



GAHC010149962010

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THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/2277/2010

035090958CT/GD, RUBEN KALITA
SINCE DISMISSED FROM SERVICE S/O LT. SONESWAR KALITA, R/O VILL-
KATHALMURA, P.O. JALKHANA, DIST. JALKHANA, DIST. NALBARI,
ASSAM.

VERSUS

THE UNION OF INDIA and ORS
REP. BY THE SECY, TO THE GOVT. OF INDIA, MINISTRY OF HOME
AFFAIRS, NEW DELHI.

2:THE DIRECTOR GENERAL
CENTRAL RESERVE POLICE FORCE
CGO COMPLEX
BLOCK NO.7
LODHI ROAD
NEW DELHI.

3:THE DEPUTY INSPECTOR GENERAL
ADMINISTRATION
COBRA
DIRECTORATE GENERAL
CRPF
BLOCK-1
CGO COMPLEX
LODHI ROAD
NEW DELHI.

4:THE ADDL. DEPUTY INSPECTOR GENERAL GROUP CENTRE
CENTRAL RESERVE POLICE FORCE
9TH MILE
AMERIGOG
GHY-23.



5:THE COMMANDANT
204 COBRA BN
CRPF
SHIVPURI
MADHYA PRADESH

Advocate for the Petitioner : MR.B CHOUDHURY
Advocate for the Respondent : ASSTT.S.G.I.

BEFORE
HONOURABLE MR. JUSTICE SUMAN SHYAM

JUDGMENT & ORDER (ORAL)

Date : 16-02-2023

Heard Mr. R. Sarma, learned counsel for the writ petitioner. Also heard Mr. A.K. Dutta, learned CGC appearing for the respondents.

2. This writ petition is directed against the order of dismissal from service dated 31-08-2009 as well as the subsequent order dated 13-11-2009 of the appellate authority refusing to interfere with the order of dismissal.

3. The facts of the case, in a nutshell, are that the writ petitioner herein had joined as Constable (GD) under the Central Reserve Police Force (CRPF) on 28-02-2003. After successful completion of training, the petitioner was placed in the 35 Bn. of the CRPF. In the year 2009, the Ministry of Home Affairs had raised 204 Cobra Bn. of CRPF for being deployed against the terrorists and nexalites. Petitioner's name was proposed for the said Battalion and accordingly, his services were placed under the Cobra Battalion. While the petitioner was posted at Shivpur in the state of Madhya Pradesh, on 23-08-2009, he had gone to the market, along with 200 other personnel of the camp. It appears that in the evening, there was a check roll call in the camp and the second in command, i.e. 2 I/C Sri



A.K. Bharti had alleged that the petitioner and his colleagues had consumed liquor. Accordingly, they were asked to subject themselves to a medical examination. At that, the petitioner had raised protest on account of which, he was allegedly beaten by the superior officials. The above conduct of the superiors had infuriated the colleagues of the writ petitioner and as many as 800 personnel of that unit had assembled and protested against the manhandling of the writ petitioner and his other colleagues by the superiors. Due to the above gathering, some commotion took place, which had also resulted into damages caused to some properties. According to the writ petitioner, on the next day, i.e. 24-08-2009, some officials of the CRPF had come to the camp and enquired about the incident wherein the petitioner had suffered injuries and was sent to the District Hospital at Shivpur. A few days thereafter, i.e. on 31-08-2009 the petitioner was asked to go on duty at Gwallior. On reaching Gwallior, he was handed over the impugned office order dated 31-08-2009 issued by the respondent No. 5 by means of which the petitioner and his three other colleagues had been dismissed from service by dispensing with the disciplinary inquiry on the ground that they had revolted against the superiors and incited their colleagues to rebellious behaviours. The petitioner had preferred an appeal before the appellate authority against the order dated 31-08-2009, which was also turned down by the order dated 13-09-2009. Hence, this writ petition.

