IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.8054 of 2020

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Rajnish Kumar Singh, Gender-Male, aged about 32 years, S/o Ramlakhan Singh, Resident of Village - Masuda, P.O. - Sakri-Khurd, P.S. - Mehdiya, District – Arwal, Pin - 804428.

... ... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Home Department, Government of Bihar, Patna.
2. The Director General of Police-cum-I.G. of Police, Bihar, Patna.
3. The D.I.G. of Police, Patna.
4. The Senior S.P. of Patna.

... ... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Ranjit Jha, Adv.

For the Respondent/s : Mr. AC to SC-8

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CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR

ORAL JUDGMENT

Date : 13-01-2021

Heard the learned counsel for the petitioner as well as the State.

2. The petitioner, a constable, has challenged his dismissal from service by order dated 26.03.2020 passed by the Senior Superintendent of Police, Patna as also the order in appeal dated

27.07.2020 (Memo No. 269) passed by the Inspector General of Police, Patna, whereby the order of dismissal has been upheld.

3. On 25.03.2020, the S.H.O. of Danapur Police Station received an information that some police personnel are extracting illegal gratification under the garb of implementing the lock-down direction which was ordered in view of the *COVID-19* pandemic. The S.H.O., Danapur, in order to verify the correctness of such information, reached Danapur, where he found a person by the name of Sonu Sah lying injured with a gun-shot in his leg. He is said to have told the S.H.O. that he was shot at by one of the constables who were demanding illegal gratification from him. Those constables were not wearing their nameplates on their uniform. The injured person was brought to Danapur Sub-Divisional Hospital for treatment and a case was registered *vide* Danapur P.S. Case No. 234 of 2020, dated 25.03.2020, under Sections 307, 386, 325, 504, 506 and 34 of the Indian Penal Code read with Section 27 of the Arms Act.

4. The matter was inquired into and in the course of inquiry, it was found that the petitioner and two other constables, who had been deployed at Danapur Court for security duty, were involved in demanding illegal gratification and injuring the aforesaid Sonu Sah. The inquiry revealed that three rounds of ammunition which was disbursed to one of the constables, *viz.*, Anirudh Kumar, was found missing. It was affirmed from the inquiry that constable Anirudh Kumar had opened fire from his service pistol. All the three constables including the petitioner were arrested and forwarded to judicial custody. No satisfactory explanation was given by them for having gone to the place of occurrence while they had been deployed for security duty at Danapur Court.

5. On the aforesaid facts, the Senior Superintendent of Police, Patna, by exercising his powers under Article 311 (2) (b) of the Constitution of India, dismissed the petitioner from service *vide* his order dated 26.03.2020. The dismissal was made effective from the

date of the occurrence, *i.e.*, from 25.03.2020.

6. A perusal of the order dated 26.03.2020 indicates that the Senior Superintendent of Police, Patna took note of the fact that during the lock-down period and promulgation of National Disaster Management Act, essential services were maintained. Despite that, such an action was resorted to by the petitioner and two others which has besmirched the name of the police force and the nature of the offence committed would, therefore, fall in the category of rarest of the rare cases. It was held by the Senior Superintendent of Police that the petitioner and two others are in custody and, therefore, the departmental proceeding against them cannot be held.

7. The appeal of the petitioner also did not succeed on the same grounds.

8. The challenge to the aforesaid orders is on the sole ground that no departmental proceeding was initiated against the petitioner nor any show-cause notice was given to him to ascertain his point of view and an

order of dismissal has been passed, which has been affirmed in appeal.

9. It has further been submitted on behalf of the petitioner that the punishment imposed upon him is highly excessive and that no reason has been assigned for dispensing with the inquiry before dismissing him by taking resort to the provisions contained in Article 311 (2) (b) of the Constitution of India.

10. Article 311 of the Constitution of India reads as hereunder:

> "**311. 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 be dismissed or removed by an authority subordinate to that by which he was appointed.
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> (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:

[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:

Provided further that this clause 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 inquiry; or

(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.]"

11. In ***Union of India & Anr. Vs. Tulsiram Patel : (1985) 2 SCC 398***, the Constitution Bench of the Supreme Court decided several issues relating to Articles 309, 310 and 311 of the Constitution of India.

12. The safeguard provided to a civil servant by Clause (2) of Article 311 of the Constitution of India is taken away, when a penalty is imposed on the conduct of a government servant which has led to his conviction on a criminal charge or where it is not reasonably practicable to hold an inquiry or where the President or the Governor, as the case may be, is satisfied that no inquiry should be held in the interest of security of the State.

