



IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.

WRIT PETITION NO. 104 OF 2012

Laxman Manikrao Tonge,
Aged 32 years, Occupation – Nil,
(Dismissed Constable)
R/o Gavrala, Tahsil – Maregaon,
District – Yavatmal.

.... PETITIONER

VERSUS

- 1) ~~Union of India,~~ - (Deleted as per order
~~through its Secretary, Department~~ dated 30-11-2018)
~~of Home, New Delhi.~~
- 2) Director General of Central
Industrial Security Force, Force
Headquarter, C.G.O. Complex,
Lodhi Road, New Delhi -110 003.
- 3) Deputy Inspector General/Airport
Central Industrial Security Force,
Ministry of Home Affairs (WZ-AP),
Headquarters, Kendriya Sadan,
C-301, CBD Belapur, New Mumbai.
- 4) Commandant,
Central Industrial Security Force,
A.S.G. Ahmedabad (Gujrat)
- 5) The Inspector General/APS
Office of the Spl. Director/Airport
Sector, Central Industrial Security
Force (Ministry of Home Affairs)
Block No.13, CGO Complex,
Lodhi Road, New Delhi – 03.

.... RESPONDENTS

Mrs. R.S. Sirpurkar, Counsel for the petitioner,
Mrs. Mugdha Chandurkar, Counsel for the respondents.

**CORAM : NITIN W. SAMBRE &
ABHAY J. MANTRI, JJ.**

DATED : 9th AUGUST, 2024

ORAL JUDGMENT : (Per : Abhay J. Mantri, J.)

The challenge is raised to the order dated 18-11-2011 passed by respondent No.3-Deputy Inspector General/Airport Central Industrial Security Force, Ministry of Home Affairs, whereby confirmed the order dated 29-05-2011 passed by respondent No.4-Commandant, Central Industrial Security Force, Ahmedabad dismissing the petitioner without conducting a departmental enquiry.

2. It further appears that during the pendency of this petition, the petitioner challenged the said order in revision before respondent No.5-Inspector General/APS office of the Special Director, Central Industrial Security Force, New Delhi. However, respondent No.5 vide order dated 31-07-2012 dismissed the revision. The petitioner also challenges the said order by amending the petition.

3. Succinctly, the facts are as under :-

(i) On 14-08-2000, the petitioner was appointed as a Constable G.D. While discharging his duty at Rajkot, he proceeded on leave from 06-05-2011 to 27-05-2011 to attend his brother's wedding. On 24-5-2011, Crime No.93/2011 was registered against him under

Sections 302, 498-A, 304-B and 506 r/w Sections 34 of the Indian Penal Code. (for short- *I.P.C.*) Pursuant to the registration of the offence, on the same day, he was arrested and remanded to police custody till 28-05-2011. Accordingly, the concerned police station officer intimated the said fact to the Airport Security Group, Rajkot Control Room. On receiving the said intimation, the petitioner was suspended vide order dated 26-05-2011. Then, on 29-05-2011, he was immediately dismissed from the service. He was in custody from 24-05-2011 to 08-09-2011.

(ii) On releasing bail, he had preferred the appeal against the dismissal order before respondents Nos.2 and 3 on 28-09-2011, requesting them to withdraw the dismissal order dated 29-05-2011. However, without giving any opportunity for a hearing, his appeal was summarily rejected by respondent No.3 vide order dated 18-11-2011. Hence, the petitioner has preferred this petition.

4. During the pendency of this petition, on 20-03-2012, the petitioner had preferred a revision application against the said order before respondent No.5-The Special Director General/Airport Sector, Central Industrial Security Force.

5. Respondent No.5 rejected the revision by order dated 31-07-2012. The petitioner also challenged the said order by amending the petition and adding the prayer to set aside the said order.