4. The petitioner's counsel has argued that the allegations brought against his client are all false and baseless inasmuch as, it was the superior officials who had misbehaved with the petitioner and his colleagues. If the authorities would have held a regular enquiry then the petitioner could have proved the said fact by adducing evidence. However, in

order to avoid the truth from coming out, the Commandant/ respondent No. 5 had arbitrarily invoked Article 311(2)(b) of the Constitution of India and dismissed the petitioner without holding any enquiry. According to Mr. R. Sarma the reasons recorded for dispensing with the holding of inquiry is wholly untenable in the eye of law inasmuch as the same does not demonstrate as to why, it would not have been practicable for the authorities to hold an enquiry.

5. By relying upon and referring to the decision of the Supreme Court rendered in the case of ***UoI Vs. Tulsiram Patel &Ors.***, reported in ***(1985) 3 SCC 398***, Mr. Sarma submits that the impugned order is not supported by proper reason for dispensing with holding of inquiry and therefore, the same is liable to be set aside by this Court on such count alone.

6. Mr. A.K. Dutta, learned CGC appearing for the respondents, has raised the plea of maintainability of the writ petition on the ground of want of territorial jurisdiction. He also submits that the misconduct on the part of the petitioner was of such a degree that it was not practicable for the Disciplinary Authority to hold an enquiry in this case. Since Article 311(2) of the Constitution of India permits dispensing with disciplinary inquiry, hence, the impugned order, according to the learned CGC, has been passed without serving any charge memo or holding a disciplinary inquiry against the petitioner.

7. I have considered the submission advanced by the learned counsel for the parties and have also gone through the materials available on record.

8. At the very outset, this Court proposes to deal with the question of maintainability



of the writ petition raised by Mr. Dutta. Such plea is on account of the fact that the incident took place in the state of Madhya Pradesh but the writ petition has been filed in Guwahati, Assam. What is to be noted herein is that the respondents are the Union of India and its officials who have presence all across the country including Guwahati. In this case, the learned CGC is representing the respondents. Moreover, the writ petition has already been admitted for final hearing. The respondents had not raised the plea of maintainability of the writ petition while admitting the writ petition. In view of the above, I am not inclined to entertain the plea on the question of maintainability of writ petition at this point of time.

9. Insofar as the challenge to the impugned orders is concerned, I find that in the order dated 31-08-2009, it has been projected that on being asked to subject himself to a medical test by the 2 I/C Sri A.K. Bharti, the writ petitioner had threatened to commit suicide and had also tied a telephone wire around his neck in full view of the personnel who were present for the "check roll call" for the assembly of the force numbering about 600. On observing the same, some of the personnel including the Constable SI U.P. Singh had rushed to save the petitioner from committing suicide. It has also been alleged that soon after the petitioner was saved, he, along with some of his colleagues, had incited the CRPF personnel of the Unit which had created a revolt like situation. As a result of such conduct of the petitioner, the constabulary in general had become unruly and had gone berserk and ransacked the office and the residence of 2 I/C Sri A.K. Bharti. The officials had to leave the area to save their lives and to avoid greater violence. When some other officers, such as Sri Akhiles Kumar, DC was trying to pacify the crowd, he had



sustained head injuries due to pelting of stones. After recounting such facts, the respondent No. 5 had made the following observations in paragraphs 4, 5 and 6 of the order dated 31-08-2009, which are reproduced here-in-below for ready reference:-

“4. Whereas in a situation where disciplined personnel indulge in acts of serious indiscipline that too to the extent of assaulting the officers, pelting stones, ransacking the office and residence of the officers etc. as a mob, there is possibility of the personnel not coming out with clear statement of evidence as complicity is collective in the entire incident. There is possibility of personnel threatening each other not to depose also. Therefore, it is not reasonably practicable to conduct a departmental enquiry against the culprits involved in serious acts of indiscipline and other criminal acts. At the same time that continued presence of hooligans and discipline breachers is contaminating the discipline of the Force and it may give rise to mutiny if immediate action is not taken to control the situation forthwith. Ct. R. Kalitha has already threatened that he would commit suicide if any action is taken against him and there is every likelihood that such disgruntled people would go to any extent to damage the discipline and good image of the Force. The situation is on the whole explosive and any delay in action may make it more volatile and explosive.

