

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.1366 of 2018

In
Civil Writ Jurisdiction Case No.19201 of 2012

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Deonandan Paswan, Son of Late Deocharan Paswan, resident of Village-
Ganjpar Jalalpur, P.O.- Maranchi, P.S.- Punpun, District- Patna.

... .. Appellant

Versus

1. The State Of Bihar through the Chief Secretary, Govt. of Bihar, Old Secretariat, Patna.
2. Director General of Police, Bihar, Patna.
3. Senior S.P. Patna.

... .. Respondents

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Appearance :

For the Appellant : Mr.Ram Hriday Prasad, Advocate
M/s. Maruti Kumari, Advocate

For the State : Mr. Saroj Kumar Sharma, AC to AAG-3

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CORAM: HONOURABLE MR. JUSTICE HEMANT KUMAR SRIVASTAVA
and
HONOURABLE MR. JUSTICE PRABHAT KUMAR SINGH
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE HEMANT KUMAR SRIVASTAVA)

Date : 20-01-2020

Heard learned counsel appearing for the appellant as well as learned AC to AAG-3 appearing for the respondents.

2. The appellant is aggrieved by the judgment dated 05.09.2018 passed by learned Single Judge in CWJC No. 19201 of 2012 by which and whereunder the learned Single Judge dismissed



the above stated writ petition declining to interfere into the Annexure-2 contained in writ petition (issued by the Senior Superintendent of Police, Patna) by which and whereunder the Senior Superintendent of Police, Patna having exercised the power under Article 311(2)(b) of the Constitution of India dismissed the appellant from the service.

3. Brief facts of the case is that the appellant was appointed as Constable in the year 1974 and served his department near about for 33 years and in the year 2006, he was transferred from Patna to Samastipur vide office order no. 11219/2006. The appellant did not join at district Samastipur nor appeared before the concerned authority to take the transfer order. The appellant absented himself for near about one and half years and between the aforesaid period, several orders were sent to him and a notice was also published in daily newspaper but in spite of all the efforts taken by the department, the appellant did not turn up. Thereafter, the competent authority having exercised the power under Article 311(2)(b) of the Constitution of India passed the dismissal order without initiating any departmental proceeding against the appellant. Subsequently, the appellant after passing dismissal order appeared before the competent authority and tendered his joining but the same was refused by the competent authority on the ground



that he had already been dismissed from the service. The appellant approached this court by filing CWJC No. 19201 of 2012 praying therein to quash the order of dismissal but the learned Single Judge dismissed the above stated writ petition passing the impugned judgment dated 05.09.2018 against which the appellant has approached this appellate court.

4. Learned counsel appearing for the appellant relied upon the decision rendered by Division Bench of this court in the case of **Md. Salam vs. Union of India through the Secretary, Ministry of Home and others** reported in 2016(1) PLJR 292 wherein having relied upon the case of **Union of India vs. Tulsiram Patel** reported in (1985) 3 SCC 398 the Division Bench held that whether it was practicable to hold an inquiry or not, must be judged in the context of whether it was reasonably practicable to do so in the opinion of a reasonable man taking a reasonable view of the prevailing situation.

5. Learned counsel of the appellant further submits that in the present case, the competent authority did not give any reason as to why the departmental proceeding was not held before dismissing the appellant from the service. He further submits that as a matter of fact, the appellant met an accident and got injury on his heel for which he remained under treatment for more than nine



months and when he regained his health, he approached the competent authority and tendered his joining but unfortunately, before tendering his joining, the competent authority had already passed the dismissal order exercising the power given by Article 311(2)(b) of the Constitution of India. He, further, submits that appellant did not get any opportunity to explain the circumstances in which he remained absent and could not join his post.

6. On the other hand, learned AC to AAG-3 appearing for the respondents submits that admittedly, the appellant remained absent for near about one and half years and several attempts were taken by the concerned authority to communicate the order of transfer to him but the appellant avoided to take order of his transfer and furthermore, he did not join his new assignment. He, further, submits that admittedly, the transfer order of the appellant was issued in the year 2006 and according to appellant, he met accident in the year 2007 but between issuance of his transfer order as well as meeting so-called accident he did not join his new assignment nor has given any explanation in respect of above stated period. He, further, submits that the appellant was member of a disciplined force and he not only violated the order of his superiors but also showed his indiscipline attitude towards his higher authority which cannot be tolerated in the disciplined force



and, therefore, in the aforesaid circumstance, the disciplinary authority took the aid of Article 311(2)(b) of the Constitution of India for passing dismissal order. Learned AC to AAG-3, further, submits that disciplinary authority has assigned the specific reasons as to why they were going to take the aid of Article 311(2)(b) of the Constitution of India and the aforesaid reasons are quite satisfactory and that was the reason the learned Single Judge did not interfere into the order of disciplinary authority.

7. Having heard the contentions of the parties, we went through the record as well as record of writ court. It is not in dispute that the disciplinary authority can pass an order against his employee under under Article 311(2)(b) of the Constitution of India but before exercising the aforesaid power, the concerned authority has to satisfy himself that to hold an inquiry is not reasonably practicable and furthermore, disciplinary authority is bound to record his reasoning in writing before passing any adverse order against the concerned employee exercising power under Article 311(2)(b) of the Constitution of India. In the case of **Union of India vs. Tulsiram Patel** (supra) the Constitutional Bench of Hon'ble Apex Court has already 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 *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.....”



8. In the present case, Annexure-2 to the writ petition, the dismissal order passed under Article 311(2)(b) of the Constitution of India, goes to show that the competent authority assigned the reason that due to long absence of the appellant, it was not possible and practicable to initiate departmental proceeding against him but in the same order the competent authority admitted that if the departmental proceeding was initiated against the appellant, the aforesaid departmental proceeding might be proceeded ex parte. The competent authority further assigned the reason that if departmental proceeding is initiated against the appellant, there is every possibility that aforesaid departmental proceeding may linger for several years which will tarnish the image of the police department. The perusal of above stated reasonings given by the competent authority goes to show that competent authority was in a position to initiate departmental proceeding against the appellant. No doubt, the aforesaid departmental proceeding may be proceeded ex parte against the appellant but the reasonings given by the competent authority go to show that departmental proceeding could have been initiated against the appellant and there was no hurdle in initiating the departmental proceeding against the appellant. Therefore, in our view, the reasonings given by the competent



authority for passing order under Article 311(2)(b) of the Constitution of India are not satisfactory.

9. However, in course of hearing, it is informed on behalf of the appellant that the appellant would have been retired in the year 2014, if he had been in service. Learned counsel of the appellant further submits that even if the case of the department assumed to be true, then also, for a petty offence, the appellant was given a very harsh punishment and there is nothing on the record that prior to 2006, the appellant had violated the order of his superiors, particularly, in the circumstance, when he served his institution for near about 33 years.

10. Although, the competent authority wrongly exercised the power under Article 311(2)(b) of the Constitution of India but taking note of the fact that appellant would have been retired in the year 2014, if he had been in service and, therefore, in our view, it would be useless to remit the matter to the competent authority for initiating fresh proceeding against the appellant.

11. Therefore, in the aforesaid circumstance, the impugned judgment dated 05.09.2018 is, hereby, set aside and, accordingly, this Letters Patent Appeal stands allowed. The matter is remitted to the competent authority to award appropriate punishment proportionate to conduct of the appellant. The



competent authority shall take decision within two months from
the date of receipt/production of copy of this judgment.

(Hemant Kumar Srivastava, J)

(Prabhat Kumar Singh, J)

shahzad/-

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