6. Respondents Nos.2 to 5 oppose the claim of the petitioner, contending that Crime No.93/2011 was registered against the petitioner on 24-05-2011 U/Ss. 302, 498-A, 304-B and 506 r/w 34 of the I. P. C. and the intimation to that effect was received by respondent No.4 from the concerned police station. Based on the said information, the petitioner was suspended from 24-05-2011. The petitioner was in jail. Therefore, the respondent disciplinary authority was of the view that it was not possible to hold a departmental enquiry in jail premises and, thus, considering the procedure prescribed under Rule 36 of the Central Industrial Security Force Rules, 2001 (for short, "*the CISF Rules*"), dismissed the petitioner under Rule 39. The said dismissal order was served on him on 30-05-2011.

7. On 27-09-2011, the petitioner preferred the appeal against the dismissal order before the appellate authority, which came to be rejected summarily as it was preferred beyond the limitation period. It is further averred that the action taken by the respondent authority against the petitioner was strictly in accordance with the CISF Rules

and cannot be interfered with in writ jurisdiction. They denied the rest of the contentions in the petition. Lastly, it is stated that the petitioner has failed to make out a case for invoking extraordinary jurisdiction. Hence, urged for dismissal of the petition.

8. On April 1st, 2013, after hearing the learned counsel for the petitioner, '**RULE**' was granted and made returnable early.

9. Mrs. R. S. Sirpurkar, learned Counsel for the petitioner, has vehemently contended that respondent No.4, without giving any opportunity of hearing and without conducting the enquiry in the matter, dismissed the petitioner from service solely on the ground of registration of the offence against him. In fact, the registration of the said offence is not concerned with the duty he discharged. Therefore, she canvassed that passing the impugned order is a gross violation of the principles of natural justice and without applying the mind. She has further argued that respondent No.3, as well as respondent No.5, have not considered that no opportunity was granted to the petitioner prior to the passing of the dismissal order and, without considering the same, erred in dismissing the appeal and rejecting the revision application, which caused prejudice to the petitioner.

10. She has further propounded that the respondent authority, in gross violation of the petitioner's constitutional rights under Article 311, has passed the impugned order and thereby erred in dismissing the petitioner from service.

11. She has further argued that the reasons recorded in the dismissal order are not justifiable. Within a period of four days, without conducting the enquiry and without following Rules 33, 36 and 39 of the CISF Rules, the respondent authority has erred in passing the impugned order. On the point of limitation, she has submitted that on 08-09-2011, the petitioner was released on bail. After that, immediately on 28-09-2011, he preferred the appeal within a statutory period of thirty days. Therefore, it cannot be said that the appeal is barred by law of limitation. She has invited our attention to Rule 47 of the CISF Rules. Lastly, she propounded that respondent No.5 had not applied his mind independently and erred in rejecting the revision summarily. She also contended that none of the authorities recorded a finding that the enquiry was not reasonably practicable as contemplated under Clause (2) of Article 311 of the Constitution of India and passed the impugned order.

12. To substantiate her contentions, she has relied on the following judgments :

- (i) Union of India and Another v. Tulsiram Patel, (1985) 3 SCC 398,
- (ii) Jaswant Singh v. State of Punjab and Other, (1991)1 SCC 362,
- (iii) Risal Singh v. State of Haryana and Other (2014) 13 SCC 244,
- (iv) Shantilal Dnyanu Jadhav v. Commissioner of Police, Brihan Mumbai, 2010(3) Mh.L.J. 362,
- (v) Sachin Kumar v. Union of India, through the Ministry of Railways and others, 2023 SCC OnLine Bom 507,
- (vi) Capt. M. Paul Anthony v. Bharat Gold Mines Ltd. and another, AIR 1999 SC 1416.

She also draws our attention to the CISF Rules and submits that the impugned order passed by respondent No.4 is contrary to the settled legal position and the CISF Rules. Therefore, she urges setting aside the said impugned order.

13. *Per contra*, Mrs. Mugdha Chandurkar, learned Counsel for the respondents, has strenuously argued that on 26-05-2011, the respondent authority received telephonic instructions about the registration of the report. Then, on 29-05-2011, respondent No.4 authority received the letter/report along with the First Information Report from the Police Inspector, Police Station Warora, about the registration of the crime against the petitioner. Based on the said letter/report, respondent No.4 has suspended the petitioner and subsequently

dismissed him from the service under Rule 39 of the CISF Rules as it was not practicably possible for them to hold the enquiry in jail premises. As such, passing the order by respondent No.4 is just and proper. She further canvassed that the respondents passed the impugned order after due application of mind and considering the prevailing circumstances and the CISF Rules. Hence, the respondents' action cannot be interfered with in the writ jurisdiction. To substantiate her contention, she has invited our attention to paragraphs Nos.130, 134 to 136, 138 and 155 of the judgment in *Tulsiram Patel* and submitted that in view of the dictum laid down by the Hon'ble Apex Court, no interference is required in the impugned order and urged for dismissal of the petition.

