

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE
[CIRCUIT BENCH AT PORT BLAIR]

PRESENT: **THE HON'BLE JUSTICE MOUSHUMI BHATTACHARYA**
AND
THE HON'BLE JUSTICE AJOY KUMAR MUKHERJEE

WP.CT/1/2022

Kunjumole ... Petitioner

Vs.

The Union of India and others ... Respondents

For the petitioner : Mr. Gopala Binu Kumar

For the respondents : Mrs. Anjili Nag

WITH
WP.CT/112/2020

The Union of India and others ... Petitioners

Vs.

Kunjumole ... Respondent

For the petitioners : Mrs. Anjili Nag

For the respondent : Mr. Gopala Binu Kumar

Heard on : August 25, 2022

Judgment on : August 26, 2022

Moushumi Bhattacharya, J.

1. The petitioner is a 67 year old widow of one late C. Mathai, a Sub-Inspector in the Andaman and Nicobar Police Department who was dismissed from service on 20th December 2007 by the

Director General of Police, Andaman and Nicobar Islands (Disciplinary Authority). The petitioner seeks quashing of an order passed by the Central Administrative Tribunal on 15th January 2020 passed in an Original Application filed by the petitioner for quashing the order of dismissal of her husband and the order of the Appellate Authority dated 10/17th September 2018.

2. The petitioner is aggrieved by the order of the Tribunal setting aside the order of the Appellate Authority and remanding the matter to the Authority for deciding certain questions but the refusal of the Tribunal to quash the first order of the Disciplinary Authority dated 20th December 2007 by which the petitioner's husband was dismissed from service.

3. The alleged facts leading to the order of dismissal arises out of a complaint made by one Mohammed Rafique which stated that the petitioner's husband, C. Mathai, demanded a bribe from Rafique for illegal selling of diesel. Rafique lodged the complaint before the Anti Corruption Unit, Port Blair against the alleged demand of bribe made by the petitioner's husband. The Director General of Police dismissed the petitioner by the order dated 20th December 2007 holding that it would not be reasonably practicable to conduct a regular departmental inquiry against Mathai. The Disciplinary Authority / DGP invoked Article 311(2)(b) of the Constitution of India and

dismissed the petitioner's husband with immediate effect. The petitioner's husband challenged the order of the Disciplinary Authority before the Appellate Authority but unfortunately, passed away on 3rd October, 2017 during the pendency of the appeal. The Special Judge, Andaman and Nicobar Islands, in the meantime, by a Judgment dated 30th November 2016, found the petitioner's husband to be not guilty of the offence punishable under sections 7 and 13 of The Prevention of Corruption Act, 1988 and acquitted the petitioner's husband. Thereafter, the Appellate Authority (by its order dated 10/17th September 2018) confirmed the order of dismissal passed by the Disciplinary Authority and dismissed the appeal preferred by the petitioner's husband.

4. The petitioner, as the widow of her deceased husband, also prays for release of all the service benefits which were due to her husband at the time of his retirement as of 30th September 2018 had the petitioner's husband continued in service.

5. Learned counsel for the petitioner places the relevant facts including that the petitioner's husband had served for long years in the Andaman and Nicobar Islands Police Department and was due to retire within nine months from the date of dismissal. Counsel places emphasis on the fact that no disciplinary proceedings were initiated against the petitioner's husband before the present order of dismissal and that the

finding of the Disciplinary Authority as well as the Appellate Authority on the difficulties of holding a regular departmental inquiry does not fulfil the test of the Article 311(2)(b) of the Constitution.

6. Learned counsel appearing for the Administration / respondents submit that the departmental inquiry and other formalities could not be held since the complainant became hostile which shows that further investigation was not possible in the case. Counsel places the order of the Disciplinary Authority to urge that the reason for non holding an inquiry was stated in the order. Counsel concedes that the petitioner's husband was dismissed from service without affording him an opportunity of hearing.

