



**HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR**



S.B. Civil Writ Petition No. 5574/2020

Hanuman Ram (**Deceased**)



-----Petitioner

Versus

State Of Rajasthan, Through The Superintendent Of Police Ajmer,
District Ajmer (Raj.)

-----Respondent

For Petitioner(s) : Mr. Tanveer Ahamad with
Mr. Manish Parihar
For Respondent(s) : Mr. Udit Sharma with
Ms. Kinjal Surana for
Mr. Rajesh Maharshi, AAG

HON'BLE MR. JUSTICE ANOOP KUMAR DHAND
Order

RESERVED ON :: 05.09.2023
PRONOUNCED ON :: 03.10.2023
REPORTABLE

1. Invoking the extra ordinary jurisdiction of this Court contained under Article 226 of the Constitution of India, instant petition has been filed by the petitioner with the following prayer:

"1. The impugned order dated 27.02.2020 (Annex.1) dismissing the petitioner from service may kindly be declared arbitrary and illegal and accordingly be quashed and set aside and further the respondents may kindly be directed to reinstate the services of the petitioner on the post of Head Constable with all consequential benefits, in the interest of justice.



2. Any other appropriate order, which may be found just and proper in the facts and circumstances of the case, be passed in favour of the petitioner.

3. Cost of the writ petition may be awarded in favour of the petitioner.”

Submissions by the petitioner:

2. Learned counsel for the petitioner submits that without following the provisions and without conducting any enquiry under Rule 16/17 of the Rajasthan Civil Services (Classification, Control and Appeal) Rules, 1958 (for short 'the Rules of 1958') the petitioner has been removed from service. Learned counsel for the petitioner submits that for an alleged incident which occurred on 04.02.2020 of which an audio clip stood viral on social media and solely on the basis of said audio clip the action has been taken by the respondent. Counsel submits that the respondent has invoked the powers contained under Rule 19 (ii) of the Rules of 1958 but no reasons for satisfaction have been recorded, that why it was not reasonably practicable to follow procedure prescribed under Rule 16, 17 and 18 of the Rules of 1958. Counsel submits that for the same incident one Head Constable Prasann Kathath was placed under suspension and thereafter disciplinary proceedings were initiated against him. However, in the case of petitioner, respondent had subjected him to discrimination and the order impugned was passed against him. Counsel submits that while passing the impugned order the respondent have recorded the fact that the voice of the petitioner was tested by supplying the audio clip to Bajrang Singh, Om Prakash and Kailash Kumar. Counsel submits that the said Bajrang Singh was not present at the spot when the alleged incident has occurred rather he was undergoing some training on the fateful day and counsel submits



that under these circumstances order impugned passed by the respondent is not tenable and is liable to be quashed and set aside. In support of his contentions, he has placed reliance upon the following judgments:

1. **Bhinya Ram vs. State of Rajasthan (S.B. Civil Writ Petition No.5669/2021)** which has been upheld by the Division Bench of this Court in the case of **State of Rajasthan and Ors. vs. Bhinya Ram (D.B. Spl. Appl. Writ No.848/2022)**.

2. **Behari Lal Gupta vs. State of Rajasthan and Ors. (S.B. Civil Writ Petition No.1084/1996)** reported in **2002 (1) WLC 752**.

3. **Badri Ram vs. State of Rajasthan and Ors. (S.B. Civil Writ Petition No.14681/2019)**.

3. Counsel submits that a discretion can not be exercised in an arbitrary manner, when the respondent has exercised their discretion for holding an enquiry against similarly situated person Prasann Kathath then it was necessary for the respondent to follow the same process in the case of the petitioner also. In support of this contention, he has placed reliance upon the judgment passed by this Court in the case of **Surendra Kumar Sharma vs. State of Rajasthan and Ors. (SB Civil Writ Petition No.13280/2019)**. Counsel submits that under these circumstances interference of this Court is warranted.

Submissions by the respondent:

4. Per contra, learned counsel for the respondent opposed the arguments raised by the counsel for the petitioner and submitted that the petitioner was found demanding lakhs of rupees for releasing the vehicle carrying liquor and doda post. Counsel submits that the aforesaid incident was recorded in an audio clip



and the same stood viral on social media which has tarnished the image of the entire Police Department in the entire State of Rajasthan. Counsel submits that the voice of the petitioner was proved by three persons namely Kailash Kumar, Bajrang Singh and Om Prakash by verifying the fact that the voice containing in the audio clip belonged to the petitioner. Counsel submits that under these circumstances the decision was taken by the respondent to invoke the provisions contained under Rule 19 (ii) of the Rules of 1958. Counsel submits that the case of Prasann Kathath is distinguishable with the case of the petitioner as no voice of the said Prasann Kathath was recorded. Counsel further submits that negative equity cannot be claimed as a matter of right. Counsel submits that invoking the provisions contained under Rule 19 (ii) of the Rules of 1958, a just and cogent order was passed by the authorities vide impugned order dated 27.02.2020 which needs no interference of this Court. In support of his contentions, he has placed reliance upon the following judgments:

1. **Union of India and Anr. vs. Tulsiram Patel** reported in **1985 (3) SCC 398.**
2. **Jaswant Singh Vs. State of Punjab and Ors** reported in **1991(1) SCC 362.**
3. **Ved Mitter Gill vs. Union Territory Administration, Chandigarh and Ors** reported in **2015 (8) SCC 86.**
4. **State of Uttar Pradesh and Ors vs. Rajit Singh (Civil Appeal No.2049/2022)** reported in **AIR 2022 SC 1551.**
5. Counsel submits that in view of the submissions made herein above, the petitioner is not entitled to get any relief and the instant petition is liable to be dismissed.