14. We have appreciated the rival contentions and perused the impugned order, record, and CISF Rules, as well as the judgments relied upon by the parties.

15. The short but crucial issue for our consideration is, 'whether passing *the impugned dismissal order is just and proper* ?'

16. Before the determination of the facts in the issue, we would like to reproduce the undisputed facts of the matter as follows:

(a) The petitioner was working as a Constable at Rajkot. He was on leave from 06-05-2011 to 27-05-2011 to attend his brother's wedding. On 24-05-2011, his wife died. Hence, initially, on that day, the father-in-law of the petitioner lodged the oral report to the police station that his daughter, i.e., the wife of the petitioner, had hanged herself to the hook of the roof of the house and died. Accordingly, A.D. No.44/2011 was registered. Subsequently, he lodged a written report against the petitioner and others alleging that they had committed the murder of his daughter on account of dowry. Pursuant to the said report, Crime No.93/2011 was registered at Warora Police Station for the offence punishable under Sections 302, 498-A, 304-B and 506 r/w 34 of the I.P.C.

(b) By letter dated 28-05-2011, the Police Inspector of Warora Police Station intimated the registration of the First Information Report and arrest of the petitioner to respondent No.4. He attached a copy of the First Information Report with the said letter. The same was received by respondent No.4 on 29-05-2011.

(c) Based on the said intimation letter, respondent No.4 exercised power conferred under Rule 39(2) of the CISF Rules and suspended the petitioner from 24-05-2011. After that, vide order dated 29-05-2011, he immediately dismissed the petitioner from service and served the dismissal order on him in jail on 30-05-2011.

(d) After releasing the petitioner from jail on 08-09-2011, he preferred appeal before respondent No.4 on 28-09-2022. Respondent No.4 vide order dated 18-11-2011 dismissed/rejected the appeal as barred by law of limitation. Being aggrieved by the said order, the petitioner preferred revision before respondent No.5, which came to be rejected on 31-07-2012 and confirmed the dismissal order.

17. In view of the aforesaid undisputed facts, we would like to reproduce Rule 39(i), (ii) and (iii) of the CISF Rules.

“39. Special procedure in certain cases – Notwithstanding anything contained in rules 36 to 38-

(i) where any penalty is imposed on an enrolled member of the Force 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 it in writing that it is not reasonably practicable to hold an enquiry in the manner provided in these rules, or

(iii) where the President is satisfied that in the interest of the security 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 deems fit;

Provided that the enrolled member of the Force may be given an opportunity of making a representation against the penalty proposed to be imposed before any order is made in a case under clause (i).”

18. A bare perusal of Rule 39(ii), it is evident that if the disciplinary authority is satisfied for the reasons recorded by it in writing that, it is

not reasonably practicable to hold an enquiry in the manner provided in these rules, in such circumstances, the disciplinary authority may pass the order as it deems fit.

19. In the case at hand, undisputedly, no disciplinary enquiry was conducted as prescribed under Rules 36 to 38 of the CISF Rules. However, after the fifth day of the offence registration, the petitioner was dismissed from the service, observing that as per Rule 39 of the CISF Rules, it is not reasonably practicable to hold the enquiry in jail premises. Mere registration of the offence does not mean that the offence has been proved against him. So also, it does not reflect on which basis, on the fifth day of registration of the offence, respondent No.4, authority, without recording the satisfactory reasons in writing, came to the conclusion that it was practicably improbable for him to hold the inquiry. No satisfaction in that regard has been recorded in the impugned order.