7. The issue before us is whether Article 311(2)(b) of the Constitution of India could have been invoked by the Disciplinary Authority for summarily dismissing the petitioner's husband and whether the order could have been sustained by the Appellate Authority.

8. Article 311 relates to dismissal, removal or reduction in rank any person employed in civil capacities under the Union or a State and mandates that no person who is a member of the aforesaid or holds a civil post under the Union or a State shall be dismissed or removed or reduced any 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 all these charges – 311(2). The second proviso to Article 311(2) is a departure from 311(2) and the first proviso which empowers imposition of penalty on the basis of the evidence adduced during such inquiry where the concerned person need not be given an opportunity of making representation of the proposed penalty. The section proviso contains three sub-clauses of which (b) is relevant for the present case and is reproduced below:

Article 311(2) (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.”

9. The above clause makes it clear that it is incumbent on the authority to record its satisfaction in writing of the reason as to why it would not reasonably be practicable to hold such inquiry where the authority is empowered to dismiss a person. The word “... *reasonably practicable to hold ...*” means that it is not practicable to hold the inquiry based on certain factual circumstances which are inalienable to the case before the Disciplinary Authority. The word “reasonably” further indicates that it is not a case of total impracticability but that holding of an inquiry is not practicable taking a reasonable view of the relevant factual situation. What however is non-negotiable is that the Disciplinary Authority must state its reason in writing for dispensing with a disciplinary inquiry which would have an

indelible impact on the person who is removed, dismissed from service or reduced in rank without an inquiry. The reason recorded must reflect the attending circumstances which would make it reasonably impracticable for the authority to hold the inquiry before imposing the penalty.

10. Article 311(2) makes it clear that the rule is inquiry + hearing before dismissal. The exception slips in where it is impracticable to hold the inquiry and the onus is on the authority to record its satisfaction in writing as to the reason for the impracticability. The underlying presumption in Article 311 is that dismissal, removal or reduction in rank of a person employed in a civil capacity under the Union or State is not to be taken lightly or done without following due process. The threshold to prove dispensation of due process and compliance with the principles of natural justice is high in all matters but particularly heightened in Article 311(2)(b) of the Constitution of India. In essence, the constitutional obligation of recording reasons for departing from the norm must strictly be conformed with. Invocation of the power without bowing down to the constitutional mandate would render the order of penalty void (Union of India vs. Tulsiram Patel, (1985) 3 SCC 398).

11. The order of the dismissal passed by the Disciplinary Authority is a sermon on the ethics of society in general and the police force in particular. The part of the order in relation

to invocation of the power under Article 311 (2)(b) is based on a set of unproved presumptions. Not a single instance has been cited or relied upon to show that the “intimidation or common experience” with regard to witnesses deposing against delinquents actually took place with regard to the petitioner’s husband. The justification is that “this kind of intimidation is a common tactic adopted by the unscrupulous police personnel”. There is no reference to whether any such threat or intimidation was made by the petitioner’s husband on proposed or probable witnesses. The conclusion arrived at of “compelling circumstances” for invoking Article 311(2)(b) is wholly unsupported by facts or even a credible justification. The order of dismissal is abrupt, unreasoned and completely contrary to the import of Article 311(2)(b) of the Constitution.

12. The order of the Appellate Authority merely parrots the view of the Disciplinary Authority and that too after 11 years. The appeal was filed in January, 2008.

13. The Appellate Authority simply refers to the Director General of Police / Disciplinary Authority being competent to dismiss the petitioner’s husband from service by invoking Article 311(2)(b) and that it was not “reasonably practical” to hold an inquiry. There is no independent finding of whether the Disciplinary Authority rightly invoked Article 311(b) and whether the reason for invoking the power was recorded in

writing justifying the satisfaction on the part of the authority to dispense with the inquiry.

