

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.7803 of 2020

Md. Muqaddar Khan Son of Md. Rashid Khan Resident of Mahisona, Police Station- Tetarhat, District- Lakhisarai.

... .. Petitioner

Versus

1. The State of Bihar through the Principal Secretary, Department of Home, (Police), Government of Bihar, Patna.
2. The Director General of Police, Bihar, Patna.
3. The Deputy Inspector General of Police, Bihar Military Police, North Division, Muzaffarpur.
4. The Commandant, B.M.P. 12, Saharsa (IRB) District- Saharsa.
5. The Superintendent of Police, Kishanganj, District- Kishanganj.

... .. Respondents

Appearance :

For the Petitioner	:	Mr. Ansul, Advocate Mr. Uma Shankar Sharma, Advocate Mr. Abhinav Ashok, Advocate
For the Respondent State:		Mr. Bishwa Bibhuti Kumar Singh, A.C. to A.G.

CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

ORAL JUDGMENT

Date : 06-04-2021

Invoking Article 311(2)(b) of the Constitution of India, Rule 20 of Bihar Government Servant (Classification, Control and Appeal) Rules, 2005 (hereinafter referred to as 'BGS, CCA Rules') and Clause 10(ii) of Appendix 49 of Volume-3 of Bihar Police Manual, the petitioner has been dismissed from service for his conduct, which, according to the disciplinary authority, constitutes misconduct under Bihar Government Servant Conduct Rules, 1976 and an offence under the provisions of Bihar Prohibition and Excise Act, 2016, warranting such action. The said order dated 31.05.2020 passed by the Commandant, Bihar Military



Police-12, Saharsa (I.R.B.-2) (hereinafter referred to as the Disciplinary Authority) has been put under challenge in the present writ application.

2. From the impugned order, it transpires that, at the relevant point of time, the petitioner, a member of Bihar Military Police (BMP), was deputed at Adarsh Police Station, Kishanganj. Impugned action against him has been taken in the light of a report of the Superintendent of Police, Kishanganj, dated 27.05.2020 to the effect that the petitioner was found causing ruckus in an inebriated condition in the police barrack in the night of 26.05.2020. The petitioner allegedly misbehaved with police officials when they attempted to intercede and, on medical examination, he was found to have consumed alcohol. As consumption of alcohol, after enforcement of prohibition laws in the State of Bihar, is an offence, the conduct of the petitioner, in the opinion of the disciplinary authority, constituted offence punishable under Section 37(c) of Bihar Prohibition and Excise Act, 2016, the misconduct was of grave nature. Rule 4 of Bihar Government Servant Conduct Rules, 1976, restrains the Government servants from consumption of alcoholic drinks or intoxicating items. In the opinion of the Disciplinary Authority, the conduct of the petitioner attracted imposition of major punishment.



The Disciplinary Authority thereafter referred to Clause 10(ii) of Appendix 49 of Volume-3 of Bihar Police Manual for taking action of the petitioner's dismissal from service without resorting to regular departmental enquiry against him.

3. Through letter issued vide Memo No.873 dated 28.05.2020, the petitioner was asked to explain as to why he should not be dismissed from service. The petitioner submitted his explanation on 29.05.2020 asserting therein that *Eid* festival was on 25.05.2020, and he, being 'a *Rozdar*', had developed weakness and had taken some homeopathic medicines. He denied any intentional misbehavior with the police personnel/officials. According to him, the alcometer detected 3.04% of alcohol content in breath, which could not be said to be conclusive evidence of consumption of alcohol. He made allegation against some of the police personnels of unnecessarily harassing him for ulterior reasons. Considering the petitioner's explanation to be imaginary, the disciplinary authority rejected the same and imposed upon the petitioner punishment of dismissal from service without holding any disciplinary enquiry.

4. A counter affidavit has been filed on behalf of Superintendent of Police, Kishanganj, which is there on record.



5. I have heard Mr. Ansul, learned counsel appearing on behalf of the petitioner and Mr. Bishwa Bibhuti Kumar Singh, learned A.C. to Advocate General, Bihar.