13. It was decisively held in ***Tulsiram Patel*** (supra) and ***Satyavir Singh & Ors. Vs. Union of India & Ors. : AIR 1986 SC 555*** that the language of the second proviso of Article 311 (2) of the Constitution of India is plain and unambiguous. The

constitutional prohibition appearing in Article 311 (2) is not directory but mandatory and is in the nature of a constitutional prohibitory injunction, restraining the disciplinary authority from holding an inquiry under Article 311 (2) of the Constitution of India or from giving any kind of opportunity to the concerned civil servant in a case where anyone of the three clauses of the second proviso becomes applicable. The Supreme Court has clarified that in the second proviso, no inquiry of any kind or opportunity to show-cause need be introduced. Such a decision was based on the maxim, *expressum facit cessare tacitam"* (where there is express mention of certain things, then anything not mentioned is excluded). The principle/maxim is based on logic and commonsense and is for a public purpose.

14. However, Clause (b) of the second proviso to Article 311 of the Constitution of India stipulates two conditions precedent which must be satisfied before dispensing with a departmental enquiry. These are *(i)* the existence of a situation which makes

the holding of an inquiry contemplated by Article 311 (2) not reasonably practicable and *(ii)* the disciplinary authority ought to record in writing its reason for its satisfaction that it is not reasonably practicable to hold such an inquiry.

15. It must be clarified that whether it was practicable to hold the inquiry or not is to be judged in the context of whether it was reasonably practicable to do so. The Supreme Court has very amply clarified that it is not the total and absolute impracticability which is required under Clause (b) of the second proviso, but practicability of a reasonable man taking a reasonable view of the prevailing situation. The assessment is to be of the disciplinary authority and the reasons are required to be penned down. If the reasons are not recorded or the reasons are not found to be genuine or satisfactory or warranted in a situation, the order cannot be sustained in the eyes of law.

16. From the perusal of the order passed by the disciplinary authority, it appears that the

requirement of a proceeding has been dispensed with on the ground that a serious misconduct has been reported against the petitioner and others during *COVID-19* period and that the petitioner is in custody.

17. The gravity of the offence is not the consideration for invoking Article 311 (2) of the Constitution of India or any service rules, but the impracticability of holding of an inquiry is. The gravity of the misconduct can be taken into account only with respect to fixing the *quantum* of punishment, but not for the purpose of dispensing with the inquiry. The two reasons, *viz.*, serious misconduct and the petitioner being in custody, which can be inferred from the order of the disciplinary authority, do not constitute a good ground for invocation of the Article 311 (2) (b) of the Constitution of India.

18. There is nothing on record to indicate that inquiry could not have been held. All that was required to be projected as a matter of evidence in the inquiry, if it would have been held, that the petitioner

was not required to go to the place where illegal gratification was demanded and the victim was shot at in his leg; that the petitioner was disbursed the arm and the ammunition and that he had accompanied the two others to the place of occurrence. His identification by the victim would have been the most clinching evidence with respect to the misconduct and the offence.

19. There could be a situation where the petitioner may have resisted the conduct of his associates or may not have been present at the place of occurrence or he may have accompanied his other two associates to some distance but would have returned to his duties. Every person has a right to be defended. True it is that if illegal gratification was demanded and the victim was shot at in case of non-payment, this is one of the most grievous misconduct on the part of a police constable who is deployed to maintain law and order and to provide safety to people at large. A protector becoming a predator cannot be tolerated. Nonetheless, what is of equal importance is that a wrong

person ought not to be penalized for any action which he has not committed or is not directly or even remotely responsible for. It is precisely for this reason that the constitutional mandate is that no government servant could be dismissed without an inquiry.

20. The provisions of Article 311 (2) (b) of the Constitution of India is only an exception to such requirement of inquiry.

21. Since no reason/plausible reason has been recorded, it is difficult for this Court to sustain the aforesaid order.

22. The appellate order also does not address the aforesaid issue, *viz.*, the requirement of dispensing with the inquiry and recording of such reason.

