

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.11616 of 2013

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Ashok Sharma Son Of Late Deena Nath Sharma Resident Of Village P.O.-
Silounja, P.S.- Belaganj, District- Gaya

... .. Petitioner/s

Versus

1. The State Of Bihar and Ors
2. The Director General Of Police, Bihar, Patna
3. The Deputy Inspector General Of Police, Rail, Patna
4. The Superintendent Of Police Rail, Jamalpur
5. The Dy. Superintendent Of Police Rail, Jamalpur

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. P.K. Shahi, Sr. Adv. Mr. Vikas Kumar, Adv.
For the State	:	Mr. Gyan Shankar, Adv.

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**CORAM: HONOURABLE MR. JUSTICE SANJEEV PRAKASH
SHARMA**

ORAL JUDGMENT

Date : 09-01-2023

1. The petitioner has preferred this writ petition seeking quashing of the order dated 06.09.2000 passed by the Superintendent of Police, Jamalpur exercising power under **Article 311(2)(b)** of the Constitution of India dispensing with the inquiry and dismissing the petitioner from service. Further, he prays for quashing of order dated 14th June 2001, whereby his appeal was rejected and also challenged the order dated 11.07.2012 whereby the memorial filed by the petitioner has been rejected by the Director General of Police. He further prays to direct the Respondents to reinstate the petitioner with all consequential monetary benefits.

2. Brief facts which required to be noticed are that the petitioner was a constable working in the Railway Police and was a



member of the escort party under Jamalpur-Howrah Super Express. It is alleged that the petitioner along with other constables was engaged in extortion from passengers and some altercation took place, whereafter he shot two persons and killed them. The F.I.R. was registered in this regard against the constables including the petitioner and a charge-sheet was issued to the petitioner on 25.08.2000. It was also alleged that a false F.I.R. had been registered by the petitioner in order to save himself against the passengers alleging that they had tried to take away his right.

3. In the Departmental inquiry, the petitioner did not appear, nor he filed his reply. An F.I.R. was also registered against the petitioner of having absconded while in custody. The inquiry officer having noticed the facts concluded that the action of the petitioner had been found to be prima-facie proved and the petitioner was absconding. The image of the police had also been seriously hampered in public on account of reports in the newspapers about no action taken with regard to the police officials. Thereafter, the disciplinary authority exercising powers under **Article 311(2)(b)** of the Constitution found that there was no other alternative available with him but to dispense with the inquiry and take a decision. He thereafter has given reasons in the order of dispensing with the departmental inquiry which includes mentioning of the fact that the petitioner was absconding. A Criminal Case under section 302 was registered against him and proceedings had been initiated as an absconder against him. It was also observed that it is not possible for collecting evidence as the witnesses at Railway Station and the train were belonging to different places and was difficult to collect them for conducting a regular departmental inquiry.



Giving the aforesaid reasons, the registry authority proceeded to dismiss the petitioner from service vide order dated 06.09.2000.

4. The counsel for the petitioner assails the order submitting that the reasons given are not cogent and contrary to record. In fact, the petitioner had never absconded and had not run away from custody. The F.I.R. which was registered against the petitioner for running away from custody has ultimately resulted in acquittal in the criminal case and the authorities were not able to prove that the petitioner had run away from custody. He further submitted that the appeal preferred by the petitioner and the memorial filed before the D.G. have been decided without application of mind. Learned counsel submits that the power under **Article 311(2)(b)** could not have been exercised merely because some of the witnesses could not be examined. It is submitted that as per the charge-sheet three of the witnesses were those who were Police Constables and no reasons have come forward as to why they could not have been examined in the departmental inquiry. Learned counsel relies on judgment passed by the Constitution Bench in **Union of India Vs. Tulsiram Patel AIR 1984 Supreme Court Page 1416**. Learned counsel for the petitioner has also relied on judgment passed by the Apex Court in **2005 (11) SCC Page 525** in support of his submission and submits that the order of dismissing him from service was wrongful and he was entitled to be reinstated. Learned counsel submits that the subsequent conviction of the petitioner under-section 302 passed by the concerned Court on 6th January 2004 is under appeal and since the dismissal order has not been passed on account of conviction, the order of dismissal dated 06.09.2000 deserves to be quashed.



