CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

(7)

OA No.825/94 DATED 04.08.1999.

Hon'ble Mr. Justice V. Rajagopala Reddy, Vice-Chairman (J)
Hon'ble Mr. R.K. Ahooja, Member (A)

Shri K.P. Singh,
S/o Shri Megh Raj Singh,
R/o B-22/1, Lakha Nagar,
Meerut Cantt. ...Applicant

(By Advocate Shri N.S. Verma)

-Versus-

1. Union of India, through
The Secretary,
Government of India,
Ministry of Defence,
New Delhi.

2. The Controller General of Defence Accounts,
West Block-V,
R.K. Puram,
New Delhi. ...Respondents

3. The Controller of Defence Accounts
(Headquarters), 'G' Block,
New Delhi.

(None for the respondents)

O R D E R

BY Reddy, J.

The applicant was an Auditor in the office of the Joint Controller of Defence Accounts (HQ), New Delhi. By an order dated 17.8.92 of respondent No.3 he was placed under suspension pending enquiry. A charge memo was issued on 26.6.93 for his acts of misbehaviour, misconduct, indiscipline, disobedience etc. It was alleged that on 27.7.92 the applicant went to the section in a drunken state to produce the application for leave for his absence, enclosing the medical certificate. When Smt. Sunita Kaul wanted to reconcile to a discrepency about his ailment shown in the medical certificate, it was alleged that the applicant insulted her by throwing papers and shouting at her and used intemperate language and that he also shouted at the staff. On 28.7.92, the

applicant who was in a drunken state, threatened to kidnap an officer and his family and also challenged the staff in the corridors attracting the attention of the staff and disrupted the normal functioning of the office. On 12.8.92, he disobeyed the orders of the superior officers and tried to enter nearby Accounts Section. It was also alleged that he never obeys the orders of the superior officers. It is further alleged that he was detained in judicial custody for more than 48 hours on 6.7.92 in a case registered under Sections 147, 148, 149, 302 and 307 of the IPC, in the court of CJM, Meerut.

2. The applicant was asked to give reply to these allegations and he accordingly submitted the reply on 28.6.93, denying the allegations. Subsequently, the impugned order was passed by the disciplinary authority on 6.9.93, dismissing the applicant from service, invoking the powers vested under Rule 19 (ii) of CCS (CCA) Rules, 1965 (for short, Rules), finding that it was not reasonably practicable to hold an enquiry in terms of Rule 15 of the Rules. The applicant's appeal against the order was dismissed by the order dated 17.2.94 (Annexure A-7). The applicant challenges the above orders in this OA.

3. Heard the learned counsel for the applicant and considered the written submissions given by Shri Vijay Mehta, learned counsel for the respondents and we have also carefully perused the record.

4. It is contended that the disciplinary authority grievously erred in invoking the powers under Rule 19 (ii) of the Rules since the facts of the case do not warrant to come to a finding that it was not possible to hold an enquiry. Hence, the satisfaction arrived at by him was not at all supported by any evidence. Several decisions have been cited by the learned counsel in support of this contention.

5. In order to examine the above contention it is necessary to look into the impugned order. The disciplinary authority found that the applicant was detained in judicial custody by a criminal court on 6.7.92 pending a case registered under Sections 147, 148, 307, 302 IPC. He further found that the material witnesses in the case were scared to give their evidence in view of the gross misbehaviour and misconduct displayed by the applicant and it was stated that he generated a fear psychosis in the minds of the witnesses. It was also found that the fear psychosis in the staff was increased further as they were aware of his nefarious activities at Meerut and threats that were held to the senior officers. The above facts constituted his satisfaction that it was not possible to hold an independent inquiry. It is the case of the applicant that all the allegations are false and the aalleged threats to the officers were also vague and that there was no case against him on the basis of which it could be said that the applicant generated a fear psychosis.

10

6. It may be useful to examine Rule 19 (ii) of the Rules. It reads as follows:

> "Notwithstanding anything contained in Rule 14 to Rule 18--
>
> (i) .....
>
> (ii) where the disciplinary authority is satisfied for reasons to be recoreded by it in writing that it is not reasonably practicable to hold an inquiry in the manner provided in these rules, or
>
> (iii) .....
>
> the disciplinary authority may consider the circumstances of the case and make such orders thereon as it deems fit:"

A bare perusal of the Rule makes it manifest that if the disciplinary authority is satisfied that it was not reasonably practicable to hold an inquiry as per rules, depending upon the circumstances, he can dispense with the inquiry and may make such orders as it deems fit. The satisfaction of the authority shall be arrived at on the basis of the sufficient material on record, meaning thereby that the disciplinary authority should not act arbitrarily.

