

A. K. Sen and Others

Vs

Union of India and Others

Transferred Cases Nos. 2 to 7 of 1983

(A. P. Sen, D. P. Madon JJ)

31.10.1985

JUDGMENT

MADON, J. –

1. Six security guards belonging to the Central Industrial Security Force (hereafter referred to as "the Force") were dismissed from service by dispensing with the disciplinary inquiry under clause (b) of Rule 37 of the Central Institution Security Force Rules, 1969, read with clause (b) of the second proviso to Article 311(2) of the Constitution. These provisions authorize a disciplinary authority to dispense with a disciplinary inquiry where it is satisfied, for some reason to be recorded in writing, that it is not reasonably practicable to hold the inquiry. The dismissed security guards filed writ petitions under Article 226 of the Constitution in the Kerala High Court challenging their dismissal. These petitions were transferred to this Court under Article 139-A(1) of the Constitution as a number of other matters involving the interpretation of the second proviso to Article 311(2) were pending in this Court. These other matters were disposed of by a Constitution Bench of this Court by a common judgment namely, Union of India v. Tulsiram Patel ((1985) 3 SCC 398 : 1985 SCC (L&S) 672).

2. The question which falls for determination in these Transferred Cases is whether it was not reasonably practicable to hold a disciplinary inquiry against the petitioners. In Tulsiram Patel case ((1985) 3 SCC 398 : 1985 SCC (L&S) 672) this Court has in great detail considered the scope and applicability of clause (b) of the second proviso to Article 311(2) and has given illustrate cases where a disciplinary inquiry can be said to be not reasonably practicable. It is in the light of what was held in the majority judgment in that case that the present cases before us fall to be decided.

3. Some of the matters before the Court in Tulsiram Patel case ((1985) 3 SCC 398 : 1985 SCC (L&S) 672) related to the Force, and the nature, functions and duties of the members of the Force have been set out and discussed in that judgment and need not to be repeated here. Suffices it to say that the Force has been constituted under the Central Industrial Security Force Act, 1968, for the better protection and security of industrial undertakings owned by the Government and of industrial undertakings and installations attached thereto of undertakings in the public sector which may request for such protection and security. It is an armed Force and as shown by the various provisions of the said Act, the maintenance of discipline in the Force is of vital importance. In March 1979 the members of the unit of the Force stationed at Bokaro Steel Plant at Bokaro in the State of Bihar formed an All-India Association and began to agitate for its recognition as also for grant of several demands. From May 1979 onwards the agitation assumed a serious form resulting in the total break-down of discipline, and insubordination ran rampant.

There was large-scale abstention from duty and parade, orders of superior officers were disobeyed and flouted, and superior officers abused in filthy and obscene language. There were dharnas and gheraos of superior officers. Processions were taken out in which slogans, both defiant and throwing out a challenge to the authorities were shouted. The situation at Bokaro ultimately became so grave that the army had to be called out to disarm the unit posted there and this could only be achieved after a pitched armed battle which lasted for three hours between the armed agitators and the army resulting in twenty-two deaths, among them of an army major and two other army personnel. Several members of the Force of the Bokaro Unit were dismissed in the same way as the petitioners before us. Their cases fell to be decided in Tulsiram Patel case ((1985) 3 SCC 398 : 1985 SCC (L&S) 672) and on a consideration of the detailed materials placed before the court in those cases, their orders of dismissal were upheld. Apart from calling out the army, similar occurrences took places at Hoshangabad in he State of Madhya Pradesh. The dismissal of a security guard posted at Hoshangabad in similar circumstances was also upheld by the Constitution Bench in Tulsiram Patel case ((1985) 3 SCC 398 : 1985 SCC (L&S) 672). In all those cases the Constitution Bench held that "no person with any reason or sense of responsibility can say that in such a situation the holding of an inquiry was reasonably practicable".

