Reena Rani

v.

State of Haryana & Others

(Supreme Court Of India)

HON'BLE MR. JUSTICE G.S. SINGHVI HON'BLE MR. JUSTICE SUDHANSU JYOTI MUKHOPADHAYA

Civil Appeal No. 2761 Of 2012 (Special Leave Petition (Civil) No. 7701 Of 2011) | 12-03-2012

Leave granted.

This appeal involves challenge to judgment dated 28.10.2010 of the Division Bench of the Punjab and Haryana High Court whereby the appeal preferred by the appellant against the order of the learned Single Judge was dismissed and the action taken by Superintendent of Police, Mewat at Nuh (for short, 'the Superintendent of Police') against the appellant under Clause (b) of the second proviso to Article 311(2) of the Constitution was upheld.

The appellant joined service as Constable in the Police Department of the Government of Haryana on 26.02.2007. After three years and two months, the Superintendent of Police passed order dated 23.4.2010 and dismissed her service by invoking Clause (b) of the second proviso to Article 311(2) of the Constitution read with Rule 16(2) of the Punjab Police Rules, as applicable to the State of Haryana on the ground that while she remained posted as Prisoner Escort Guard from 24.5.2008 to 18.9.2008, she developed close relation with Mustak @ Mustkin @ Rasid, son of Istak @ Husain Khan of Guraksar despite the fact that he was involved in seven criminal cases registered under Sections 332, 353, 392, 395, 397, 399, 402 and 506 IPC and Sections 25, 54 and 59 of the Arms Act and she used to meet Mustak in Bhondsi Jail on many occasions. In the opinion of the Superintendent of Police, there was sufficient evidence to prove the appellant's nexus with Mustak and, as such, she did not deserve to be retained in the service and that it was not practicable to hold a regular departmental enquiry because no independent witness would be available.

The appellant challenged her dismissal in Writ Petition No. 7870 of 2010. In paragraphs 5 and 6 of the writ petition she made the following averments:

"5. That it is necessary to mention here that the accused Mustak was previous known to her while he was studying in Bs.C. (Non-Mecial) and the petitioner was studying in BA. The petitioner and accused are belong to same Mohmadan community. The family of the petitioner wants to marry with accused Mustak.

It is also necessary to mention here that the accused Mustak was arrested in the year of 2007 in one case, thereafter, he falsely implicated in another cases on his disclosure statement. However, nothing is recovered to him. It is pertinent to mention here that out of 6/7 cases he was acquitted in two cases.

6. That as per allegation the only fault of the petitioner that she contact on mobile with accused Mustak and promise her to marry. The petitioner did not help the accused in any manner out of way being a police employee. Hence, the provision under Article 311(2)(b) does not attract."

The learned Single Judge referred to the judgments of this Court in Union of India v. Tulsiram Patel (1985) 3 SCC 398 and Jaswant Singh v. State of Punjab (1991) 1 SCC 362, which were relied upon by the appellant in support of her plea that the Superintendent of Police was not entitled to invoke Clause (b) of second proviso to Article 311(2) of the Constitution and proceeded to observe:

"From the facts as these would emerge in this case, it cannot be viewed that decision to dispense with the departmental enquiry was on account of any ulterior motive or it was merely to avoid holding the enquiry. It is not such a case where the case of the respondents is weak in any manner. A police official, who acts in a manner to get involved with an accused facing number of criminal cases and adopts means and methods to suggest measures to help such a criminal, would be an action, which is highly uncalled for by an employee who is a constituent of disciplined force like Police. Police is required to deal with the criminals in order to protect the citizens. If the protectors of law becomes a conspirator to help the violators of law, the very purpose of policing will get defeated. View also is possible that in the facts and circumstances of this case, it

was not reasonably practicable to hold an enquiry in this case. The only witness, who was relevant and who could have thrown light on the involvement of the petitioner in this case is the benefactor of the petitioner and highly interested to save her."

The appeal filed by the appellant was dismissed by the Division Bench by making the following general observations:

"The satisfaction that the facts of any given case merit action under any of the three situations contemplated by the second proviso to Article 311(2) of the Constitution of India has to be based on objective facts and such satisfaction cannot be reached arbitrarily; neither the same can be on the mere ipse-dixit of the authority. However, the situations where a conclusion with regard to practicability of the inquiry can be reached would be varied and cannot be entrapped in any straight jacket formula. The facts of each case have to be taken into consideration while examining the validity of the satisfaction and the standard applied must be that of a reasonable man.

Proceeding on the said basis, we are of the view that having regard to be facts on which the decision was reached by the authority it cannot be said that the same is arbitrary or is vitiated by consideration of any extraneous or irrelevant matter. The judicial pursuit, therefore, must end on the basis of the above conclusion."

We have heard learned counsel for the parties and perused the record including the document marked Annexure P-1, which has been filed with the counter affidavit and which contains transcript of the alleged conversation between the appellant and Mustak and are convinced that there was no valid ground much less justification for dismissal of the appellant without holding an enquiry consistent with the rules of natural justice. The transcript of the conversation between the appellant and Mustak does show that she was in contact with a person who was accused in many cases and some conversation relate to other persons who were also accused, but there is no indication therein that she was trying to help Mustak or any other accused or was divulging confidential information relating to the pending cases. In the writ petition filed by her, the appellant had given an explanation for her having been in contact with Mustak.

