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RESERVED

Court No. - 27

Case :- WRIT - A No. - 25018 of 2018
Petitioner :- Lokendra Pal Singh
Respondent :- State Of U.P. And 3 Others
Counsel for Petitioner :- Pankaj Kumar Tiwari, Amit Saxena
Counsel for Respondent :- C.S.C.

Hon'ble Vivek Varma, J.

By means of this petition under Article 226 of the Constitution, the petitioner has assailed the order dated 09.03.2018 passed by respondent no.4-Inspector General of Police, Moradabad Region, Moradabad and order dated 11.08.2018 passed by respondent no.3-Additional Director General of Police, Bareilly Region, Bareilly (Annexure Nos.5 and 9 to the writ petition).

Briefly, the facts of the case are that the petitioner was sub-inspector in civil police. When he was posted as Station House Officer in District Bulandshahar, he was approached by a lady, namely, Ms. Ruma Chaudhary in connection with a land dispute with her uncle. Upon intervention of the petitioner, the aforesaid dispute was resolved. Thereafter, Ms. Ruma Chaudhary became familiar with the family of the petitioner and won their trust. She took a loan and financial help from the petitioner to continue her studies. According to the petitioner, in the year 2011, Ms. Ruma Chaudhary successfully qualified the examination of constable in U.P. Police. But she still continued to take financial help from the family of the petitioner. Even after 4 to 5 years of service, she refused to repay the loan. It is stated that in October, 2017, the wife of the petitioner filed a complaint case being Case No. 23786 of

2017 (Smt. Geeta vs. Ruma Chaudhary), under Sections 406, 506 I.P.C. against Ms. Ruma Chaudhary. On 23.01.2018, Ms. Ruma Chaudhary, it is submitted as a counter blast, lodged an FIR against the petitioner under Sections 376, 377 and 506 I.P.C. alleging that said offences have been committed from June, 2010 onwards. Again on 09.02.2019, in order to pressurize the petitioner, Ms. Ruma Chaudhary lodged another FIR under Sections 364, 511, 507, 504 and 506 I.P.C. Due to the aforesaid FIR and complaint of Ms. Ruma Chaudhary, the petitioner was placed under suspension vide order 14.02.2018 passed by S.S.P, Moradabad. On 27.03.2018, a charge-sheet was submitted against the petitioner in the FIR dated 23.01.2018. Thereafter, the petitioner is stated to have challenged the charge-sheet by filing Criminal Misc. Application U/S 482 Cr.P.C. No.21454 of 2018 and this Court vide order dated 20.06.2018 stayed the further proceedings. It is also stated that in the FIR dated 09.02.2018, a final report was submitted and no protest petition has been filed as yet.

It is submitted that while those proceedings were continuing, a departmental preliminary enquiry was initiated against the petitioner by the S.P. City, District Moradabad. The statements of Ms. Ruma Chaudhary and the Investigating Officers of the two cases instituted against the petitioner, were recorded by the enquiry officer. The preliminary enquiry report recorded that, prima facie, the allegations made by Ms. Ruma Chaudhary were correct.

On the basis of said ex-parte enquiry report, the petitioner was dismissed from service vide order dated 09.03.2018 by the Inspector General of Police, Moradabad Region, Moradabad under Rule 8 (2) (b) of the Uttar Pradesh Police Officers of the

Subordinate Ranks (Punishment and Appeal) Rules, 1991 (hereinafter referred to as the "Rules, 1991").

Aggrieved by the aforesaid order, the petitioner preferred a departmental appeal and the same was rejected by the Additional Director General of Police, Bareilly Region, Bareilly vide order dated 11.08.2018. The orders dated 09.03.2018 and 11.08.2018 are under challenge before this Court by means of present writ petition.

Heard Sri Amit Saxena, learned Senior Advocate, assisted by Sri Ashish Pandey, learned counsel for the petitioner and Mr D. K. Tiwari, learned Standing Counsel for the State.