5. Per contra, learned counsel appearing for the State has supported the order passed by the disciplinary authority. It is submitted that standing warrants had been issued against the petitioner and he was declared absconder. Proceedings had also been initiated to attach him properly. Reasons have been assigned by the concerned disciplinary authority while passing the order and the same does not warrant any interference. Learned counsel submits that this Court would not sit as an appellate authority and substitute the reasons different from that given by the disciplinary authority as well as the appellate authority. No perversity can be said to have been committed by the concerned authority while passing the order. Learned counsel submits that as per **Rule 20 of the Bihar CCA Rules 2005** provides for taking action without proceeding in a regular departmental inquiry. Learned counsel further submits that as the petitioner has already been convicted of offence under 302, there is no occasion of reinstating the petitioner.

6. I have considered the submissions. **Union of India Vs. Tulsiram Patel AIR 1985 Supreme Court Page 1416**, the Constitution Bench examined the validity and provisions of Article 311 of the Constitution and the impact of pleasure doctrine and held as under:-

“44. Ministers frame policies and legislatures enact laws and lay down the mode in which such policies are to be carried out and the object of the legislation achieved. In many cases, in a Welfare State such as ours, such policies and statutes are intended to bring about socio-economic reforms and the uplift of the poor and disadvantaged classes. From the nature of things the task of efficiently and effectively implementing these policies and enactments, however, rests with the civil services. The public is,



therefore, vitally interested in the efficiency and integrity of such services. Government servants are after all paid from the public exchequer to which everyone contributes either by way of direct or indirect taxes. Those who are paid by the public and are charged with public administration for public good must, therefore, in their turn bring to the discharge of their duties a sense of responsibility. The efficiency of public administration does not depend only upon the top echelons of these services. It depends as much upon all the other members of such services, even on those in the most subordinate posts. For instance, railways do not run because of the members of the Railway Board or the General Managers of different railways or the heads of different departments of the railway administration. They run also because of engine-drivers, firemen, signalmen, booking clerks and those holding hundred other similar posts. Similarly, it is not the administrative heads who alone can see to the proper functioning of the post and telegraph service. For a service to run efficiently there must, therefore, be a collective sense of responsibility. But for a government servant to discharge his duties faithfully and conscientiously, he must have a feeling of security of tenure. Under our Constitution, this is provided for by the Acts and rules made under Article 309 as also by the safeguards in respect of the punishments of dismissal, removal or reduction in rank provided in clauses (1) and (2) of Article 311. It is, however, as much in public interest and for public good that government servants who are inefficient, dishonest or corrupt or have become a security risk should not continue in service and that the protection afforded to them by the Acts and rules made under Article 309 and by Article 311 be not abused by them to the detriment of public interest and public good. 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.

45. It is thus clear that the pleasure doctrine embodied in Article 310(1), the protection afforded to civil servants by clause (1) and (2) of Article 311 and the withdrawal of the protection under clause (2) of Article 311 by the second proviso thereto are all provided in the Constitution on the ground of public policy and in the public interest and are for public good.

59. The position, therefore, is that the pleasure of the President or the Governor is not required to be exercised by either of them personally, and that is indeed obvious from the language of Article 311. Under clause (1) of that Article a government servant cannot be dismissed or removed by an authority subordinate to that by which he was appointed. The question of an authority equal or superior in rank to the appointing authority cannot arise if the power to dismiss or remove is to be exercised by the President or the Governor personally. Clause (b) of the second proviso to Article 311 equally makes this clear when the power to dispense with an inquiry is conferred by it upon the



authority empowered to dismiss, remove or reduce in rank a government servant in a case where such authority is satisfied that for some reason, to be recorded by that authority in writing, it is not reasonably practicable to hold such inquiry, because if it was the personal satisfaction of the President or the Governor, the question of the satisfaction of any authority empowered to dismiss or remove or reduce in rank a government servant would not arise. Thus, though under Article 310 (1) the tenure of a government servant is at the pleasure of the President or the Governor, the exercise of such pleasure can be either by the President or the Governor acting with the aid and on the advice of the Council of Ministers or by the authority specified in Acts made under Article 309 or in rules made under such Acts or made under the proviso to Article 309; and in the case of clause (c) of the second proviso to Article 311(2), the inquiry is to be dispensed with not on the personal satisfaction of the President or the Governor but on his satisfaction arrived at with the aid and on the advice of the Council of Ministers.”