5. Whereas, after considering all possibilities to initiate a regular departmental enquiry against the culprits, I am constrained to come to conclusion that the situation does not allow for the same in the back drop of circumstance in service is highly detrimental to the discipline and good order of an uniformed force like CRPF in general and CoBRA in particular.

6. Now therefore, I have reached the conclusion that retaining indiscipline, riotous drunkards and personnel who revolt against superiors and incite their colleagues to resort to rebellious behaviour in the Force will only contaminate the discipline further and lead to a situation of potential mutiny. Under the given circumstances it is not reasonably practicable to hold an enquiry. Hence, in exercise of the powers conferred on the undersigned under Section 11 of the CRPF Act read with Rule 27 cc (2) of the CRPF Rules, (corresponding to Article 311 (2)(b) of the Constitution of India, 1950), hereby order of dismissal from service of following personnel of this unit from 31st August, 2009 and accordingly they are struck off the strength of this unit from the same date.

- 1. 031528408 CT/GD Sanjoy Singha*
- 2. 065094613 CT/GD Anil Kumar Singha*
- 3. 880979372 HC/GD Jyoti Lal Dev Nath*
- 4. 035090958 CT/GD Raben Kalita”*

10. Article 311 of the Constitution provides that no person, who is a member of the civil service of the Union of India or an all India service or 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, except after conducting an enquiry in which he has been informed of the charges brought against him and is given reasonable opportunity of being heard in respect of those charges. Proviso to Clause- 2 of Article 311, however, contains exception clauses which permits the authorities to impose an order of penalty of dismissal or removal from service or reduction in rank of such person without holding an enquiry. Clause- (b) of the proviso to Sub-Article 2 of the Article 311 would be relevant in this case and therefore, is quoted here-in-below for ready reference:-

“(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.”

11. A plain reading of the impugned order dated 31-08-2009 goes to show that the reason for not holding an enquiry is on account of the fact that it was not reasonably practicable to hold such an enquiry. However, from a careful reading of the impugned order, I do not find any basis for recording the above reason. First of all the incident evidently took inside the CRPF Battalion camp and in the presence of a large number of CRPF personnel including the superior officials. It has also been alleged that there were incidents of rampage and injury caused to a number of officials leading them to be admitted in the hospital. Under the circumstances, it is apparent that a number of CRPF personnel had witnessed the incidents. If that be so, there was ample evidence available

for the authorities to prove the allegation brought against the petitioners. That apart, if it is really a case where the petitioner was trying to commit to suicide, then also, it is not clear as to why the authorities did not lodge an FIR with the police. Notwithstanding the same, the respondent No. 5 has observed that it was not practicable to hold an enquiry in the facts of this case. In my opinion, such a conclusion was wholly erroneous. From an analysis of the reasons recorded in the impugned order it appears that the respondent No. 5 has speculated on the possibility of the charge being proved against the petitioner and his colleagues as well as the gravity of the alleged misconduct so as to dispense with the inquiry. The reasons recorded in the impugned order, in the opinion of this Court, do not go to show as to why it was impracticable to hold an inquiry against the writ petitioner before dismissing him from service.

12. It is to be noted herein that holding a disciplinary inquiry based on charges known to the Govt. servant is the requirement of the law and departure there-from, if any, as per proviso to the Article 311(2) would only be permissible if the facts and circumstances of the case justifies the same. Proviso to Article 311(2)(b) cannot be invoked at the *ipse-dixit* of the authority, merely to prevent the truth from coming to light.

13. In the case of **Tulsiram Patel (Supra)** the Apex Court has observed that although the decision of the disciplinary authority is final, yet, 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 inquiry or because the department's case against the Government servant is weak and must fail. The finality given to the decision of the disciplinary authority under Article 311(3) is not binding upon the Court so

far as its power of judicial review is concerned.