Submission of Sri Amit Saxena, learned counsel for the petitioner is that the dismissal order passed against the petitioner without holding a departmental enquiry is entirely arbitrary, discriminatory and the same has been passed in violation of the principles of nature justice. There is no material before the disciplinary authority for arriving at any subjective satisfaction to dispense with the enquiry. There was no occasion to hold that enquiry into the matter is neither reasonable nor practicably possible.

Further submission is that reasons recorded for dispensing with the enquiry was irrelevant and was arbitrary and, therefore, the impugned termination was invalid and that the petitioner was liable to be reinstated in service.

Per contra, learned Standing Counsel for the State, in support of orders impugned, has submitted that Rule 8 (2) (b) of the Rules, 1991 has rightly been invoked in the matter as it was not possible to hold a departmental enquiry. He has further stated that the enquiry

officer has clearly stated in his enquiry report that the petitioner indulged in criminal acts.

I have considered the rival submission advanced by learned counsel for the parties.

The services of the petitioner had been dismissed after invoking, the proviso to Rule 8 (2) of the Uttar Pradesh Police Officers of the Subordinate Ranks (Punishment and Appeal) Rules, 1991. To appreciate the contention made by learned counsel for the parties, it is necessary first to have a look at the provisions contained in Rule 8 of the Rules, 1991. It reads as under:

> *"**8. Dismissal and removal.** - (1) No Police Officer shall be dismissed or removed from service by an authority subordinate to the appointing authority.*
>
> *(2) **No Police Officer shall be dismissed, removed or reduced in rank except after proper inquiry and disciplinary proceedings** as contemplated by these rules :*
>
> *Provided that this rule 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 enquiry**; or*
>
> *(c) Where the Government is satisfied that in the interest of the security of the State is not expedient to hold such enquiry.*
>
> *(3) All orders of dismissal and removal of Head Constables or Constables shall be passed by the Superintendent of Police. Cases in which the Superintendent of Police recommends dismissal or*

removal of a Sub-Inspector or an Inspector shall be forwarded to the Deputy Inspector-General concerned for orders.

(4) (a) The punishment for intentionally or negligently allowing a person in police custody or judicial custody to escape shall be dismissal unless the punishing authority for reasons to be recorded in writing awards a lessor punishment.

(b) Every officer convicted by the Court for an offence involving moral turpitude shall be dismissed unless the punishing authority for reasons to be recorded in writing considers it otherwise."

Bare perusal of the aforesaid Rule would go to show that holding of inquiry is a rule and dispensing with the enquiry is an exception. Before proceedings to impose any one of the major penalty of dismissal, removal or reduction in rank the departmental inquiry is must. However in certain contingency said rule can be dispensed with. One such contingency provided for is that, it is not reasonably practicable to hold an inquiry for reasons recorded in writing. The said authority is to be exercised in exceptional circumstances and that too by recording finding to the effect as to why it is not reasonably practical to hold an inquiry. The sine quo non for exercise of power under the proviso (b) to Rule 8 (2) of U.P. Police Officers of the Subordinate Rank (Punishment and Appeal) Rules, 1991, is the requirement to record reasons that it is not reasonably practicable to hold such inquiry.

The proviso to Article 311 (2) of the Constitution of India, which is analogous to Rule 8 (2) (b) of Rules, 1991 provides for the mandatory requisites to dispense with the enquiry. In the aforesaid provision also, an exception is carved out to the normal rule of holding a departmental enquiry, before imposing a major

punishment upon the delinquent officer.

