CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH
(CIRCUIT AT PORT BLAIR)

No. OA.351/00065/2015

Date of CAV:30.03.2017. Date of Order : 10.04.2017.

Present : Hon'ble Mr. A.K.Patnaik, Judicial Member
Hon'ble Mrs.Minnie Mathew, Administrative Member

Between:

Shri Etwa Ekka, s/o Shri Ragwa Ekka,
r/o Rajeev Nagar, Campbell Bay,
Great Nicobar Pin-744 302
Ex-Constable Ct/021304. ,.. Applicant

- VERSUS-

1. The Lieutenant Governor,
Raj Niwas, Andaman and Nicobar Islands,
Port Blair.

2. The Andaman and Nicobar Administration,
Service through the Chief Secretary,
Andaman and Nicobar Administration,
Secretariat, Port Blair-744 101.

3. The Director General of Police,
Andaman and Nicobar Islands,
Port Blair-744 101.

4. The Commandant,
India Reserve Battalion,
Andaman and Nicobar Islands,
Port Blair.

5. The Assistant Commandant,
India Reserve Battalion,
Andaman and Nicobar Islands,
Port Blair. ...Respondents

For the Applicants : Mr. R.Kumar, Counsel

For the Respondents : Mr. S.C.Mishra, Counsel

ORDER

Per Mrs.Minnie Mathew, Administrative Member

This OA is directed against the following orders:

(i) Annexure.A-3 orders of the 4th respondent dated 03.04.2010 dismissing the applicant from service; and

(ii) Annexure.A-8 orders of the 3rd respondent dated 11.11.2013 rejecting the applicant's prayer for reinstatement into service after his acquittal in the criminal case.

2. The brief facts of the case are that while the applicant was in the service of the India Reserve Battalion, A & N Police, a Crime Case No.294/2010, dated 19.03.2010 was registered under Section 376/323/504 of IPC against the applicant at PS Aberdeen based on the complaint of one Ms.Mariayam Ekka. The registered complaint against the applicant was that he had been sexually exploiting Ms.Mariayam Ekka under the guise of promise of marriage. As a result, she became pregnant on three occasions in 2007, 2008 and 2009 and was compelled by the applicant to abort her pregnancies. In pursuance of the complaint and the criminal case registered against the applicant, he was arrested on 25.03.2010 and remanded to judicial custody. On the same day, Ms.Mariayam Ekka lodged another FIR No.311/2010, dated 25.03.2010, stating that two India Reserve Battalion (IRBn) constables approached her and shouted that she was the one who was responsible for the arrest of their friend Etwa (the applicant herein). They started beating her and using filthy and unparliamentary words. On the basis of the written report, a Criminal Case under Section 341/354/323/504/506/34 IPC was registered against the two constables. Consequent on this, the two constables were placed under suspension and a departmental inquiry ordered against them. The applicant submits that subsequent to his arrest and remand to judicial custody, he was dismissed from service, vide Annexure.A-3 Order Book No.681, dated 03.04.2010, invoking Article 311 (2) (b) of the Constitution of India read with Rule 11 (viii) of the CCS (CCA) Rules 1964. It is also his case that in the Criminal Case filed before the

learned Additional Sessions Judge, Andaman & Nicobar Islands, Port Blair, he was acquitted from all charges as the Hon'ble Court held that the prosecution had failed to prove the charges leveled against him beyond reasonable doubt and also found that the evidence against him was grossly insufficient and inadequate. Immediately after the passing of the said order, he submitted a representation to the 3rd respondent on 02.01.2013 requesting for reinstatement into service. However, his case for reinstatement was not considered even after the Sessions Court had acquitted him from all the charges leveled against him. Thereafter, he submitted an appeal to the first respondent on 06.11.2013. While the matter was under consideration by the 1st Respondent, the 3rd respondent being the Appellate Authority disposed of his representations dated 02.01.2013 and 24.6.2013 by rejecting his prayer for reinstatement.

3. The grievance of the applicant is that the respondents have dismissed him from service in contravention of Article 311 and that such action is arbitrary, illegal and in contravention of the provisions contained under Articles 14 and 21 of the Constitution of India as he was not given any show cause notice nor provided any opportunity of hearing before his dismissal by invoking Article 311 (2) (b) of the Constitution of India. Thus, the entire action and inaction on the part of the respondents are against all canons of service jurisprudence and are liable to be set aside. Further, the Appellate Authority has failed to consider the fact that he cannot be denied reinstatement when he has been acquitted by a competent Court of law in the criminal case. It is his case that he would be seriously prejudiced, if he is not reinstated even after his acquittal from all criminal charges by the learned Additional Sessions Judge, Andaman & Nicobar Islands, Port Blair.