14. In the case of ***Jaswant Singh Vs. State of Punjab & Ors.*** reported in **(1991) 1 SCC 362**, a similar view has been expressed by the Supreme Court. That was also a case where a police official was dismissed from service by invoking Clause-(b) of the second proviso to Article 311(2) of the Constitution of India read with Rule 16.1(2) of the Punjab Police Rules. In that case also, the dismissal order was based on the allegations that the appellant was instigating his fellow police officials to cause indiscipline, show insubordination and exhibit disloyalty; that he was meeting other police officials and inducing them to stand against the senior officials and was thus spreading discontentment, hatred and dissatisfaction amongst his fellow policeman towards the superiors and that he betrayed lack of sense of discipline which was highly unbecoming of the member of the police force expected to maintain law and order. The writ petition filed by the policeman assailing the order of dismissal from service was dismissed by the High Court in *limine*. Aggrieved thereby, he had approached the Hon'ble Supreme Court by filing Special Leave Petition (SLP), which was allowed by setting aside the order of dismissal. While allowing the SLP, the Supreme Court has observed that the decision to dispense with the disciplinary inquiry cannot be raised solely on the *ipse-dixit* of the concerned authority. When the satisfaction of the concerned authority is questioned in a Court of law, it is incumbent on those who support the order to show that the satisfaction is based on certain objective facts and is not the outcome of the whim or caprice of the concerned officer.

15. Again in the case of ***Reena Rani Vs. State of Haryana & Ors.*** reported in

(2012) 10 SCC 215, whereby an order of dismissal from service was passed by invoking Clause-(b) of Article- 311(2) on the ground that it was not practicable to hold the regular disciplinary inquiry because no independent witness will be available, the Hon'ble Supreme Court has observed that certain general observations to show that it was not practicable to hold an inquiry could not be made the basis for dismissal of an employee from service without holding inquiry. The decision in the case of **Reena Rani (Supra)** was rendered after considering the law laid down in the case of **Tulsiram Patel (Supra)** as well as in the case of **Jaswant Singh (Supra)**.

16. Section 11 of the Central Reserve Police Force Act, 1947 deals with minor penalties with which we are not concerned. Insofar as Rule 27(cc) of the Central Reserve Police Force (CRPF) Rules, 1955 is concerned, it is no doubt correct that Rule 27(cc)(ii) contains a *parimateria* provision, as in proviso to Article 311(2)(b), which permits award of punishment by dispensing with the holding of inquiry on reasons to be recorded in writing that it is not reasonably practicable to hold such an inquiry. However, the question that would arise in this case is whether sufficient reasons have been recorded to invoke Rule 27(cc)(ii) of the Rules of 1955 read with proviso to Article 311(2)(b).

17. Coming to the facts of this case, as noted hereinabove, the reason as to why the disciplinary authority had felt that it was not practicable to hold an inquiry against the petitioner have been recorded in the impugned order dated 31-08-2009 and the same has been discussed hereinabove. Applying the ratio of the decisions referred to in the foregoing paragraphs to the facts of this case, this Court is of the opinion that the reasons recorded in the impugned order were neither adequate nor relevant for the authorities to



invoke Clause-(b) of Article- 311(2) read with Section 11 of the CRPF Act and Rule 27cc of the CRPF Rules and dismiss the petitioner from service without holding an inquiry.

18. For the reasons recorded (Supra) this Court is of the considered opinion that the impugned order dated 31-08-2009 dismissing the petitioner from service as well as the subsequent order dated 13-11-2009 issued by the appellant authority are vitiated by procedural irregularity and therefore, is required to be interfered with.

19. In view of the above, this writ petition succeeds and is hereby allowed. The impugned orders dated 31-08-2009 and 13-11-2009 are hereby set aside.

20. The respondents are directed to reinstate the petitioner within 04 weeks from the date of receipt of a certified copy of this order. Upon such reinstatement, it will be open for the authorities to initiate fresh disciplinary proceeding against the petitioner, if so advised, after serving charge memo upon him.

Writ petition stands allowed to the extent indicated above.

JUDGE

GS

Comparing Assistant