7. Since the scope of Rule 19 (ii) as to the nature of the power of disciplinary authority in arriving at his satisfaction is almost the same as in Article 311 (2)(b), let us examine the following decisions:

The Supreme Court discussed elaborately, examining the case law, on the scope of clause (b) of Art. 311 (2) of the Constitution in **Satyavir Singh & Ors. v. Union of India & Ors.** (1985) 4 SCC p. 252. In (1985) 3 SCC

p. 398 **Union of India & Anr. v. Tulsi Ram Patel** the Supreme Court observed thus:

> "The condition precedent for the application of clause (b) of second proviso is the satisfaction of the disciplinary authority that 'it is not reasonably practicable to hold' the inquiry contemplated by Article 311 (2). Whether it was practicable to hold the inquiry or not must he judged in the context of whther 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. 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 and is the best judge of the situation."

It was further held:

> "A disciplinary authority is not expected to dispense with the disciplinary inquiry lightly or arbitrarily or out of ulterior motives or merely in order to avoid the holding of an inquiry."

In this case it was held, considering the wilful and deliberate disobedience of the orders of superiors and intimidating officers as well as loyal members of the staff which resulted in a total breakdown of discipline in the force with the result the Army had to be called out and the action taken under Art. 311 (2)(b) of the Constitution, dispensing with the inquiry and taking action against the employees, was held valid.

In **Satyavir Singh's** case (supra) also the disciplinary authorty dispensed with the procedure in view of the agitation made by the employees of the RAW, which took aggressive turn. It was held that there was sufficient material for dispensing with the normal procedure.

Learned counsel for the applicant relies on 1991 (1) SCALE 47 **Chief Security Officer & Ors. v. Singasan Rabi Das** where the enquiry was dispensed with only on the ground that it was not feasible to procure the witnesses as that would expose them and make them ineffective in future. It was also stated that they would likely to suffer personal humiliation and insults. It was a case of alleged rape by Police officers in a police station. This reason was found to be insufficient by the Court in dispensing with the inquiry. But, in the present case it was found ~~where~~ that the applicant was an accused in a murder case and that he also generated a fear psychosis in the minds of all officers by his nefarious activities inside the office as well as in Meerut. We are of the view that the facts of the above case will not have any bearing to the present case. He also relied on 1992 (2) SLJ 113 **Shri Bishamber Singh v. Lt. Governor of Delhi & Ors.** In the case the inquiry was dispensed with on the ground that the witnesses would turn hostile due to fear of reprisals, terrorising, threatening or intimidating the witnesses who will come forward to give evidence against him in the departmental inquiry. The court held that these reasons are insufficient in law to dispense with the enquiry.

As stated above the facts in the present case are ~~distinctly~~ distinguishable. Hence the above case also will not come to his help.

8. The applicant is an Auditor in the office of Controler of Defence Accounts and the allegations against him pertain to various acts committed by him in the office. It is not disputed that the applicant was detained in judicial custody for a period of exceeding 48 hours for very serious offence committed by him. It was also stated that the applicant has generated a fear psychosis by his criminal acts, thereby his colleagues were terrorised and the senior officers were threatened. Several threats have been held by him against them. The witnesses were also scared to depose against him. In view of this fear psychosis generated by the applicant by his criminal attitude the disciplinary authority was satisfied that it was not posible to hold an inquiry. The ~~criminal~~ activities alleged against the applicant were said to have been committed by him in 1992 and even after waiting for one year the situation did not improve, ~~so~~ hence the impugned orders were passed in 1993. After taking into consideration all these facts and circumstances, the disciplinary authority has come to its satisfaction that it was not reasonably practicable to hold an inquiry. As stated by the Supreme Court in **Tulsi Ram Patel's** case (supra), the reasonable practicability of holding of inquiry is a matter of assessment to be made by the disciplinary authority and such an authority generally on the spot knows what is happening and he is the best judge of the situation. In view of the above facts and circumstances, it cannot be said that the satisfaction arrived at by the disciplinary authority is not supported by any material.

9. It was argued by the learned counsel for the applicant that the punishment of dismissal is too drastic and disproportionate to the misconduct alleged. We will not normally interfere with the decision of the disciplinary authority as to the nature of the punishment unless it is a punishment which no reasonable person would impose. In the circumstances, we do not think that the punishment of dismissal from service is too severe.

10. We do not find any warrant to interfere with the impugned orders. The O.A. is dismissed. No costs.

(R.K. Ahooja)
Member (A)

(V.Rajagopala Reddy)
Vice-Chairman (J)

'San'