4. The respondents have filed a detailed reply statement contesting the OA. From the reply statement, it is seen that there is no serious dispute on the basic facts of the case. The respondents point out that the principle of strict proof

beyond reasonable doubt applies in a criminal trial. However, it is settled law that his acquittal in a criminal case has no bearing on the departmental action, which has already been taken against him. It is also the case of the respondents that the applicant failed to file a statutory appeal within the limitation period. However, the appellate authority disposed of his representations dated 02.01.2013 addressed to the 3rd respondent and 6.11.2013 addressed to the first respondent by passing a well reasoned and speaking order of rejection. A dismissed employee cannot claim reinstatement merely on the ground that he has been acquitted in the criminal case subsequently. Involvement of the applicant in such a criminal act itself points to the fact that his conduct is unbecoming of a member of a disciplined force.

5. The respondents also state that the order of dismissal passed by the Disciplinary Authority under Article 311 (2) (b) of the Constitution of India contains cogent reasons for dispensing with the regular departmental inquiry. The reasons as to why it was not reasonably feasible to hold an inquiry has been elaborately explained in the order of the Disciplinary Authority. The respondents have also relied on the judgment of the Hon'ble Supreme Court in *Union of India* v. *Tulsi Ram Patel* and have extracted the following:

> *"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*

intimidate 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."

Thus, in view of the law laid down by the Hon'ble Supreme Court, the disciplinary authority has rightly exercised its power conferred under Article 311 (2) (b) of the Constitution of India.

6. Heard the learned counsel for the parties and considered the written submission notes and perused the record. In his written submissions, the learned Counsel for the Applicant heavily relied on the judgments of the Hon'ble Supreme Court in *Reena Rani* v. *State of Haryana* (2012) 10 SCC 215 and the judgment in Civil Appeal No.2839 of 2011 (*Risal Singh* v. *State of Haryana*)

7. The two questions that fall for consideration in this OA are –

(i) Whether the action of the Disciplinary Authority in invoking Article 311 (2) (b) of the Constitution of India for dismissing the applicant from service is maintainable;

(ii) Whether the action of the Appellate Authority in rejecting his representation for reinstatement even after his acquittal in the criminal case was just and proper.

8. To examine the first issue, it is necessary to consider the intent and purport of the constitutional provisions.

9. Article 311 of the Constitution provides certain safeguards to Government servants against any arbitrary action of dismissal, removal or reduction in rank. Article 311 (2) particularly mandates that no Government servant who is a member of a civil service of the Union of India 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 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. While this is the general provision of law, Article 311 (2) also contains three provisos where the protection given under Article 311 (2) shall not apply as extracted hereunder:

> *"(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."

10. The above constitutional provisions empowers the competent authority to dismiss or remove or reduce in rank a person without holding an inquiry, if the said authority is satisfied and also records the reasons in writing that it is not reasonably practicable to hold such inquiry. Article 311 (3) also states in unmistakable terms that if 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. Thus, the mandatory requirements for invoking Article 311 (2) (b) are - (a) whether the said

order of dismissal has been issued by the competent authority and (b) whether any reasons have been recorded by that authority in writing as to why it is not reasonably practicable to hold such inquiry.

11. In the instant OA, the applicant has no case that the impugned order of dismissal has been passed by an incompetent authority. A perusal of the order of the disciplinary authority would reveal that the disciplinary authority has recorded the reasons as to why it would not be possible to proceed against the applicant through regular departmental proceedings. The impugned order while setting out the facts leading to the registration of a case Crime No.294/2010, dated 19.03.2010 on the complaint of Ms.Mariayam Ekka has also pointed out that immediately after the arrest of the applicant on 25.03.2010, two IRBn constables have attacked and intimidated Ms.Mariayam Ekka, which led to the lodging of another FIR No.311/2010 and the registration of a Criminal Case under Section 341/354/323/504/506/34 IPC against the two constables. The constables were placed under suspension and a departmental enquiry was initiated. Having regard to this situation, the disciplinary authority has come to the conclusion that once the applicant and the other constables are out of Jail, they will not allow the departmental proceedings to get completed and they will not allow the complainant and the witnesses to come and depose against them and that they would not even hesitate to eliminate the complainant from the scene. The disciplinary authority has thus given adequate reasons as to why regular departmental proceedings could not be initiated and as to why he has resorted to the summary action of dismissal of the applicant under Article 311 (2) (b).

