

IKRAMUDDIN AHMED BORAH
SUPERINTENDENT OF POLICE, DARRANG & OTHERS

SEPTEMBER 27, 1988

[E.S. VENKATARAMIAH AND N.D. OJHA, JJ.]

Constitution of India, 1950: Article 311(2)(b)—‘Not reasonably practicable to hold such enquiry’—Interpretation of—The holding of the enquiry is not practicable in the opinion of a reasonable man taking a reasonable view of the prevailing situation—Non availability of witnesses on account of fear of the officer concerned—A sufficient ground.

Assam Police Manual: Part III Rule 11(X) and Column II—Sub-Inspector—Appointed by Principal Police Training College—Dismissal by Superintendent—Whether valid and legal.

The appellant who was a Sub-Inspector of Police was dismissed by the Superintendent of Police by an order dated 29th January, 1973, exercising powers under clause (b) of the second proviso to Article 311(2) of the Constitution of India. The appellant preferred an appeal to the Inspector General of Police, and the said appeal having been dismissed, he challenged the order of dismissal as well as the appellate order in an application under Article 226 of the Constitution in the High Court. A Division Bench, however, dismissed the application.

In the appeal by special leave to this Court, it was contended on behalf of the appellant that:

(1) the appellant having been appointed as Sub-Inspector of Police by the Inspector General of Police, the order of his dismissal by the Superintendent of Police was illegal being in contravention of Article 311(1) of the Constitution, and (2) the provisions of clause (b) of the second proviso to Article 311(2) of the Constitution were not attracted to the facts of the case and consequently the order of dismissal was illegal having been passed without compliance with the requirements of Article 311(2).

Dismissing the Appeal, the Court,

HELD: 1. The Superintendent of Police and Principal, Police Training College, Assam are authorities having coordinate jurisdiction

A to appoint Sub-Inspectors under Rule 11(X) and Schedule Column II of the Assam Police Manual, Part III. [329E; 328H]

B In the instant case, the appellant having been appointed by the Principal Police Training College Darrang, Assam, and having been dismissed by the Superintendent of Police, Darrang, District Tejpur who was a coordinate authority, the submission that the order of dismissal was illegal as having been passed by an authority subordinate to that by which he was appointed has no substance. [329E-F]

C 2. While construing the words "it is not reasonably practicable to hold such enquiry" used in clause (b) of the second proviso to Article 311(2) it was held in *Union of India v. Tulsī Ram Patel and Others*, [1985] Supplement 2 SCR 131, that 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. 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. One of the illustrations D justifying clause (b) of the second proviso to Article 311(2) being invoked, is the non availability of the witnesses on account of fear of the officer concerned. [330G-H; 331A-B, 332A]

E In the instant case, it is apparent from the order of dismissal that this was the main ground for invoking the said clause (b). The Superintendent of Police who passed the order of dismissal was the best authority on the spot to assess the situation in the circumstances prevailing at the relevant time and this Court does not find any good ground to interfere with the view taken by the Superintendent of Police in this behalf. In such matters the Court will not sit in judgment over F the relevancy of the reasons given by the disciplinary authority for invoking clause (b) like a Court of appeal. Even in those cases where two views are possible, the Court will decline to interfere. [332A-B, C]

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 977 of 1976.

G

From the Judgment and Order dated 8.3.1976 of the Guwahati High Court in Civil Rule No. 261 of 1973.

D.N. Mukherjee, N.R. Choudhary and Ranjan Mukherjee for the Appellant.

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Prabir Choudhary for the Respondents.

The Judgment of the Court was delivered by

OJHA, J. This appeal by special leave has been preferred against the Judgment dated 8th March, 1976 of the Guwahati High Court in Civil Rule No. 261 of 1973. The appellant who was a Sub-Inspector of Police in Assam was dismissed by the Superintendent of Police, Darrang district, Tezpur, by Order dated 29th January, 1973. This order was passed without compliance with the requirements of Article 311(2) of the Constitution on the ground that it was a case to which the provisions of clause (b) of the second proviso to Article 311(2) were attracted. The appellant preferred an appeal to the Inspector-General of Police, Assam (Shillong). The said appeal having been dismissed he challenged the order of dismissal as well as the appellate order under Article 226 of the Constitution in Civil Rule No. 261 of 1973 referred to above. The various submissions made on behalf of the appellant did not, however, find favour with the Learned Judges who heard the civil rule mentioned above resulting in its dismissal by the judgment appealed against.

Two submissions have been made by learned counsel for the appellant:

- (i) The appellant having been appointed as Sub-Inspector of Police by the Inspector General of Police, the order of his dismissal by the Superintendent of Police, Darrang, was illegal being in contravention of article 311(1) of the Constitution.
- (ii) The provisions of clause (b) of the second proviso to article 311(2) of the Constitution were not attracted to the facts of the instant case and consequently the order of dismissal was illegal having been passed without compliance with the requirements of article 311(2).