The condition precedent for exercise of powers to dispense with the departmental enquiry arose for consideration before the Hon'ble Supreme Court in the case of ***Union of India and another vs. Tulsi Ram Patel***[1]**.** The Hon'ble Court held as under:

> *"60. The Second Proviso to Article 311(2) Clause (2) of Article 311 gives a constitutional mandate to the principles of natural justice and audi alteram partem rule by providing that a person employed in a civil capacity under the Union or a State shall not be dismissed or removed from service or reduced in rank until after an inquiry in which he has been informed of the charges against him and has been given a reasonable opportunity of being heard in respect of those charges. To this extent, the pleasure doctrine enacted in Article 310 (1) is abridged because Article 311 (2) is a express provision of the Constitution. This safeguard provided for a government servant by clause (2) of Article 311, however, taken away when the second proviso to that clause becomes applicable. The safeguard provided by clause(1) of Article 311, however, remains intact and continues to be available to the government servant. The second proviso to Article 311 (2) becomes applicable in the three cases mentioned in clauses (a) to (c) of that proviso. These cases are :*
>
> *(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; and*
>
> *(c) where the President or the Governor, as the case may be, is*

1 ***AIR 1985 SC 1416***

satisfied that in the interest of the security of the State it is not expedient to hold such inquiry.

130. The condition precedent for the application of clause

(b) is the satisfaction of the disciplinary authority that "it is not reasonably practicable to hold" the inquiry contemplated by clause (2) of Article 311. What is pertinent to note is that the words used are "not reasonably practicable" and not "impracticable". According to the Oxford English Dictionary "practicable" means "Capable of being put into practice, carried out in action, effected, accomplished, or done; feasible". Webster's Third New International Dictionary defines the word "practicable" inter alia as meaning "possible to practice or perform : capable of being put into practice, done or accomplished : feasible". Further, the words used are not "not practicable" but "not reasonably practicable". Webster's Third New International Dictionary defines the word "reasonably" as "in a reasonable manner : to a fairly sufficient extent". Thus, whether it was practicable to hold the inquiry or not must be judged in the context of whether it was reasonably practicable to do so. It is not a total or absolute impracticability which is required by clause (b). What is requisite is that the holding of the inquiry is not practicable in the opinion of a reasonable man taking a reasonable view of the prevailing situation. It is not possible to enumerate the cases in which it would not be reasonably practicable to hold the inquiry, but some instances by way of illustration may, however, be given. It would not be reasonably practicable to hold an inquiry where the government servant, particularly through or together with his associates, so terrorizes, threatens or intimidate witnesses who are going to given 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 other threatens, intimidates and

terrorizes the officer who is the disciplinary authority or member of his family so that he is afraid to hold the inquiry or direct it to be held. It would also not be reasonably practicable to hold the inquiry where an atmosphere of violence or of general indiscipline and insubordination prevails, and it is immaterial whether the concerned government servant is or is not a party to bringing about such an atmosphere. In this connection, we must bear in mind that numbers coerce and terrify while an individual may not. The reasonable practicability of holding an inquiry is a matter of assessment to be made by the disciplinary authority. Such authority is generally on the spot and knows what is happening. It is because the disciplinary authority is the best judge of this that clause(3) of Article 311 makes the decision of the disciplinary authority on this question final. 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 Hon'ble Apex Court in the case of ***Jaswant Singh vs. State of Punjab and others***[2], the Court while dealing with the exercise of power as conferred by way of exception under Article 311 (2) (b) of the Constitution of India, opined as under:

"Clause (b) of the second proviso to Article 311 (2) can be invoked only when the authority is satisfied from the material placed before him that it is not reasonably practicable to hold a departmental enquiry. This is clear from the following observation at page 270 of Tulsiram Case: (SCC p.504, para 130)

> *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*

2 ***(1991) 1 SCC 362***

> *inquiry or because the department's case against the government servant is weak and must fail.*
>
> *The decision to dispense with the departmental enquiry cannot, therefore, be rested solely on the ipse dixit of the concerned authority. When the sanctification 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."*

In ***Reena Rani vs. State of Haryana***[3], after referring to the various authorities holding the field, the Hon'ble Apex Court ruled out when reasons are not ascribed, the order is vitiated and accordingly set aside the order of dismissal which had been concurred with by the Single Judge and directed for reinstatement in service with all consequential benefits. It has also been observed therein that the order passed by this Court would not preclude the competent authority from taking action against the appellant/petitioner in accordance with law.