6. Mr. Ansul, learned counsel appearing on behalf of the petitioner has argued that the utter haste, in which the impugned order came to be passed without giving the petitioner a reasonable opportunity to explain his case, shows the arbitrariness and premeditated approach of the disciplinary authority while passing the impugned order. He has further submitted that requirement of holding a disciplinary proceeding has been arbitrarily and whimsically dispensed with by the Disciplinary Authority. The constitutional provision under Article 311(2)(b) can be invoked to dismiss a Government servant only if the disciplinary authority records in writing his opinion that it is not reasonably practicable, in the facts and circumstances, to hold a disciplinary proceeding before taking disciplinary action, he contends and adds that on perusal of the impugned order, it can be easily seen that there was no such circumstance which would have required the disciplinary authority to conclude that a disciplinary proceeding against the petitioner was not reasonably practicable. The charge of misconduct, for which the impugned order has been passed, could have been considered and dealt with in a disciplinary proceeding



with the aid of evidence of witnesses and other materials after giving the petitioner a due opportunity of hearing. He has, assailing the impugned order, relied on the Supreme Court's decision in case of *Union of India Vs. Tulsi Ram Patel*, reported in **(1985) 3 SCC 398**, wherein it has been held that the impugned order must reflect satisfaction of the disciplinary authority to the effect that departmental enquiry is not reasonably practicable. He has contended that since the impugned order has been passed arbitrarily, the same deserves to be struck down by this Court exercising power of judicial review.

7. Mr. Bishwa Bibhuti Kumar Singh, learned A.C. to the Advocate General, Bihar, on the other hand, has argued that conduct of a member of disciplined force like Bihar Military Police needs to be exemplary, in public interest. He has contended that by making amendment in the conduct rules, governing conduct of State Government servants, the Government of Bihar has made its intention clear to the effect that consumption of alcohol by a Government Servant which constitutes an offence punishable under Bihar Excise and Prohibition Act, 2016, shall be viewed seriously. He has submitted that the petitioner was found intoxicated and creating nuisance at his barrack and when the officials made an attempt to overpower him and pacify the



situation, he misbehaved with them also, leading to registration of a criminal case and submission of charge-sheet therein for the offence punishable under Section 341, 323 of the Indian Penal Code and Section 37(c) of the Bihar Excise and Prohibition Act, 2016.

8. He has submitted that the disciplinary authority has rightly taken note of an order issued by the Director General of Police, Bihar, vide Memo. No.58/Go. Dated 26.03.2019, which contemplates dismissal of a police personnel found guilty of consumption of alcohol by resorting to Article 311 of the Constitution of India. He has accordingly submitted that the impugned order suffers from no illegality and the same does not require any interference by this Court.

9. Before proceeding to address the issues involved in the present case, one has to keep in mind that Clause (2) of Article 311 is a constitutional mandate, which guarantees not only adherence to principles of natural justice, it makes it compulsory to hold an enquiry after informing a member of 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 informing him of the charges against him, if an action of dismissal, removal or reduction in rank is proposed.



10. The principle incorporated in Clause (2) of Article 311 of the Constitution of India shall have no application in three circumstances as provided under the second proviso to Clause (2) of Article 311 of the Constitution of India. One of the three circumstances is, 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. On plain reading of the second circumstance mentioned in the second proviso to Clause (2) of Article 311 of the Constitution of India, it can be easily noticed that in order to dispense with the requirement of enquiry, all of the following elements must exist : -

(i) Conduct of the government servant is such that he deserves punishment of dismissal, removal or reduction in rank.

(ii) There must be a satisfaction of the disciplinary authority that it is not reasonably practicable to hold such enquiry;

(iii) There must be reason for coming to the aforesaid conclusion, which must be recorded in writing; and

(iv) Satisfaction must be of the authority empowered to dismiss or remove or reduce in rank and the reasons in support of his satisfaction must be recorded by the said authority.



11. Absence of either of the aforesaid elements shall render exercise of power under the second exception (b) of Clause (2) of Article 311 of the Constitution of India illegal and unconstitutional.

12. It is settled legal position that all service rules framed under Article 309 of the Constitution of India dealing with the authority to dispense with the requirement of enquiry before imposing either of the three of the aforesaid punishment will have to be read in conjunction with the second proviso to Clause (2) of Article 311 of the Constitution of India. Rule 20 of BGS, CCA Rules and Clause 10(ii) of the Appendix 49 of Volume III of the Bihar Police Manual are no exception.

13. In case of *Tulsiram Patel* (supra), dealing elaborately with essential requirements for invoking second exception to Clause (2) of Article 311 of the Constitution of India, the Supreme Court has held that whether it was practicable to hold the enquiry or not must be judged in the context of whether it was reasonably practicable to do so.

14. What is requisite is that holding of inquiry is not practicable in the opinion of a reasonable man taking reasonable view of the prevailing situation. The Supreme Court, though by way of illustration said that, it may 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 an inquiry or direct to be held. It may also not be reasonably practicable to hold the inquiry where an atmosphere of violence or of general indiscipline or insubordination prevails, and it is immaterial whether the concerned government servant is or is not a party to bringing about such an atmosphere.