20. Turning to the judgment in the case of ***Tulsiram Patel*** (supra), on which both the learned counsel has relied, the Constitution Bench of the Hon'ble Apex Court, while dealing with a similar issue, in paragraphs No.118 to 124, 130 to 138 and 155 to 162 discussed in detail about the CISF Rules and Article 311 of the Constitution as well

as considered the dictionary meaning of practicable and not practicable/impracticable words and held that “*the satisfaction of the disciplinary authority that ‘it is not reasonably practicable to hold’ the inquiry as contemplated by the clause (2) of Article 311 of the Constitution of India, means in the opinion of the reasonable man, taking a reasonable view of the prevailing situation, is said to be reasonable/practicable to do so or not.*” **Tulsiram Patel’s** case is followed in **Jasawant Sing** (*supra*)(in para 5 and 6), **Risal Singh**(*supra*)(in Para 7) and other judgments.

21. In the case of **Risal Singh** (*supra*), the Hon’ble Apex Court has observed that “according to the Oxford English Dictionary, practicable means ‘capable of being put into practice, carried out action, effected, accomplished, or done feasible. *Likewise*, they have considered the proviso to Article 311(2) of the Constitution of India and followed the dictum laid down in the case of **Tulsiram Patel** (*supra*) in para 130. i.e.

“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 enquiry or because the department’s case against the government servant is weak and must fail.”

22. Thus, considering the above discussion and perusal of the impugned order, it seems that the reasons recorded by respondent No.4 authority for dispensing with the inquiry are unsustainable in the light

of the settled position of law. We are conscious of the limitation of the power of judicial review, and we do not wish to sit as an appellate authority over reasons recorded for dispensing with enquiry. However, no convincing reasons were recorded for dispensing with the enquiry in the impugned order. As against, it is evident that no material has been produced before the authority or without conducting a *prima facie* inquiry, merely based on the intimation received, he has passed the impugned order. Therefore, the reasons recorded in the said order are not sustainable in the eyes of the law. On the contrary, in our view, the respondent authorities have been dispensed with an enquiry in an arbitrary manner by grossly abusing the special power under Article 311(2) (b) of the Constitution and Rule 39 of the CISF rules 2001.

23. *Furthermore*, it appears that the respondent authority has not given the petitioner any opportunity to hear, thereby violating the principles of natural justice. Thus, in our opinion, passing the impugned order without conducting the inquiry and offering the opportunity to the petitioner is an arbitrary and grossly abuse of the powers under Rule 39 of the CISF Rules and Article 311(2)(b) of the Constitution of India.

24. Besides, based on the registration of the First Information Report, the respondent authority assumed that the accused was convicted for

the offence charged against him. The respondent authority has failed to consider the principle that the “*accused is innocent until proven guilty or his guilt is established beyond a reasonable doubt*”.

25. Regarding the respondent's objection to filing the appeal by the petitioner, it was barred as per Rule 47 of the CISF Rules. However, considering the facts of the case and the fact that the petitioner was in jail till 08-09-2011 and after being released on bail within one month, i.e., the statutory period of thirty days, he has preferred the appeal before the competent authority. In view of the above, we do not find substance in the argument of the learned counsel for the respondents in that regard.

26. Thus, to sum up, it seems that the respondents, without following the rules and principle of natural justice and dictum laid down in the judgments referred to supra, as well as without giving any opportunity to hear the petitioner, passed the impugned order. The reasons recorded by respondent No.4 authority for non-holding the inquiry are not convincing, satisfactory and justifiable in the eyes of the law. Hence, in our opinion, the impugned order is not sustainable and liable to be set aside. Consequently, we answer the issue accordingly and deem it appropriate to pass the following order.

- (a) The writ petition is allowed.
- (b) The impugned orders dated 29-05-2011, 18-11-2011 and 31-07-2012 are hereby quashed and set aside.
- (c) As a sequel of the above, respondent Nos. 3 and 4 are directed to reinstate the petitioner with continuity of service and back-wages in accordance with the law.
- (d) Needless to clarify, the respondents have been granted the liberty to hold the inquiry if desired.

27. Rule is made absolute in the above terms. No costs.

(ABHAY J. MANTRI, J.)

(NITIN W. SAMBRE, J.)

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