12. The Hon'ble Apex Court in *Union of India* v. *Tulsi Ram Patel* has categorically held that the reasonable practicability of holding an inquiry is a matter of assessment to be made by the disciplinary authority and that it is because the disciplinary authority is the best Judge that Clause (3) of the Article 311 makes the decision of the disciplinary authority on this question final. Further, while giving illustrative cases as to in what circumstances it would not be

reasonably practicable to hold the inquiry, the Hon'ble Apex Court has given an illustration in Para 5 (a) which exactly fits into the facts and circumstances of this case as can be seen from Para 13 below.

13. In the instant case, the arrest of the applicant on 25.03.2010 has immediately triggered a situation in which the complainant Ms.Mariayam Ekka was attacked by the associates of the applicant in full public view. The disciplinary authority taking into consideration the aforesaid reprehensible conduct, has held that the applicant and his associates who belong to the uniformed Force would not allow the departmental inquiry to proceed in a fair manner and would not allow the complainant or the witnesses to depose against the applicant. This is precisely the situation envisaged by the Hon'ble Apex Court in Para 5 of the judgment in Tulsi Ram Patel's case where it gave an illustration as to when holding of an inquiry would not be reasonably practicable. Para 5 is extracted hereunder:

"It is not possible to enumerate the cases in which it would not be reasonably practicable to hold the inquiry. Illustrative cases would be -

(a) Where a civil 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 (270 A)

(b) Where the civil 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, or (270B).

(c) Where an atmosphere of violence or of general indiscipline and insubordination prevails, it being immaterial whether the

concerned civil servant is or is not a party to bringing about such a situation. In all these cases, it must be remembered that numbers coerce and terrify while an individual may not. (270 C)."

14. Thus, the order of the disciplinary authority which has recorded in writing the situation that prevailed and the reasons as to why regular departmental proceedings would not be possible and as to why Article 311 (2) (b) has been invoked is in accordance with the constitutional provisions and is based on the fact situation that prevailed at the time of the registration of the criminal case against the applicant. Therefore, the order which has been passed by the disciplinary authority based on an assessment of the situation at the relevant point of time does not warrant any interference.

15. The applicant has contended that the action of the Disciplinary Authority is in violation of the provisions of Articles 14 and 21 of the Constitution of India. However, this objection is untenable because it has been held that the second proviso under Article 311 (2) is "in the nature of a constitutional prohibitory injunction restraining the Disciplinary Authority from holding an inquiry where one of the three clauses of the second proviso becomes applicable. The second proviso has been introduced in public interest and for public good and has to be strictly construed. Although natural justice principles are implicit in Article 14, those principles have been expressly excluded by the second proviso". Hence, this contention of the applicant is without any substance.

16. We have perused at length the two judgments of the Hon'ble Apex Court in *Reena Rani* v. *State of Haryana* and *Risal Singh* v. *State of Haryana*. In both the judgments the orders of dismissal invoking the second proviso clause (b) of Article 311 (2) were set aside on the ground that no reasons were disclosed as to why it was not reasonably practical to hold the inquiry. In Reena Rani case, the

Hon'ble Apex Court quoting the judgment of the Constitution of Bench in *Union of India* v. *Tulsi Ram Patel* and *Jaswant Singh* v. *State of Punjab* stated as follows:

> *"9. In Union of India v. Tulsiram Patel 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 of Bench observed: (SCC pp.503-06, paras 130 & 133-35).*
>
> *"130.....*
>
> *.....*
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> *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 reasons 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.....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.*
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> *10. In Jaswant Singh v. State of Punjab, the two-Judge Bench referred to the ratio of Union of India v. Tulsiram Patel and observed: (Jaswant Singh case, SCC p.369, para 5)*
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> *"5. ... the decision to dispense with the departmental enquiry cannot, therefore, be rested solely on the ipse dixit of the authority concerned. When the satisfaction of the authority concerned 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 officer concerned.

11. By applying the ratio of the 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 the order dated 23.4.2010 passed by the Superintendent of Police."

17. Similarly in Risal Singh's case, the Hon'ble Supreme Court after citing the judgment in Tulsi Ram Patel and Reena Rani held as hereunder:

"6. We have already reproduced the order passed by the competent authority. On a bare perusal of the same, it is clear as day that it is bereft of reason. Non-ascribing of reason while passing an order dispensing with enquiry, which otherwise is a must, definitely invalidates such an action. In this context, reference to the authority in Union of India and Anr. V. Tulsiram Patel is apposite."