15. A disciplinary authority, however, is not expected to dispense with the disciplinary enquiry lightly or arbitrarily or out of ulterior motives or merely in order to avoid the holding of an enquiry or because the Department's case against the government servant is weak and must fail, the Supreme Court said in case of *Tulsiram Patel* (supra).

16. The Supreme Court emphasized that for the valid application of clause (b) of the second proviso, it imperative that the disciplinary authority records in writing its reason for its satisfaction that it was not reasonably practicable to hold the



enquiry contemplated by Article 311(2). Recording of reasons in writing by the disciplinary authority for its satisfaction that it is not reasonably practicable to hold the enquiry is a constitutional obligation and in case it is not done, such order shall essentially be void and unconstitutional. Paragraph 133 of the Supreme Court's decision in case of ***Tulsiram Patel*** (supra), which is relevant, is being reproduced hereinbelow : -

“133. 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.”

17. It is noted, at this stage, that in the present case, the disciplinary authority, at no place in the impugned order, has recorded its satisfaction that in the facts and circumstances of the case an enquiry stipulated under Clause (2) of Article 311 of the Constitution of India was not practicable. No stand has been taken on behalf of the State of Bihar or the disciplinary authority that before passing of the impugned order any satisfaction was



recorded in writing in this regard by the authority empowered to impose punishment as noted above.

18. The background facts of the present case have already been noted. It was alleged against the petitioner that he was creating nuisance in the barrack and was found in an inebriated condition. He was found to have consumed liquor, which he denied. He is alleged to have misbehaved with his officers under the influence of alcohol when they had attempted to pacify the situation. The nature of misconduct alleged against the petitioner leading to passing of the impugned order could have been a matter of regular enquiry as there existed no situation where it was not reasonably practicable to hold enquiry.

19. A decision to dispense with the departmental enquiry, in the Court's opinion, cannot be based solely on the *ipse dixit* of the concerned authority and 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 such enquiry is not reasonably practicable. While making these observations, the Supreme Court, in case of ***Jaswant Singh v. State of Punjab***, reported in **(1991) 1 SCC 362**, has recorded that if satisfaction of the concerned authority is put to challenge in the Court of law, it is incumbent on those who support the order to show that satisfaction



is based on certain objective facts and is not the outcome of whim or caprice of the concerned officers. In the present case, nothing has been disclosed to the Court which could have prevented holding of a fair departmental enquiry.

20. In case of *Reena Rani v. State of Haryana*, reported in **(2012) 10 SCC 215**, the Supreme Court relying on the decision in case of *Tulsiram Patel* (supra) interfered with the decision of the High Court of Punjab and Haryana and set aside an order of dismissal passed in exercise of power under Article 311(2)(b) of the Constitution of India as in the order of dismissal, the disciplinary authority had not disclosed any reason as to why it was not reasonably practicable to hold regular departmental enquiry.

21. Similar view has been taken by the Supreme Court, in case of *Risal Singh v. State of Haryana*, reported in **(2014) 13 SCC 244**, after having noticed that the order passed by the disciplinary authority was bereft of reasons for dispensing with the enquiry.

22. In my opinion, the impugned order in the present case requires interference on two counts. Firstly, the reasons recording satisfaction that a departmental enquiry is not reasonably practicable is absent in the order. Ascribing of such a reason is



mandatory and its absence essentially invalidates the impugned action. Secondly, no material has been shown to this Court nor there is any material to infer from the circumstance disclosed in the impugned order that it was not reasonably practicable to hold a departmental enquiry.

23. In my opinion, the letter of the Director General of Police dated 26.03.2019, noted in the impugned order, which requires expeditious disciplinary action of dismissal from service, cannot be a basis to avoid constitutional mandate of Article 311(2) of the Constitution of India of holding an enquiry before imposing punishment of dismissal or removal from service or reduction in rank.

24. In the wake of aforesaid discussions and the reasons noted above, the impugned order requires interference for which, in the Court's opinion, is void, illegal, unconstitutional, *ultra vires* Article 311(2) of the Constitution of India. Consequently, the impugned order dated 31.05.2020 passed by the Commandant, Bihar Military Police-12, Saharsa (I.R.B.-2), is hereby set aside. The petitioner is directed to be reinstated forthwith. He shall also be entitled to all consequential benefits including full back wages, as if no order, which has been set aside by the present order of this Court, was ever passed against him. The respondents shall,



however, be at liberty to take disciplinary action against the petitioner for the alleged misconduct after following due process of law and conducting regular departmental enquiry.

25. This application is allowed with the aforesaid observations and direction.

26. There shall, however, be no order as to costs.

(Chakradhari Sharan Singh, J)

Pawan/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	06.04.2021
Transmission Date	N/A

