

**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble Justice Partha Sarathi Sen

WPA 15705 of 2021

**Ranjana Bharti & Ors.
Vs.
Union of India & Ors.**

For the petitioners : Mr. Shambhu Nath Ray
Ms. Tuhina Parvin
Ms. Amrita Tewari
Mr. Varun Raj Tewari
Ms. Munmun Das

For the State : Mr. Saikat Basu

Heard on : 07.05.2024

Judgement on : 07.05.2024

PARTHA SARATHI SEN, J.:

1. The substituted writ petitioners and the respondents/Union of India and its officials are represented by their respective learned advocates.
2. The instant writ petition has been filed by the original writ petitioner praying for his reinstatement in the service by setting aside the order passed by the Director General/RPF vide its office order no. 2020/SEC (E)/DAR-3/55 dated September 21, 2020.

3. It is undisputed that the original writ petitioner was a member of RPF and by an office order dated September 24, 2018, he was dismissed from service. The delinquent felt aggrieved with such order of dismissal and thus preferred an appeal, however, the appellate authority by an order dated 03.09.2019 dismissed such appeal upholding the order of the disciplinary authority. The delinquent, thereafter, approached the revisional forum and the revisional authority i.e., Inspector General-cum-Principal Chief Security Commissioner by its order dated December 31, 2019, however, allowed such revisional application and thus, the dismissal order of the writ petitioner was set aside and the writ petitioner was reinstated in RPF as Constable.
4. Pursuant to the finding of the revisional authority, an office order dated January 24, 2020 was issued by the Senior Security Commissioner/RPF/Chittaranjan whereby the writ petitioner was reinstated with immediate effect. In the said office order, it has also been mentioned that the period of his date of dismissal to date of reinstatement would be decided after finalization of D&AR proceeding. All on a sudden, the Director General who is the respondent no. 2 before this Court passed the aforesaid order dated September 21, 2020 thereby he reviewed the order of the revisional authority as passed on December 31, 2019 and found that the order

dated December 31, 2019 was passed on the day of superannuation of the said revisional authority and on such ground, the said revisional order was reviewed and the respondent no. 2 found no possible reason in the said revisional authority's order and thus, exercised his own jurisdiction and set aside the order of revisional authority and revived the order of dismissal as passed by the disciplinary authority and as affirmed by the appellate authority.

5. In course of his argument, learned advocate for the substituted writ petitioners submits before this Court that the respondent no. 2/Director General, RPF acted beyond his jurisdiction in passing such order and further while passing such order, principle of natural justice has not been followed for which, the writ jurisdiction is required to be invoked by issuing a writ of certiorari. In course of his argument, learned advocate for the writ petitioner draws attention of this Court to the paragraph 12 of the affidavit-in-opposition as filed on behalf of the respondents. It is contended that the said affidavit-in-opposition is absolutely vague and the relevant Rule i.e. Rule 219.4 of the RPF Rule, 1987 (hereinafter referred to as the 'said Rules') has been misinterpreted by the respondent authorities.
6. It is thus submitted on behalf of the substituted writ petitioners that an appropriate order may be passed directing the respondents to

release all consequential benefits in favour of the substituted writ petitioners holding that the original writ petitioner died-in-harness.

7. *Per contra*, learned advocate for the respondent authorities at the very outset draws attention of this Court to the Articles 309, 310 and 311 of the Constitution of India. It is submitted on behalf of the respondents that Article 310 of the Constitution of India deals with the doctrine of pleasure and Article 311(2) second proviso (b) empowers the authority to dismiss or remove a person or to reduce him in rank if the said authority is satisfied that for some reason to be recorded by that authority in writing, it is not reasonably practical to hold an enquiry. It is contended that considering the gravity of the situation as involved in this case, the provisions of Article 311(2) second proviso (b) has been exercised by the respondent no. 2.