14. It is also shocking that the Appellate Authority failed to refer to the judgement of the Special Court dated 30th November 2018 by which the petitioner's husband was found not guilty of the offence punishable under The Prevention of Corruption Act, 1988. The Appellate Authority totally discounts this extremely relevant fact in its eagerness to confirm the order of dismissal after 11 long years.

15. The objection of the authorities to any relief being granted in the petition is based on presumptions. The position taken is that the departmental inquiry was not feasible since the complainant turned hostile reflecting the influence of Mr. Mathai. This is entirely unacceptable to us since no connection has been established between the power exerted by the petitioner's husband, if at all, and the complainant turning hostile. In any event, the complainant turning hostile is a event subsequent to the order of dismissal and hence cannot be a material reason for circumventing due process before passing the order of dismissal.

16. Although the petitioner had prayed for quashing both the orders passed by the Disciplinary Authority as well as the Appellate Authority, the Tribunal remanded the matter to the Appellate Authority for deciding afresh. Since we are of the

opinion that the order of the Disciplinary Authority dated 20th December, 2017 is the starting point of the injustice caused to the petitioner's husband including an unjustified and hurried invocation of Article 311(2)(b), the Tribunal should also have quashed the order of dismissal which gave rise of the appeal filed by the petitioner's husband and the order of the Appellate Authority. We see no reason for the Tribunal to choose not to interfere with the order of dismissal passed by the Disciplinary Authority.

17. The mandate of Article 311(2)(b) was discussed in the seminal judgment of *Union of India vs. Tulsiram Patel* and was relied on in several later decisions including in *State of Uttar Pradesh and another vs. Ram Vinai Sinha*, (2010) 15 SCC 305 and in *Reena Rani vs. State of Haryana and others*, (2012) 10 SCC 215 placed before us. We have also been shown *State of Bihar vs. Shanti Kumari*, a Division Bench judgment of the Patna High Court (2019) 1 BBCJ 596 which held that the legal heirs of a deceased delinquent were fully entitled to pursue the case in appellate stage as has been done by the widow of the deceased in the case before us.

18. We have no doubt that the petitioner is entitled to the pension and other retire benefits of her husband which would have accrued to her husband at the time of retirement. Since we have found the order of the dismissal of the Disciplinary

Authority as well as the Appellate Authority to be without any legal basis, the impugned order of the Tribunal dated 15th January 2020 is quashed to the extent of not interfering with the order of the Disciplinary Authority dated 20th December, 2017. Both the order dated 20th December, 2017 and the order of the Appellate Authority dated 10/17th September 2018 are liable to be quashed and set aside. The impugned order of the Tribunal is hence partly set aside for the reasons as state above.

19. As an extra-ordinary measure and to do complete justice to a widow who has suffered the agony of her husband's unjust dismissal and was not given the benefit of the order of acquittal by the CBI Court, we direct the respondent authorities to release the pensionary and other retirement benefits which would have accrued to the petitioner's husband on his date of retirement, to the petitioner within a period of six weeks from the date of this order.

20. WPCT/1/2022 is disposed of in terms of the above.

21. Re: WPCT/112/2020

This writ petition is filed by the Administration/ respondents who were the respondents before the Tribunal. The respondents are aggrieved by the impugned order of the Tribunal by which the order of the Appellate Authority was quashed.

22. Since we have given our reasons for partly setting aside the impugned order of the Tribunal to the extent of failing to interfere with the order of the Disciplinary Authority, the Judgment given in WPCT/1/2022 (Kunjumole vs. Union of India and other) shall govern the decision in WPCT/112/2020. Both the WPCTs arises out of the same impugned order dated 15th January 2020 passed by the Tribunal on the Original Application filed by the petitioner.

23. WPCT/112/2020 is accordingly disposed of in terms of the judgment in WPCT/1/2022.

(Moushumi Bhattacharya, J.)

24. I agree

(Ajoy Kumar Mukherjee, J.)