7. In Sudesh Kumar Vs. State of Haryana & Ors. (2005) 11 SCC 525, the Supreme Court was examining the case where the concerned witness belong to different country and the authority therefore took a decision to revoke powers under **Article 311 (2)** for dispensing the inquiry. In these circumstances, the Apex Court has held as under :-

“5. It is now established principle of law that an inquiry under Article 311 (2) is a rule and dispensing with the inquiry is an exception. The authority dispensing with the inquiry under Article 311 (2)(b) must satisfy for reasons to be recorded that it is not reasonably practicable to hold an inquiry. A reading of the termination order by invoking Article 311(2)(b), as extracted above, would clearly show



that no reasons whatsoever have been assigned as to why it is not reasonably practicable to hold an inquiry. The reasons disclosed in the termination order are that of the complainant refused to name the accused out of fear of harassment; the complainant, being a foreign national, is likely to leave the country and once he left the country, it may not be reasonably practicable to bring him to the inquiry. This is no ground for dispensing with the inquiry. On the other hand, it is not disputed that, by order dated 23-12-1999, the visa of the complainant was extended up to 22-12-2000. Therefore, there was no difficulty in securing the presence of Mr. Kenichi Tanaka in the inquiry.

6. A reasonable opportunity of hearing enshrined in Article 311(2) of the Constitution would include an opportunity to defend himself and establish his innocence by cross-examining the prosecution witnesses produced against him and by examining the defence witnessed in his favour, if any. This he can do only if inquiry is held where he has been informed of the charges levelled against him. In the instant case, the mandate of Article 311(2) of the Constitution has been violated depriving reasonable opportunity of being heard to the appellant.”

8. In the present case, the facts are different. Here, the disciplinary authority has given cogent reasons as to why it is not reasonable practical to hold an inquiry. Reasons assigned by the disciplinary authority cannot be a subject matter of judicial review. In a recent case, reported in **C.I.S.F. & Ors. Vs. Abrar Ali 2017 (7) SCC 507**, the Apex Court was examining the scope of interference by this Court under Article 226 relating to departmental proceedings. This Court would not substitute its opinion to that of the disciplinary authority or the appellate authority. The only scope available with this Court is to see whether the proceedings undertaken are within the four corners



of the Rule which governs the departmental proceedings. The **Bihar CCA Rules 2005** provides under **Rule 20** as under :-

“20. Special procedure in certain cases.- Notwithstanding anything contained in Rules 17 to 19 -

(i) where any penalty is imposed on a Government Servant on the ground of conduct which has led to his conviction on a criminal charge, or

(ii) where the disciplinary authority is satisfied for reasons to be recorded by him in writing that it is not reasonably practicable to hold an inquiry in the manner provided in these Rules, or

(iii) where the Government is satisfied that in the interest of the State, it is not expedient to hold any inquiry in the manner provided in these Rules,

The disciplinary authority may consider the circumstances of the case and make such orders thereon as it deem fit :

Provided that the Government Servant may be given an opportunity of making representation on the penalty proposed to be imposed before any order is made in a case under clause (i) :

Provided further that the Commission shall be consulted, where such consultation is necessary, before any orders are made in any case under this Rule.”

9. Thus, this Court finds that essentially the disciplinary authority has acted in terms of **Rule 20 (ii)** of the **Bihar CCA Rules 2005** while invoking **Article 311(2)(b)**. Thus, the rule is akin to the provisions of the Constitution. In these circumstances, this Court would only examine whether reasons have been assigned which can be said to be in relation to the dispensing of the inquiry. Having noticed the reasons as above, this Court is satisfied that both the disciplinary authority as well as the appellate authority have satisfied themselves of the



inquiry not being feasible since the petitioner himself was absconding. There was no occasion for examining the witnesses behind his back. As the petitioner would have claimed defense of not being given an opportunity to cross-examine. Having already served with the charge-sheet, it was incumbent upon the petitioner to have participated but since he himself absconded from the inquiry, no relief can be granted to him if a decision has been taken to dispense with the inquiry. None of the above can be said to be perverse. The charges levelled against the petitioner have been ultimately proved in the criminal trial and he has already been convicted of offense under 302. In view of the provisions contained under **Article 311(2)(a)** as well as under **Rule 20(a)**, even other wise the petitioner cannot be reinstated.

10. In view thereof, the writ petition is wholly mis-concieved and is accordingly dismissed.

(Sanjeev Prakash Sharma, J)

Sachin/-
Item No. 29

AFR/NAFR	A.F.R.
CAV DATE	
Uploading Date	
Transmission Date	