In order to appreciate these submissions, it would be useful to extract article 311 of the Constitution. It reads:

“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

- A 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.
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- 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:
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Provided further that this clause shall not apply—

- (a) where a person is dismissed or removed in rank on the ground of conduct which has led to his conviction on a criminal charge; or
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- (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
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- (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."
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- Having heard learned counsel for the parties, we find it difficult to agree with any of the submissions referred to above. In support of his first submission, learned counsel for the appellant placed reliance on a Memo dated 7th July, 1967 from the office of the Inspector-General of Police which according to him was the letter of appointment whereby the appellant was appointed as a Sub-Inspector of Police. According to learned counsel for the appellant, this being so the order of dismissal having been passed by the Superintendent of
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Police, Darrang, who was admittedly "an authority subordinate to that by which the appellant was appointed", was on the face of it illegal.

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With regard to this submission, we are of the opinion that the said Memo cannot be treated as the letter of appointment of the appellant. It reads as hereunder:

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"Express:

Office of the Inspector General of Police:
Assam Memo No. F/1/93/Vol. 16/51 Shillong, the 7th July, 1967.

From: Shri P.C. Das, I.P.S.,
Deputy Inspector General of Police
(P) Assam

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To

Md. Ikramuddin Ahmed Borah,
Ward No. III, P.O. Mariani,
(Jorhat), Dist. Sibsagar,

D

Subject: Recruitment of temporary Sub-Inspector of Police (Unarmed Branch) for 1967

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You are hereby informed that you are provisionally selected for appointment as temporary Sub-Inspector of Police (U.B.) subject to final and satisfactory police verification report.

Please report to the Principal, Police Training College, Dergaon on 17th July 1967 positively for training failing which your name will be struck off the list of selected candidates.

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The details relating to books & uniform required for training in the college should be obtained from the Principal, Police Training College, Dergaon on your joining for the training.

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Your provisional appointment letter will be issued by the Principal, Police Training College, Dergaon on joining."

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A In pursuance of the aforesaid Memo the Principal Police Training College, Dergaon, issued Memo dated 17th July, 1967, the relevant portion whereof reads as under:

"OFFICE OF THE PRINCIPAL: Police Training College: Dergaon.

B

APPOINTMENT LETTER

Memo No. 10712(A) PTC dated, Dergaon, the 17th July 1967.

C

Shri Ikramuddin Ahmed Borah, s/o Late A. Ahmed Borah Vill. Mariani, P.O. Mariani, P.S. Mariani, Dist. Sibsagar is hereby informed that he has been provisionally appointed as a Cadet Sub-Inspector of Police in Assam with effect from 17-7-1967 A.N. He should provide himself with the books and uniforms.

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7. Principal, Police Training College, Assam may expel or discharge him any time during the training if his progress or discipline or behaviour shows that he is not likely to be fit for Police service.

E

Sd/-
Principal
Police Training College,
Assam, Dergaon."

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Even on a bare perusal of the two Memos mentioned above, it is apparent that by Memo dated 7th July, 1967 which was issued by the Deputy Inspector General of Police, the appellant was only informed that he had been provisionally selected for appointment as temporary Sub-Inspector of Police (U.B.) and the order of appointment was to be issued by the Principal, Police Training College which indeed was issued by the subsequent Memo dated 17th July, 1967. This memo seems to have been sent by the Deputy Inspector General of Police as President of the Selection Board constituted for the purpose according to the procedure for appointment of a Sub-Inspector to be found in Assam Police Manual in Part III. Rule 11(x) at the relevant time as it appears from the judgment appealed against read as hereunder:

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“11.(x) Direct recruitment of Sub-Inspectors:

The final selection will be made by the Deputy Inspector General of Police sitting as President of a Selection Board, which will consist of himself and 2 Superintendents of Police appointed by the Inspector-General of Police. The order of appointing Probationary Sub-Inspectors will be issued by the Superintendents of Police of the Districts from which the candidates are nominated.”

Rule 66 deals with proceedings to be drawn up in cases of major punishment. The said rule contains a schedule.