23. Both the orders, referred to above, therefore are deficient on that account.

24. In ***Jaswant Singh Vs. State of Punjab and Ors. : (1991) 1 SCC 362***, a police personnel was dismissed from service but the superior police officer, while exercising the powers of revision,

remanded the case of that officer for a reconsideration and fresh orders. Shortly, thereafter, an attempt was made by that police personnel to commit suicide. A show-cause notice was served upon him to explain his conduct but before he could reply, an order of dismissal was passed, invoking Clause (b) of the second proviso to Article 311 (2) of the Constitution of India and the corresponding provision of the Punjab Police Rules, giving two reasons in support of his satisfaction that it was not practicable to hold a departmental inquiry, *viz.*, that he had threatened that he will not allow the holding of a departmental enquiry and that he and his associates would cause physical injuries to the witnesses as well as the Inquiry Officer. The order of dismissal was not interfered with by the High Court but the Supreme Court, on being satisfied that no material was disclosed to be in existence on the date of passing of the order of dismissal in support of the subjective satisfaction of the authority concerned regarding the necessity of holding an inquiry, held that since a departmental enquiry was

conducted against that personnel in the past and no difficulty was posed in examining the witnesses, it was difficult to accept the reason that because of the threat given by the police personnel, the departmental enquiry has been forfeited and an order of dismissal has been passed. The Supreme Court went on to state that the decision to dispense with the departmental enquiry cannot be rested solely on the *ipse dixit* of the concerned authority. The personal assessment of the disciplinary authority may not be sufficient.

25. For almost similar reasons, the Supreme Court in ***Chief Security Officer & Ors. Vs. Singasan Rabi Das : (1991) 1 SCC 729***, held that if there is total absence of sufficient materials or good grounds for dispensing with the inquiry, the order of punishment cannot be sustained.

26. In ***Tarsem Singh Vs. State of Punjab & Ors. : (2006) 13 SCC 581***, the dismissal of a police constable who was charge-sheeted for outraging the modesty of a woman and having carnal intercourse

against the law of nature with a migrant labourer, by invoking Article 311 (2) (b) of the Constitution of India, was not sustained on the ground that the assessment of the disciplinary authority that the delinquent could win over aggrieved people or the witnesses from giving evidence, was not sufficient or real as no material was placed or disclosed in such order to show that the subjective satisfaction of the authority was based on objective criteria. The ground that the conduct of the delinquent which was of a very grave and heinous nature, capable of bringing bad name to the police force of the State, was not accepted for justifying the forfeiting of regular departmental enquiry. The Supreme Court in that instance lamented that if a preliminary inquiry was conducted in the action, there was no reason why formal departmental enquiry should have been avoided.

27. The principles which are to be followed for dispensing with a departmental enquiry by invoking Article 311 (2) (b) of the Constitution of India have been

very well delineated by series of decisions of the Supreme Court, following the Constitutional Bench judgment in ***Tulsiram Patel*** (supra) [refer to ***Reena Rani Vs. State of Haryana & Ors. : (2012) 10 SCC 215*** and ***Risal Singh Vs. State of Haryana & Ors. : (2014) 13 SCC 244***].

28. The order of dismissal passed by the disciplinary authority does not at all refer to the circumstances holding the conduct of the departmental enquiry against the petitioner to be impracticable. In fact, no ground has been assigned but the impression of the disciplinary authority has been penned down that the conduct of the petitioner is very grave and has brought bad name to the police force. Such action by anyone, much less a police personnel, is condemnable but obviating the necessity of a departmental enquiry/regular enquiry may not be totally relatable to the gravity of the offence, but impracticability of holding an inquiry.

29. The orders impugned in the present petition fall foul of the aforesaid requirement under

Article 311 (2) (b) of the Constitution of India.

30. Both the orders are, therefore, set aside.

31. However, regard being had to the circumstances and the nature of the accusation, this Court does not deem it expedient to direct for reinstatement of the petitioner straightway. This Court also refrains from even remotely suggesting that there could not be any invocation of Article 311 (2) (b) of the Constitution of India in the circumstance. What this Court directs that a fresh decision be taken by the disciplinary authority, within a period of eight weeks from the date of receipt/production of a copy of this order, whether the petitioner should be dismissed from service without affording him an inquiry by invoking the provision of Article 311 (2) (b) of the Constitution of India. In case, it is found that there are sufficient reasons for holding that the inquiry would not be practicable, the reasons for the same must be recorded in the order. A reasoned order is, therefore, required to

be passed. In case, it is found that a departmental enquiry would be necessary, that decision also shall be taken by the disciplinary authority and in that event, the inquiry should be conducted with urgent dispatch and a final decision be taken.

32. Since, there is no direction for reinstatement of the petitioner, this Court only cautious that whatever decision has to be taken, it must be done with due diligence, urgent dispatch and without loosing any time.

33. The petition stands allowed to the extent indicated above.

(Ashutosh Kumar, J)

Praveen-II/-

AFR/NAFR	AFR
CAV DATE	N/A
Uploading Date	19.01.2021
Transmission Date	N/A