

CASE NO.:
Appeal (civil) 6361-6363 of 2002

PETITIONER:
State of Haryana and Others

RESPONDENT:
Ram Kumar and Ors. etc.

DATE OF JUDGMENT: 09/03/2004

BENCH:
V.N. KHARE & S.H. KAPADIA

JUDGMENT:
JUDGMENT

O R D E R

WITH

CIVIL APPEAL No. 6365 of 2002

The respondents were the members of the Haryana Police Force. It appears that they committed several misconducts, as a result of which departmental enquiry was initiated against them. It is alleged that they refused to participate in the departmental enquiry. They tore off the documents (including the summary of allegations) produced against them and threatened their seniors. It is alleged that for the aforesaid reasons the departmental enquiry was not found reasonably practicable and, therefore, respondents were removed from service under Article 311(2)(b) of the Constitution. Respondents, against the order of removal, filed writ petitions under Article 226 of the Constitution before the High Court which were allowed. It is in this way, the State is in appeal before us.

Learned counsel for the appellants urged that the High Court committed error in allowing the writ petitions inasmuch as the appellants herein, had made out sufficient cause for dispensing with the enquiry under Article 311(2)(b). It is also contended that in the present case the behaviour of the respondents during the enquiry, as stated above, made the holding of the departmental enquiry not reasonably practicable. It was submitted that under Article 311(2)(b) a situation which makes the holding of a departmental enquiry not reasonably practicable can exist before the commencement of enquiry and also can come into existence during the course of the enquiry i.e. after the service of the charge-sheet. In this connection reliance was placed on the judgment of this Court in the case of Satyavir Singh v. Union of India [AIR 1986 SC 555].

We have gone through the record. Article 311(2)(b) reads as under: -

"311. Dismissal, removal or reduction in rank of persons employed in civil capacities under the Union or a State.\027

(1) \005.

(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) \005.

(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"

A perusal of Article 311(2)(b) shows that it can be invoked only when the authority is satisfied from the material placed before him that it is not reasonably practicable to hold a departmental enquiry. 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 was based on certain objective facts and is not the outcome of the whim or caprice of the officer. A disciplinary authority is not expected to dispense with a departmental enquiry lightly or arbitrarily or merely to avoid the holding of an enquiry or because the case of the department against the government servant is weak (see para 130 of the judgment of the Constitution Bench of this Court in the case of Union of India vs. Tulsiram Patel reported in AIR 1985 SC 1416]. In the present case, the reasons recorded by the disciplinary authority for dispensing with the enquiry were non-participation by the delinquents in the enquiry; destruction of the records by the delinquents in the course of the enquiry; abusing the enquiry officer and giving of threats to senior police officers. In our view on facts of this case, there is no sufficient ground for dispensing with the enquiry under clause (b) of the second proviso to Article 311(2) of the Constitution. What we found here that the enquiry was being held by senior police officers; the delinquents were head constables and nothing prevented the enquiry officer from proceeding with the enquiry ex parte under the above circumstances. On the facts of the case, we are of the view that the reasons given in this case for dispensing with the enquiry do not fall within the expression "not reasonably practicable" under clause (b) of the second proviso to Article 311(2) of the Constitution and accordingly, we are in agreement with the view taken by the High Court.

The appeals fail and are, accordingly, dismissed with no order as to costs.

Before we part with this case, we would like to observe that it will be open to the appellants to proceed with the enquiry from the stage it was found vitiated.

JUDIS