If regular departmental enquiry had been held, she could have adduced evidence to prove that she knew Mustak much before joining the service and that her family members wanted to perform her marriage with him. She could have also adduced evidence to show that she had not helped any of the accused persons. However, as no enquiry was held, the appellant did not get an opportunity to defend herself.

In the order of dismissal, the Superintendent of Police has not disclosed any reason as to why it was not reasonably practicable to hold regular departmental enquiry. The learned Additional Advocate General fairly stated that the order of dismissal does not contain the reasons as to why it was not reasonably practicable to hold regular departmental enquiry against the appellant. He also admitted that no other record has been made available to him which would have revealed that the Superintendent of Police had recorded reasons for forming an opinion that it was not reasonably practicable to hold regular departmental enquiry for proving the particular charge(s) against the appellant.

In view of the above, we hold that the learned Single Judge and the Division Bench of the High Court committed serious error by negating the appellant's challenge to her dismissal from service without enquiry. The Division Bench of the High Court did not examine the issue in a correct perspective and made general observations that each case is required to be decided on its own facts and no straight jacket formula can be adopted to decide whether it is reasonable and practicable to hold regular enquiry for imposing major penalty of dismissal from service. Such general observations could not have been made basis for approving her dismissal from service without enquiry.

In Union of India v. Tulsiram Patel (supra) the Constitution Bench considered the scope of Clauses (a), (b) and (c) of the second proviso to Article 311. While dealing with Clause (b), Madon, J., who spoke for the majority of the Constitution Bench observed:

"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 intimidates witnesses who are going to give 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 others threatens, intimidates and terrorizes the officer who is the disciplinary authority or members 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 finality given to the decision of the disciplinary authority by Article 311(3) is not binding upon the court so far as its power of judicial review is concerned and in such a case the court will strike down the order dispensing with the inquiry as also the order imposing penalty.

133. 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.

134. It is obvious that the recording in writing of the reason for dispensing with the inquiry must precede the order imposing the penalty. The reason for dispensing with the inquiry need not, therefore, find a place in the final order. It would be usual to record the reason separately and then consider the question of the penalty to be imposed and pass the order imposing the penalty. It would, however, be better to record the reason in the final order in order to avoid the allegation that the reason was not recorded in writing before passing the final order but was subsequently fabricated. The reason for dispensing with the inquiry need not contain detailed particulars, but the reason must not be vague or just a repetition of the language of clause (b) of the second proviso. For instance, it would be no compliance with the requirement of clause (b) for the disciplinary authority simply to state that he was satisfied that it was not reasonably practicable to hold any inquiry. Sometimes a situation may be such that it is not reasonably practicable to give detailed reasons for dispensing with the inquiry. This would not, however, per se invalidate the order. Each case must be judged on its own merits and in the light of its own facts and circumstances.

135. It was vehemently contended that if reasons are not recorded in the final order, they must be communicated to the concerned government servant to enable him to challenge the validity of the reasons in a departmental appeal or before a court of law and that failure to communicate the reasons would invalidate the order. This contention too cannot be accepted. The constitutional requirement in clause (b) is that the reason for dispensing with the inquiry should be recorded in writing. There is no obligation to communicate the reason to the government servant. As clause (3) of Article 311 makes the decision of the disciplinary authority on this point final, the question cannot be agitated in a departmental appeal, revision or review. The obligation to record the reason in writing is provided in clause (b) so that the superiors of the disciplinary authority may be able to judge whether such authority had exercised its power

under clause (b) properly or not with a view to judge the performance and capacity of that officer for the purposes of promotion etc. It would, however, be better for the disciplinary authority to communicate to the government servant its reason for dispensing with the inquiry because such communication would eliminate the possibility of an allegation being made that the reasons have been subsequently fabricated. It would also enable the government servant to approach the High Court under Article 226 or, in a fit case, this Court under Article 32. If the reasons are not communicated to the government servant and the matter comes to the court, the court can direct the reasons to be produced, and furnished to the government servant and if still not produced, a presumption should be drawn that the reasons were not recorded in writing and the impugned order would then stand invalidated. Such presumption can, however, be rebutted by a satisfactory explanation for the non-production of the written reasons."

(emphasis supplied)

In Jaswant Singh v. State of Punjab (supra), the two-Judge Bench referred to the ratio of Union of India v. Tulsiram Patel (supra) and observed:

"The decision to dispense with the departmental enquiry cannot, therefore, be rested 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."

By applying the ratio of above extracted observations to the facts of this case, we hold that the appellant's dismissal from service was ultra vires the provisions of Article 311 and the learned Single Judge and the Division Bench of the High Court committed serious error by upholding order dated 23.4.2010 passed by the Superintendent of Police.

In the result, the appeal is allowed. The impugned judgment as also the order passed by the learned Single Judge are set aside and the writ petition filed by

the appellant is allowed with the direction that she shall be reinstated in service and given all consequential benefits.

However, it is made clear that this order shall not preclude the competent authority from taking action against the appellant in accordance with law. At the same time, we deem it necessary to observe that liberty given by this Court shall not be construed as a mandate for initiation of disciplinary proceeding against the appellant and the competent authority shall take appropriate decision after objectively considering the entire record.