Recently, in the case of ***Risal Singh vs. State of Haryana and others***[4], while construing a similar provision, the Hon'ble Apex Court Court observed as follows:

> *"Non-ascribing of reason while passing the order dispensing with enquiry, which otherwise was must, definitely invalidates such action....*
>
> *Tested on the touchstone of the aforesaid authorities, the irresistible conclusion is that the order passed by the Superintendent of Police dispensing with the inquiry is totally unsustainable and is hereby annulled. As the foundation founders,*

3 ***(2012) 10 SCC 215***
4 ***(2014) 13 SCC 244***

the order of the High Court giving the stamp of approval to the ultimate order without addressing the lis from a proper perspective is also indefensible and resultantly, the order of dismissal passed by the disciplinary authority has to pave the path of extinction"

The provisions of Rule 8 (2) (b) of the Rules, 1991 and Article 311 (2) of the Constitution of India are almost in *pari-materia* and the legislative intent behind the provisions are the same.

In view of the law laid down by the Hon'ble Apex Court noticed above, before exercising special powers to dispense with the enquiry, the disciplinary authority must be satisfied on the basis of objective material that it is not practicable to hold such enquiry.

At this stage, it would be appropriate to notice some authorities in point rendered by this Court, while interpreting proviso (b) to Rule 8 (2) of the Rules, 1991.

In ***Pushpendra Singh and another vs. State of U.P. and another***[5]**,** the Court in paragraphs 7, 8, 9 and 10 held as follows:

"7. …….. ***Thus, in order to dispense with the regular departmental proceeding for inflicting punishment of dismissal, removal or reduction in rank, recording reasons is condition precedent.*** *The idea or object of recording reasons is obviously to prevent arbitrary, capricious and mala fide exercise of power. Therefore, recording of reason is mandatory and in its absence the order becomes laconic and cannot sustain. Onus is on the State or its authorities to show that the order of dismissal has been passed strictly as per prescription of the statutes. The Hon'ble Apex Court in the case of Union of India v. Tulsi Ram Patel, AIR 1985 SC 1416 while considering Articles 310 and 311 of the Constitution of India*

5 ***2008 (3) ADJ 689 (D.B.)***

held that two conditions must be satisfied to uphold action taken under Article 311 (2) of the Constitution of India, viz., (i) there must exist a situation which renders holding of any enquiry not reasonably practicable, (ii) the disciplinary authority must record in writing its reasons in support of its satisfaction. The Hon'ble Apex Court further observed that though Clause (3) of Article 311 makes the decision of the disciplinary authority in this behalf final, yet such finality can certainly be tested in the Court of law and interfered with if the action is found to be arbitrary or mala fide or motivated by extraneous considerations or merely a rule to dispense with the enquiry. The Hon'ble Apex Court at page 1479 in Tulsi Ram Patel (supra) held as follows :

> *"A disciplinary authority is not expected to dispense with a disciplinary authority lightly or arbitrary 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."*

8. The words some "reason to be recorded in writing that it is not reasonably practicable to hold enquiry" means that there must be some material for satisfaction of the disciplinary authority that it is not reasonably practicable. The decision to dispense with the departmental enquiry cannot, therefore, be rested solely on the ipse dixit of the concerned authority. The Apex Court in the case of Jaswant Singh v. State of Punjab and Ors. has observed as under:

> *"It was incumbent on the respondents to disclose to the Court the material in existence at the date of the passing of the impugned order in support of the subjective satisfaction recorded by respondent No. 3 in the impugned order. Clause (b) of the second proviso to Article 311(2) can be invoked only when the authority is satisfied from the material placed before him that it is not reasonably practicable to hold a departmental enquiry."*

"...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."

