SUPREME COURT OF INDIA

Prithipal Singh

Vs.

State of Punjab

C.A.No.5226 of 2004

(S.B. Sinha and Dalveer Bhandari JJ.)

19.10.2006

JUDGMENT

S.B. SINHA, J.

Application of the 2nd proviso appended to Clause (2) of Article 311 of the Constitution of India is in question in this appeal, which arises out of a judgment and order dated 24th September, 2002 passed by the Punjab and Haryana High Court in Regular Second Appeal No.3135 of 1996. The said question arises in the following circumstances:

Appellant was appointed as an Assistant Sub-Inspector of Police (for short, 'ASI') on 17.3.1980. He was put on probation. On completion of his period of probation, he was confirmed on 31.3.1989. He was promoted to the post of Sub-Inspector on 29.10.1985. While he was discharging his duties in the said capacity, on a charge of grave misconduct that he had let off one smuggler, named, Lakhwinder Singh after accepting money, a departmental proceeding was initiated against him. He was dismissed from services by an order dated 7.1.1988 of the Senior Superintendent of Police, Tarn Taran. The matter was carried in appeal and the Appellate Authority, being the Deputy Inspector General of Police, set aside the said order of dismissal and directed completion of the disciplinary proceeding, which had already been initiated. Pursuant to or in furtherance of the said direction, Appellant was reinstated in service on 4.11.1988 and was posted at Sangrur. The departmental proceeding that followed, the misconduct alleged against Appellant was found to have not been proved. The disciplinary proceeding against Appellant was dropped by the Senior Superintendent of Police, Sangrur, stating:

"On completion of the Departmental Inquiry, the Report was submitted to this Office. I have carefully examined the statements of prosecution witnesses, defence witnesses and the Report of the Inquiry Officer. On the basis of the evidence recorded the allegations leveled against SI Prithipal Singh are not proved because it has not been stated by any witness that SI Prithipal Singh, without registering a case against Lakhwir Singh had let off him after accepting money. Besides this it has been stated by Budha Singh, father of Lakhwir Singh that neither his son was ever arrested by SI Prithipal Singh nor he or his son Lakhwir Singh has ever paid any money to him. After considering the statements of prosecution witnesses, defence witnesses and the Report of the Inquiry Officer, I drop the proceedings against SI Prithipal Singh as the allegations leveled against him are not proved. A copy of this Order be given to him."

A notice was served upon Appellant purported to be in terms of Rule 16.28 of the Punjab Police Rules, 1934 (for short, 'the Rules'), asking him to show cause as to why the order dated 18.10.1988 passed by the then Deputy Inspector General ('DIG', for short), Border Range, Amritsar, setting aside the order of dismissal from service passed by the Senior Superintendent of Police, Tarn Taran on 7.7.1988, should not be set aside. Appellant filed his show cause, inter alia, stating that there was no valid reason for dispensation of departmental inquiry and once it had been initiated, the same should have been completed. The Director General of Police, however, by an order dated 5.2.1990 set aside the said order dated 18.10.1988 passed by the DIG, Amritsar, opining:

".....After due appraisal of the facts and circumstances of the case, I do not see any force in the various contentions raised by the S.I. in his written reply. I further find that the impugned order passed by the Sr. Supdt. of Police, Tarn Taran was proper, valid and based on true facts and in accordance with law and did not warrant any interference. The conduct of the S.I. was reprehensible and the holding of departmental enquiry was rightly dispensed with by the competent authority after recording valid reasons therefor. I, therefore, hold that the decision taken by the appellate authority setting aside the impugned order of dismissal passed by the Sr. Supdt. of Police, Tarn Taran is erroneous, unwarranted and deserves to be quashed. In view of the above discussion, I hereby quash the appellate order dated 18.10.1988 passed by the D.I.G. of Police, Border Range reinstating S.I. Prithipal Singh No.259/J in service. In consequence the order passed by the Sr. Supdt. of Police, Tarn Taran dated 7.7.1988 is maintained resulting in the dismissal of S.I. Prithipal Singh No.259/J from service with immediate effect."

A suit was filed by Appellant herein, questioning the validity of the said order in the Court of Senior Sub-Judge, Sangrur. In the said suit the defendant did not examine any witness. The suit was decreed by the Subordinate Judge, 1st Class, Sangrur by a Judgment and Decree dated 16.3.1995, inter alia, opining that as Appellant was exonerated of the charges in the regular departmental inquiry, the question of dispensation of the departmental proceeding against him did not arise. On an appeal preferred by the State, the Additional District Judge, however, reversed the said Judgment and Decree, inter alia, holding that the Director General of Police had enough material before him to enable him to pass the order impugned in the suit. The second appeal filed by Appellant thereagainst, as noticed hereinbefore, has been dismissed by the Punjab and Haryana High Court by reason of the impugned judgment.

Appellant was a Government servant. He was entitled to the protection as envisaged under Article 311 of the Constitution of India. His services could, therefore, be terminated only by an Authority competent in that behalf; upon being informed of the charges and after giving him a reasonable opportunity of hearing in respect thereof. Clause (b) of the 2nd Proviso appended thereto, however, provides for dispensation of such enquiry where the Authority empowered to dismiss or remove an employee or to reduce him in rank is satisfied that for reasons to be recorded in writing, it is not reasonably practicable to hold such inquiry.

