailing situation.

14. Following observation made in case of *Tulsiram Patel* (supra) in paragraph 130 is significant to be noted while considering question of dispensation of enquiry to invoke clause (b) of the second proviso to Article 311(2) of the Constitution of India :-

“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 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. The case of *Arjun Chaubey v. Union of India* [(1984) 2 SCC 578 : 1984 SCC (L&S) 290 : (1984) 3 SCR 302] 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.”(Underlined for emphasis)

15. It has been held in ***Jaswant Singh vs. State of Punjab & Ors.*** reported in (1991) 1 SCC 362 that clause (b) of second proviso to Article 311(2) can be invoked only when the authority is satisfied from the materials placed before him that it is not reasonably practicable to hold departmental enquiry.

16. Similar view has been taken by the Supreme Court



in case of *Kendriya Vidyalaya Sangathan and another vs. S.C. Sharma* reported in (2005) 2 SCC 363.

17. I need not encumber the present judgment with further consistent precedents while dealing with clause (b) of the second proviso to Article 311(2). Suffice it to say that an order passed in exercise of the said provision without recording a satisfaction that it is not reasonably practicable to hold an enquiry is beyond jurisdiction and for the said reason the same is unsustainable being unconstitutional. The impugned order dated 12.05.2020, passed by the Disciplinary Authority and the order dated 30.06.2020, passed by the Appellate Authority are accordingly set aside. The petitioner is directed to be reinstated in service forthwith with all consequential benefits in terms of payments of salary for the period he remained out of service because of the unauthorised, illegal orders passed by the respondents, which have been quashed by the present order.

18. The respondents shall, however, be at liberty to proceed in relation to the petitioner's alleged misconduct in accordance with law. It goes without saying that it will be open for the respondents to initiate a departmental proceeding against the petitioner or take appropriate action depending upon the outcome of the criminal case registered against him.



19. This writ application is accordingly allowed with the aforesaid observations and directions.

20. There shall be no order as to costs.

(Chakradhari Sharan Singh, J)

Rajesh/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	17.12.2020
Transmission Date	NA