9. Therefore, in view of the exposition of law such satisfaction has to be recorded either in the impugned order or in any case it must be available on record. In the case in hand, the impugned order is enclosed as Annexure 5 to the writ petition. From a perusal thereof it is evident that the Senior Superintendent of Police merely reproduced the provisions contained in Rule 8(2)(b) against the above police personnel, stating that it is not reasonably practicable to hold such enquiry. It does not contain any reason showing as to why it is not reasonably practicable to hold regular enquiry. The satisfaction that it is not reasonably practicable to hold such enquiry has to be spelled out either in the order itself or at least it has to be available on record. Learned Standing Counsel also during his submission could not show us any such reason recorded by the competent authority in the record to show any ground or reason for invoking the provisions contained in Rule 8(2)(b) of the Rules. It is well settled legal position that when a statutory functionary makes an order based on some reasons or grounds, its validity is to be tested on the ground or reasons mentioned therein and cannot be supplemented by giving reasons through affidavit filed in the case (See Mohinder Singh Gill and Anr. v. The Chief Election Commissioner, New Delhi and Ors.).

9. It is also an admitted position that the appellants have been dismissed from service without holding any enquiry. They have not been informed of the charges against them nor been afforded opportunity of being heard in respect of charges before inflicting punishment of dismissal from service. Thus, in the absence of

reasons for dispensing with the regular enquiry the impugned order of dismissal is patently illegal and it is difficult to uphold the same."

In ***Dayashankar Tiwari and another vs. State of U.P. and others***[6]**,** the Court in paragraphs 9, 10 and 11 held as follows:

"9. In the present case, it is admitted that the petitioners were caught red handed while on duty, and no preliminary enquiry was held nor the petitioners were given opportunity to explain their conduct. The Senior Superintendent of Police has found that it was not reasonably practicable to hold a departmental enquiry against them only on the ground that the act of police personnel will cause serious damage to the police department, and general public will loose confidence in the police department.

10. In all the aforesaid cases, it was held that unless the reasons given by the disciplinary authority that it was not reasonably practicable to hold departmental enquiry, relevant for the exercise of power, the courts will not exercise power of judicial review.

11. In the present case, acceptance of bribe and being caught red handed in the act, may lower the image of the police department, and the confidence of general public, but that by itself cannot be said to relevant grounds to dispense with the preliminary and thereafter departmental enquiry. The exercise of powers under Section 8 (2) (b) will require the act of indiscipline or misconduct to be such, and not its consequences, which may be relevant to record findings that it is not reasonably practicable to hold departmental enquiry. Every allegation of corrupt practice by police officers results into possibility of indiscipline, lowering of image and loss of public

6 ***2010 (10) ADJ 574 (D.B.)***

faith. These consequences cannot be taken to be sufficient not to cause departmental enquiry to enquire into the truth of allegations after affording an opportunity of hearing to the delinquent employee."

In ***Rajendra Prasad Singh vs. State of U.P. and others***[7]**,** the Court in paragraphs 9 & 10 held as follows:

"9. Thus, the consistent view is that holding an enquiry is a rule and it's dispensation, an exception. The test is that in a prevailing situation, what a reasonable man, taking a reasonable view, would have done. Further, the decision to dispense with the departmental enquiry is not based on the ipse dixit of the authority concerned but should be based on objective assessment of the relevant facts. If the subjective satisfaction is challenged before the Court of law, it has to pass the test laid down above and for which, it is the burden of the disciplinary authority to place the relevant facts and material before the Court to justify it's action in dispensing with the disciplinary enquiry.

10. Applying these principles to the facts of the present case, this Court finds that the decision to dispense with the enquiry is not based on relevant considerations and cannot be sustained in law. Perusal of the impugned order will demonstrate that the decision to dispense with the disciplinary enquiry is primarily based on two grounds: (1) that the delinquent continues to be absent and there is no possibility of his co-operation in the enquiry; and (2) the deeds of the delinquent were widely reported in various newspapers and media and, therefore, it would be inexpedient and impracticable to hold the enquiry."