4. The situation in the southern Zone was very similar. Ultimately, four security guards belonging to the Unit of the Force posted at Thumba in the Trivandrum Division who are petitioners in Transferred Cases 4 to 7 of 1983 and two security guards belonging to the Unit posted at Eloor, Always, being the petitioners in Transferred Cases 2 to 3 of 1983, were dismissed in the manner aforesaid. The materials on the record show that the acts of misconduct charged against the petitioners in Transferred Cases 4 to 7 of 1983 were the same as were before the court in Tulsiram Patel case ((1985) 3 SCC 398 : 1985 SCC (L&S) 672) and the situation which prevailed was very similar.

5. So far as Transferred Cases 2 and 3 of 1983 are concerned, the materials on the record show that at Eloor also the situation was the same but ultimately returned to normal in June 1980. However, efforts were made in October 1980 to revive the agitation and clandestine meetings were held at village Kulathur, Trivandrum, on October 6 and 7, 1980, in which it was decided that efforts should be made to restart the agitation on a wide scale in all the units of the southern zone. These meetings were held by the petitioners in Transferred Cases 2 and 3 of 1983 in corroboration with some of the dismissed members of the Force. In order to prevent the possible re-occurrence of a near mutiny by the units posted in the southern zone, swift and deterrent action was necessary and required and these two petitioners were dismissed. The result was that the agitation did not start again in the southern zone.

6. All the impugned orders of dismissal before us expressly state that the witnesses were being threatened and intimidated from coming forward to give evidence and that attempts were made to serve the charge-sheets but that the charge-sheets could not be served. In these circumstances, we can only repeat what was said by the Constitution each in Tulsiram Patel case ((1985) 3 SCC 398 : 1985 SCC (L&S) 672) that no person with any reason or sense of responsibility can say that in such a situation the holding of an inquiry was reasonably practicable. Several of the petitioners before us went in departmental appeals and those appeals were also rejected and, in our opinion, rightly rejected.

7. An additional point has been raise in Transferred Cases 2 and 3 of 1983 that the orders of dismissal were passed by an authority subordinate to the authority by which the said petitioners were appointed and, therefore, the provisions of clause (1) of Article 311 of the Constitution were

violated. The Petitioner in Transferred Case 2 of 1983 was appointed on August 8, 1972, and the petitioner in Transferred Case 3 of 1983 was appointed on December 30, 1974, by the Assistant Inspector-General. In both these cases the orders of dismissal were passed by the Commandant of their unit. It was submitted that the very designation showed that the Commandant was subordinate to the Assistant Inspector-General. The composition of the Force is set out in Rule 3 of the Central Industrial Security Force Rules, 1969. Rule 3 as it stood gave the rankings as (1) Inspector-General, (2) Deputy Inspector-General, (3) Commandant (Chief Security Officer). The Assistant Inspector-General did not feature in the said Rule. This post was obviously created some time before August 30, 1972, on which date the petitioner in Transferred Case 2 was appointed. These petitioners have not produced any material to show when and how this post was created or what was the ranking given to the Assistant Inspector-General vis-a-vis the Commandant at that time. However, at the hearing of these Transferred Cases, the respondents produced a letter dated May 29, 1969, from the Deputy Secretary to the Government of India, Ministry of Home Affairs, addressed to the Inspector-General of the Force conveying the sanction of the President of India to the creation of certain posts in the Force. Amongst the posts so sanctioned was the post of Assistant Inspector-General who was ranked along with Commandant. Further, Rule 3 was substituted in 1976. The substituted Rule 3 shows that the Assistant Inspector-General/Principle, Training Colleges/Commandant (Fire) / Commandant (Chief Security Officer) all rank equally. This contention must, therefore, equally fail.

8. In the result, these Transferred Cases are dismissed. There will be no order as to the costs of these cases.

9. In conclusion, we may mention that as the petitioners were not represented in this Court, we requested Dr. Y. S. Chitale, Senior Advocate, to appear as amicus curiae so that no point which might be in favour of the petitioners may remain to be brought to the notice of the Court and we are much beholden to Dr. Chitale for the assistance which he has rendered to the court in the course of the hearing of these cases.

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