8. In course of his submission, learned advocate for the respondent authority also places his reliance upon a reported decision, namely, ***Union of India Vs. Tulsiram Patel*** reported in ***AIR 1985 SC 1416***. It is submitted on behalf of the respondents that in the reported decision of ***Tulsiram Patel (Supra)*** more specifically in paragraphs 44 and 45 of the said judgment, the Hon'ble Apex Court has occasion to visualise the provision of Article 311 of the Constitution of India and in doing so the Hon'ble Apex Court came to a finding that in a case as envisaged in Article 311(2) second proviso (b), the public

interest and public good would prevail over the safeguards in respect of punishments as provided in Article 311 (1) and (2) and in such a situation a government servant cannot be heard to complain that he is deprived of his livelihood. In course of his submission, learned advocate for the respondent authorities took me to the Preamble of the RPF Act. It is submitted on behalf of the respondents that the Preamble of the RPF Act, 1957 (hereinafter referred to as the 'said Act') clearly postulates that the said Act has been enacted basically for the protection and the security of the railway property, passenger area and passengers and for matters connected therein.

9. In course of his submission, learned advocate for the respondents also draws attention of this Court to the Chapter 3 and Chapter 4 of the RPF Rules, 1987 (hereinafter referred to as the 'said Rules'). Drawing attention to Rule 22.4 vis-à-vis Rule 26 of the said Rules, it is argued that the Director General of the RPF has an advisory role in all matters pertaining to the service condition of the members of the force and exercise of the disciplinary control over them and Rule 26 postulates that the Director General may take all such steps as he considers necessary for effectively discharging his responsibilities as mentioned in the sub-Rule 1 of the said Rules. It is thus submitted that the exercise of the power of the Director General which has been challenged before this Court is thus not only in accordance with the

aforesaid two rules but also the same is in conformity of the true spirit of the said Act vis-à-vis the provision of Article 311 of the Constitution of India.

10. This Court has meticulously gone through the entire materials as placed before this Court, this Court has also given its due consideration over the submissions of the learned advocates for the contending parties. For effective adjudication of the instant writ petition, this Court considers that a look to the Article 311 of the Constitution of India is required and the same is reproduced hereunder in verbatim.

“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

(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 Permeable of the RPF Act is as under:

“An Act to provide for the constitution and regulation of an armed force of the Union for the better protection and security of railway property, passenger area and passengers and for matters connected therewith.”

12. This Court considers that Rule 22.4 and Rule 26.2 of the RPF Rules are also required to be considered and thus, those are quoted hereunder in verbatim.

“22.4 The Director-General shall advise the Central Government in all matters relating to the service conditions of the members of the Force and exercise of disciplinary control over them.”

“26.2 The Director-General may take all such steps as he considers necessary for effectively discharging his responsibilities referred to in sub-rule (1) including steps by way of tours and inspections, supervision of cases, examination of records, calling for reports and issuing or instructions and directions and holding periodical conferences and co-ordination meetings with the superior officers of police including railway police and civil and military administration and of the Force.”

13. In the case of Tulsiram Patel (Supra) the Hon'ble Apex court while discussing the doctrine of pleasure express the following view:

“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 the 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. This 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 clauses (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.”

14. On conjoint perusal of the Article 311 of the Constitution of the India and the aforesaid rules it appears to this Court that the power of Director General, RPF with regard to discharge his responsibilities is not only limited to its advisory role but the said Director General has been empowered to take all such steps which he considers necessary for effectively discharging his responsibilities as given to him within the compass of the said Act and Rules. It is also required

to be viewed as to whether such power of the Director General is unfettered and further whether while issuing the order dated September 21, 2020 the Director General, i.e., the respondent No. 2 herein had acted within his jurisdiction.

15. As discussed (Supra) it is undisputed that the writ petitioner was dismissed from service pursuant to the provision of Section 161(ii) of the RPF Rules without holding any disciplinary proceeding which cannot be said to be inconsistent with the provision of Article 311(2) second proviso (b). Materials have been placed before this Court that the delinquent approach the appellate authority but he failed and when he approached the revisional authority he got success. Consequently, he was reinstated.

16. Admittedly, by an order dated September 21, 2020 the respondent No. 2, i.e., Director General revisited the said order of the revisional authority which is the subject matter of challenge in this writ petition.

17. It appears to this Court that while passing the said order dated September 21, 2020 the Director General/respondent No. 2 herein has perused and recorded the entire facts relating to the dismissal of the delinquent, the finding of the appellate authority as well as the finding of the revisional authority and ultimately in the penultimate paragraph of his finding he held that since the revisional authority

passed its order on the day of his superannuation the same is required to be reviewed and in fact it was reviewed and unfortunately no reason has been assigned on which point it has been reviewed except the finding that the revisional authority passed its order on the day of his superannuation.