Indisputably, the Disciplinary Authority being Senior Superintendent of Police, Tarn Taran was of the said view. The said Authority, however, did not, in his order dated 7.7.1988, record that the conditions precedent for invoking the said provisions stood fulfilled. He proceeded to exercise his jurisdiction under the Rules without completion of the departmental proceedings. He opined that a regular inquiry, without there being any material on record, as laid down in Punjab Police Rules, was not practicable as the witnesses were not likely to depose against him due to the fear of injury to their lives. No reason was assigned in support thereof. Appellant herein preferred an appeal

thereagainst. The learned Appellate Authority noticed that summary of allegation had been served upon Appellant on 30.6.1988. He was of the opinion that when the departmental enquiry was initiated, it was incumbent upon the punishing authority to complete it and the provisions of Rule 16.28 of the Rules read with Section 7 of the Police Act, 1861 could not have been circumvented in such a manner. It was categorically held:

"....As soon as a stigma is attached against the Govt. Employee, then it is necessary to have a probe made into it. If the departmental enquiry had not been ordered then the dismissal order of SSP was not open to challenge and in this manner, the dismissal order is illegal, void and not sustainable."

It is not in dispute that pursuant thereto or in furtherance of the said order dated 18.10.1988, Appellant was reinstated in service. Thereafter the departmental proceedings were held and therein the charges, having not been proved, were dropped. Once in the disciplinary proceedings Appellant was exonerated of the charges framed against him, the question of taking recourse to Clause (b) of the 2nd Provision appended to Clause (2) of Article 311 of the Constitution of India did not and could not arise. It is unfortunate that although, the same had been duly noticed by the learned Trial Judge, it failed to receive due attention of the Appellate Court as also of the High Court. The very purpose, for which the said provision was enacted, had lost its relevance once a departmental proceeding was held. The Director General of Police, while passing the order dated 5.2.1990, furthermore failed to take into consideration that in an appeal preferred by the delinquent from such an order it was obligatory on the part of the Disciplinary Authority to produce all records to show that there were enough materials before the Disciplinary Authority to arrive at a positive and categorical finding that in the departmental proceeding the witnesses were not likely to depose. It was not done. Resultantly, the entire proceeding became vitiated in law.

This Court in Union of India & Anr. etc. vs. Tulsiram Patel etc. [AIR 1985 SC 1416], held that

"It is not necessary that a situation which makes the holding of an inquiry not reasonably practicable should exist before the disciplinary inquiry is initiated against a government servant. Such a situation can also come into existence subsequently during the course of an inquiry, for instance, after the service of a charge-sheet upon the government servant or after he has filed his written statement thereto or even after evidence has been led in part. In such a case also the disciplinary authority would be entitled to apply clause (b) of the second proviso because the word "inquiry" in that clause includes part of an inquiry. It would also not be reasonably practicable to afford to the government servant an opportunity of hearing or further hearing, as the case may be, when at the commencement of the inquiry or pending it the government servant absconds and cannot be served or will not participate in the inquiry. In such cases, the matter must proceed ex parte and on the materials before the disciplinary authority. Therefore, even where a part of an inquiry has been held and the rest is dispensed with under clause (b) or a provision in the service rules analogous thereto, the exclusionary words of the second proviso operate in their full vigour and the government servant cannot complain that he has been dismissed, removed or reduced in rank in violation of the safeguards provided by Article 311(2).

The second condition necessary for the valid application of clause (b) of the second proviso is that the disciplinary authority should record in writing its reason for its satisfaction that it was not reasonably practicable to hold the inquiry contemplated by Article 311(2). This is a constitutional obligation and if such reason is not recorded in writing, the order dispensing with the inquiry and the order of penalty following thereupon would both be void and unconstitutional."

The said dicta was affirmed by a Three Judge Bench of this Court Chief Security Officer & Ors. vs. Singasan Rabi Das [(1991) 1 SCC 729], stating :

".....It is common ground that under Rules 44 to 46 of the said Rules the normal procedure for removal of an employee is that before any order for removal from service can be passed the employee concerned must be given notice and an enquiry must be held on charges supplied to the employees concerned. In the present case the only reason given for dispensing with that enquiry was that it was considered not feasible or desirable to procure witness of the security/other railway employees since this will expose these witnesses and make them ineffective in the future. It was stated further that if these witnesses were asked to appear at a confronted enquiry they were likely to suffer personal humiliation and insults and even their family members might become targets of acts of violence. In our view these reasons are totally insufficient in law. We fail to understand how if these witnesses appeared at a confronted enquiry, they are likely to suffer personal humiliation and insults. These are normal witnesses and they could not be said to be placed in any delicate or special position in which asking them to appear at a confronted enquiry would render them subject to any danger to which witnesses are not normally subjected and hence these grounds constitute no justification for dispensing with the enquiry. There is total absence of sufficient material or good grounds for dispensing with the enquiry."

[See also Tarsem Singh vs. State of Pubjab & Ors. (Civil Appeal No.1489 of 2004), disposed of by this Court on 25th January, 2006.]

Holding of a departmental proceeding is the rule. The 2nd Proviso appended to Article 311(2) of the Constitution of India provides for an exception. It is a trite law that existence of such an exceptional situation must be shown to exist on the basis of relevant materials. In this case, even such a question did not arise as a departmental proceeding had been held and the appellant was not found guilty therein. Once he was exonerated of the charges, the question of issuing an order of dismissal against him and that too, upon dispensation of a formal inquiry, did not arise. The judgment of the High Court as also of the 1st Appellate Court are set aside and that of the trial court is restored. In the peculiar facts and circumstances of case Appellant shall be entitled to the costs, which is quantified at Rs.10,000/-.