18. Thus, in both the aforesaid judgments, the Hon'ble Supreme Court ruled that when reasons are not ascribed, the dismissal order is vitiated and consequently set aside. The instant OA is clearly distinguishable on facts inasmuch as the Disciplinary Authority has given in explicit terms the reasons as to why holding of an inquiry was not reasonably practicable. Hence, the judgments of the Hon'ble Supreme Court are not relevant to the facts and circumstances of the present case.

19. Having regard to the aforesaid discussions, we hold that the first issue is answered against the applicant.

20. The second issue that arises for consideration in this OA is as to whether the appellate authority and the 3rd respondent herein has considered all material facts and contentions while rejecting the applicant's representation for reinstatement into service after his acquittal in Sessions Case no.44/2010 by the Additional Sessions Judge,Andaman & Nicobar Islands, Port Blair, vide his order dated 12.12.2012.

21. The respondents have taken an objection that the appeal for reinstatement was not filed within the period of limitation. However, having considered and disposed of the same, vide the impugned order dated 11.11.2013, the objection of limitation is not valid at this juncture.

22 The Annexure.A-5 and Annexure.A-7 representations submitted by the applicant point out that he was dismissed from service only on account of the criminal case and that after being acquitted in the criminal case he is eligible for reinstatement as a constable in IRBn.

23. The appellate authority's order narrates the circumstances under which the applicant was dismissed from service under Article 311 (2) (b) of the Constitution of India. It also points out that while the criminal case was under trial, the applicant married the complainant and subsequently on his instruction the complainant turned hostile and was thus acquitted by the Court. The appellate authority has therefore come to the conclusion that the applicant married the complainant with an intention to escape punishment. Further, even though he was acquitted by the Court of law, it is evident from the facts and circumstances of the case that the applicant had indulged in a criminal act amounting to rape and that "his further continuance in the force would be detrimental to the public interest and trust besides image of the Police

Organization". On these grounds, the prayer of the applicant for reinstatement into Police service was rejected.

24. The order of the appellate authority suffers from a serious defect as he has not made it clear as to what was the evidence for arriving at the conclusion that the applicant had indulged in a criminal act even when he was acquitted by the Trial Court and particularly when no appeal seems to have been filed against the order of the Additional Sessions Judge in Sessions Case No.44 of 2010. Thus, the order of the appellate authority does not stand the test of judicial scrutiny in this respect. His order has also failed to consider the pleas of the applicant that he was dismissed from service only on account of the criminal case and that he is entitled to claim reinstatement after his acquittal in the criminal case. It was incumbent on the third respondent to give a reasoned and justified finding as to why despite his acquittal in the Criminal Case, the applicant is not entitled to reinstatement.. Thus, on account of the failure of the 3rd respondent to properly address the issues raised by the applicant, the appellate authority's order stands vitiated

25. It has been well settled by the Hon'ble Apex Court in *Mohinder Singh* Gill v. *The Chief Election Commissioner* (1978 (1) SCC 405) and in *Dipak Babaria* v. *State of Gujarat* (2014 (3) SCC 502) that the Government must defend its action on the basis of the order that it has passed and that it cannot improve its stand by filing subsequent affidavits. It is also well settled that the validity of an order has to be judged by the reasons mentioned in the order and cannot be supplemented by fresh reasons in the shape of affidavits or otherwise.

26. In this view of the matter, we are of the considered view that the appellate authority's order is bad in law and is liable to be set aside. Thus, the second issue is answered in favour of the applicant.

27. In the result, we quash and set aside the impugned order of the 3rd respondent dated 11.11.2013. The 3rd respondent is directed to reconsider the representation of the applicant and afford an opportunity to him for hearing and submission of any other relevant material in support of his prayer for reinstatement within a period of six weeks from the date of receipt of a copy of this order. The 3rd respondent is also directed to consider objectively the further developments and all the issues raised by the applicant and pass a detailed and reasoned speaking order in accordance with law and communicate the same to the applicant within a period of four weeks thereafter. It is made clear that we have not expressed any opinion on the merits of the contentions raised by the applicant in his appeal petition to the 3rd respondent.

28. The OA is partly allowed as above. No order as to costs.

(Minnie Mathew)
Member(A)

(A.K.Patnaik)
Member (J)

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