Recently, a Division Bench of this Court in the case of ***Umesh Chandra vs. State of U.P. through Secretary,*** Special

7 ***2014 (3) AWC 2616***

Appeal No.350 of 2017, decided on 06.08.2019, (of which I was a member), the Court construed the provisions of Rule 8 (2) (b) of the Rules, 1991. The relevant extract of the judgments is quoted below:

> *"The above provision is pari-materia with Article 311 (1) and (2) of the Constitution, which gives constitutional protection to a Member of civil service of the Union or of the State. The normal rule is that no major punishment, such as, dismissal, removal or reduction in rank should be inflicted without taking recourse of regular disciplinary enquiry against any delinquent. However, Rule 8 (2) (b) of the Rules, 1991 has carved out certain exceptions where even without holding regular proceeding punishment of dismissal, removal or reduction in rank can be inflicted. In order to dispense with the regular departmental proceeding for inflicting major punishment recording reasons is a condition precedent to prevent arbitrary, capricious and mala fide exercise of power. Absence of reasons vitiates the order and renders it unsustainable in law. Secondly, the authority has to record its satisfaction based on credible material in the record, to dispense with the enquiry. Onus is on the State or its authorities to show that the order of dismissal has been passed strictly as per prescription of the statutes."*

The authorities in point are long, but the position of law has been consistent on the point.

In the case in hand, the Inspector General of Police vide his order dated 09.03.2018, dismissed the services of the petitioner relying upon a confidential/ex-parte preliminary enquiry report dated 15.02.2018 conducted by Deputy Inspector of Police, Moradabad by stating that since the petitioner had been posted as Inspector in police department, a cloud of fear exists, no witness

came forward to depose against him, as such, further enquiry is not possible.

The said order also records that the petitioner is a married person and being a senior member of a disciplined force, has committed misconduct within the meaning of Rule 3 of The U.P. Government Servant Conduct Rules, 1956. He has tarnished the image of the police force. The continuance of such undisciplined and criminal minded person will cause serious damage to the police department and general public will loose faith. For this reason the disciplinary authority thought it fit to dispense with the enquiry.

The recital in the impugned dismissal order dated 09.03.2018 that no witness came forward to depose against the petitioner in the preliminary enquiry as such further enquiry is not possible, needs consideration. It does not stand to reason how witnesses were aware about the enquiry when even the petitioner was not informed. The said reasoning by no stretch of imagination could be a ground for dispensing with the disciplinary enquiry. It is a wholly subjective opinion not arising from any objective material.

It is also relevant to be noted that if a preliminary enquiry can be held then there is no reason as to why a regular departmental enquiry cannot be held, in such facts. Admittedly, there are cross cases registered between petitioner and Ms. Ruma Chaudhary and also the fact that Ms. Ruma Chaudhary had duly appeared and deposed before the ex-parte preliminary enquiry.

It is trite law that the satisfaction of the authority has to be based upon objective material on record. There is no material on

record to justify the conclusion that it was not possible to hold a departmental enquiry.

Also, the order has been passed on the basis of preliminary enquiry. The preliminary enquiry report was never supplied to the petitioner. The petitioner did not have an opportunity to refute the preliminary enquiry report. The report was adverse to the petitioner. The authority by failing to provide preliminary enquiry report to the petitioner and omitting to call for objections from the petitioner, has acted in violation of principles of natural justice. The procedure adopted by the authority while passing the impugned order is arbitrary and illegal. Even the appellate authority failed to appreciate the aforesaid issues and dismissed the appeal. The reasoning assigned in the impugned orders cannot be said to be relevant grounds to dispense with the departmental inquiry.

In view of the admitted facts and the legal position referred to above, the impugned dismissal order dated 09.03.2018 and appellate order dated 11.08.2018 cannot be sustained and are hereby set aside.

The writ petition is ***allowed***.

The matter is remanded back to the disciplinary authority to proceed from the stage prior to the passing of the impugned order dated 09.03.2018 and conclude the enquiry within a period of six months from the date of production of a certified copy of this Court.

Order Date :- 30.8.2019
Ajeet

(Vivek Varma, J.)