Item No. 3 of column I refers to Sub-Inspector of Police. Column II indicates that the appointing authorities of a Sub-Inspector of Police *inter alia* are Superintendent of Police; S.P./S.S.P./C.I.D.; Commandant of Battalion, Principal, APTC (that is Assam Police Training College). Deputy Inspector General of Police is shown as the final appellate authority. Rule 11(x) and the schedule referred to above are the relevant provisions in pursuance whereof the selection was made of the appellant vide Memo dated 7th July 1967 and the appointment order was issued by the Principal Training College, Dergaon vide Memo dated 17th July, 1967. Consequently, Superintendent of Police and Principal, Police Training College, Assam, are authorities having coordinate jurisdiction according to column II of the schedule. The appellant having been appointed by Principal Police Training College Dergaon, Assam, and having been dismissed by the Superintendent of Police, Darrang, who was a coordinate authority, the submission made by the learned counsel for the appellant that the order of dismissal was illegal having been passed by an authority sub-ordinate to that by which he was appointed, obviously therefore has no substance.

Coming to the second submission, we find it necessary to refer to the order of dismissal in extenso. It reads:

“D.O. No. 320 dated 29.1.73.

Whereas it has been made to appear before me that proby. Sub-Inspector of Police Ikramuddin Ahmed Borah was appointed as proby. Sub-Inspector of Police on 17.7.67 against a temporary vacancy;

AND

A Whereas said Ikramuddin Ahmed Borah since his joining the department, his service in all branches of Police work where he had been tried leaves much to be desired and that consistent efforts by his senior officers for improving his work has proved abortive and further that despite the above drawbacks the said S.I.'s conduct and integrity has recently been found to be doubtful and the said S.I. has been recently misusing his official position to the detriment of general social well-being and to his personal gain.

AND

C Whereas I am satisfied that it is not reasonably practicable to hold any inquiry as contemplated under Clause (2) of Article 311 of the Constitution of India because of non-availability of witnesses who would not testify against the said S.I. of Police out of various considerations such as fear and because of the likelihood of causing of damage to the Police image and administration before the general public in the event of holding of such an enquiry;

Now,

E therefore, in exercise of powers under proviso (b) clause (2) of Article 311 of the Constitution of India, I, Shri P.N. Goswami, Superintendent of Police Darrang District, Tezpur, hereby order that said Ikramuddin Ahmed Borah be dismissed from the force with effect from the date of issue of this order. Said Ikramuddin Ahmed Borah is accordingly dismissed from the police service.

F Sd/- P.N. Goswami
(P.N. Goswami)

Superintendent of Police,
Darrang, District Tezpur."

G The scope of clause (b) of the second proviso to Article 311(2) and of Article 311(3) came up for consideration before a Constitution Bench of this Court in *Union of India and Anr. v. Tulsi Ram Patel and Others*, [1985] supplementary 2 S.C.R., page 131. While construing the clause "it is not reasonably practicable to hold such enquiry" used in clause (b) aforesaid, it was held:

“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 intimidates witnesses who are going to give evidence against him with fear of reprisal as to prevent them from doing so”

With regard to Article 311(3) of the Constitution after pointing out that where a government servant is dismissed, removed or reduced in rank by applying clause (b) or an analogous provision of the service rules and he approaches either the High Court under Article 226 or this Court under Article 32, the Court will interfere on grounds well established in law for the exercise of judicial review in matters where administrative discretion is exercised, it was held:

“If the court finds that the reasons are irrelevant, then the recording of its satisfaction by the disciplinary authority would be an abuse of power conferred upon it by clause (b) and would take the case out of the purview of that clause and the impugned order of penalty would stand invalidated. In considering the relevancy of the reasons given by the disciplinary authority the court will not, however, sit in judgment over them like a court of first appeal. In order to decide whether the reasons are germane to clause (b), the court must put itself in the place of the disciplinary authority and consider what in the then prevailing situation a reasonable man acting in a reasonable way would have done. The matter will have to be judged in the light of the then prevailing situation and not as if the disciplinary authority was deciding the question whether the inquiry should be dispensed with or not in the cool and detached atmosphere of a court room, removed in time from the situation in question. Where two views are possible, the court will decline to interfere.”

- A One of the illustration justifying clause (b) of the second proviso to Article 311(2) being invoked, as indicated above, is the non-availability of the witnesses on account of fear of the officer concerned. In the instant case as is apparent from the impugned order of dismissal this was the main ground for invoking the said clause (b). On
- B the material on record, it is not possible for us to make the view that there was an abuse of power by the disciplinary authority in invoking clause (b). The Superintendent of Police who passed the order of dismissal was the best authority on the spot to assess the situation in the circumstances prevailing at the relevant time and we do not find any good ground to interfere with the view taken by the Superintendent of Police in this behalf. As pointed out in the case of Tulsi Ram
- C Patel supra, in such matters, the Court will not sit in judgment over the relevancy of the reasons given by the disciplinary authority for invoking clause (b) like a Court of first appeal and that even in those cases where two views are possible, the Court will decline to interfere. In this view of the matter, we do not find any substance in the second submission either.
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In the result, this appeal fails and dismissed but in the circumstances of the case there would be no order as to costs.

N.V.K.

Appeal dismissed.