18. In considered view of this Court, the order of the respondent No. 2 is totally non-speaking and unreasoned. Even if the said order is viewed in the perspective of the Rule 22.4 and Rule 26.2 of the said Rules as discussed supra, it appears to this court that though the said Rule permitted the respondent No. 2/Director General to take all steps as he considers necessary for effectively discharging his duties and responsibilities but such power of taking steps cannot be called unfettered and that must be governed under Articles 310 and 311 of the Constitution of India.

19. The principles regarding issuance of writ of certiorari has been discussed by the Hon'ble Apex Court in the reported decision of ***Central Council for Research in 'Ayurvedic Sciences vs. Bikartan Das & Ors'***. reported in **2023 SCC Online SC 996** where the Hon'ble Apex Court ad dealt with two cardinal principles of law governing exercise of extraordinary jurisdiction under Article 226 of the Constitution more particularly when it comes to issue of writ of

certiorari and in doing so Hon'ble Apex Court express the following views:

“51. The first cardinal principle of law that governs the exercise of extraordinary jurisdiction under Article 226 of the Constitution, more particularly when it comes to the issue of a writ of certiorari is that in granting such a writ, the High Court does not exercise the powers of Appellate Tribunal. It does not review or reweigh the evidence upon which the determination of the inferior tribunal purports to be based. It demolishes the order which it considers to be without jurisdiction or palpably erroneous but does not substitute its own view for those of the inferior tribunal. The writ of certiorari can be issued if an error of law is apparent on the face of the record. A writ of certiorari, being a high prerogative writ, should not be issued on mere asking.

52. The second cardinal principle of exercise of extraordinary jurisdiction under Article 226 of the Constitution is that in a given case, even if some action or order challenged in the writ petition is found to be illegal and invalid, the High Court while exercising its extraordinary jurisdiction thereunder can refuse to upset it with a view to doing substantial justice between the parties. Article 226 of the Constitution grants an

extraordinary remedy, which is essentially discretionary, although founded on legal injury. It is perfectly open for the writ court, exercising this flexible power to pass such orders as public interest dictates and equity projects. The legal formulations cannot be enforced divorced from the realities of the fact situation of the case. While administrating law, it is to be tempered with equity and if the equitable situation demands after setting right the legal formulations, not to take it to the logical end, the High Court would be failing in its duty if it does not notice equitable consideration and mould the final order in exercise of its extraordinary jurisdiction. Any other approach would render the High Court a normal court of appeal which it is not.”

20. If the facts and circumstances of the instant case is viewed in the light of the observation of the reported decision of **Central Council for Research in Ayurvedic Sciences (Supra)** it appears to this Court that admittedly an error of law occurred on the part of the respondent No. 2 in invoking its power in setting aside the finding of the revisional authority since under the Rules 22.4 and 26.2 of the aforesaid Rule, the respondent No. 2/the Director General does not possess any further power of superintendence over the finding of the revisional authority.

21. It further appears to this Court that the respondent No. 2 acted without jurisdiction and acted erroneously in exercise of its jurisdiction in revisiting the order of the reviewing authority that too either without assigning any plausible explanation or assigning an explanation which is extraneous to the evidence on record.
22. In view of the discussion made hereinabove, the instant writ petition succeeds. As a result the order no. 2020/Sec(E)/DAR – 3/55 dated September 21, 2020 as passed by the respondent No. 2, i.e., the Director General/RPF is set aside. Since the original writ petitioner, Sri Pankaj Kumar had died during the pendency of the writ petition there cannot be any order for his reinstatement and thus justice and equity demands, that his legal heirs are entitled to all consequential benefits on account of the death of the writ petitioner who died-in-harness.
23. The respondent No. 3 is thus directed to disburse all consequential benefits to the substituted writ petitioners positively within a month from the date of communication of this order. It is further made clear that all such consequential benefits shall carry the prevailing nationalized bank interest on fixed deposit till actual payment.
24. With the aforementioned observations, the instant writ petition being **WPA 15705 of 2021** is disposed of.

25. The respondent Nos. 2 and 3 are hereby directed to act on the server copy of this order.

26. Urgent photostat certified copy of this order, if applied for, be given to the parties, upon compliance of necessary formalities.

(PARTHA SARATHI SEN, J.)

Sourav/Suvayan
A.R. (Court)s