Analysis and Reasoning:

6. Heard and considered the submissions made at the Bar and perused the material available on the record.

7. The legal issue involved in this petition is 'whether powers contained under Rule 19 (ii) of Rules, 1958 could have been invoked in hurry by the Disciplinary Authority for summary dismissal of the deceased petitioner for want of reasons for dispensing with enquiry?'

8. As per the version of respondent, the petitioner was posted as Head Constable at Police Check Post Jhadwasa, Police Station Nasirabad Sadar District Ajmer. While checking vehicles at the above check post on 04.02.2020 a vehicle carrying liquor and 'Doda Post' was stopped and lakhs of rupees were demanded by the petitioner for release of this vehicle. The audio clip of this incident stood viral on the social media and thereafter, a report was given by the Station House Officer (for short, 'SHO') Nasirabad (Ajmer) that voice of the petitioner in the said audio clip was recognized and verified by (i) Kailash Kumar, Sub Inspector, (ii) Om Prakash, Constable and (iii) Bajrang Singh, Constable. After perusing the above report, the matter was taken seriously by the Superintendent of Police, Ajmer and services of the petitioner were terminated vide impugned order dated 27.02.2020 by resorting to the provisions of Rule 19 (ii) of the Rules of 1958, dispensing with the enquiry. It was observed that conducting a regular enquiry in this case was not reasonably practicable and it was found that it was a fit case to proceed against the petitioner under Rule 19 (ii) of the Rules, 1958.



9. At the same time, the other Head Constable Prasann Kathath was also found involved in the aforesaid incident dated 04.02.2020 but in his case, he was placed under suspension and departmental proceedings were initiated against him vide order dated 27.02.2020.

10. Now this Court has to examine that whether in the instant case the respondent was correct in dispensing with the enquiry and he was correct in removing the petitioner in exercise of his power under Rule 19 (ii) of the Rules, 1958?

11. Rule 19 of the Rules of 1958 deals with special procedure for removal of a Government Servant by exempting the enquiry contained under Rule 16, 17 and 18 where the Disciplinary Authority is satisfied by recording the reasons in writing that it is not reasonably practicable to follow the procedure prescribed under the said rule.

12. The above sub rule makes it clear that it is incumbent on the authority to record its satisfaction in writing the reason as to why it would not be reasonably practicable to hold such enquiry where the authority is empowered to dismiss a person. The word "*.....reasonably practicable to hold.....*" means that it is not practicable to hold the enquiry based on certain factual circumstances which are inalienable to the case which is before the Disciplinary Authority. The word "reasonably" further indicates that it is not a case of total impracticability but that holding of an enquiry is not practicable after 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 enquiry which would



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

13. The exception slips in where it is impracticable to hold the enquiry and the onus is on the authority to record its satisfaction in writing as to the reason for the impracticability. The underlying presumption in Rule 19 is that dismissal, removal of a person employed in a State service 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 Rule 19 (ii) of the Rules of 1958. 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. The same has been held by the Hon'ble Apex Court in the case of **Union of India vs. Tulsiram Patel, (1985) 3 SCC 398.**

14. While passing the impugned order, the respondent was of the view that the Disciplinary Authority was competent to dismiss the petitioner from service by invoking Rule 19 (ii) and that it was not "reasonably practicable" to hold an enquiry. There is no independent finding about whether the Disciplinary Authority rightly invoked Rule 19 (ii) 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 enquiry.



15. The importance of recording the reasons for dispensing with the enquiry while removing the person from service has been discussed by the Hon'ble Apex Court in the case of **Reena Rani Vs. State of Haryana** reported in **2012 (10) SCC 215** and it has been held in para 7 as under:

"7. In the order of dismissal, the Superintendent of Police has not disclosed any reason as to why it was not reasonably practicable to hold regular departmental enquiry. The learned Additional Advocate General fairly stated that the order of dismissal does not contain the reasons as to why it was not reasonably practicable to hold regular departmental enquiry against the Appellant. He also admitted that no other record has been made available to him which would have revealed that the Superintendent of Police had recorded reasons for forming an opinion that it was not reasonably practicable to hold regular departmental enquiry for proving the particular charge(s) against the Appellant."

16. The Hon'ble Apex Court in the case of **Sudesh Kumar Vs. State of Haryana and ors.** reported in **(2005) 11 SCC 525** has held that it is now established principle of law that an enquiry under Article 311 (2) of the Constitution of India is a rule and dispensing with the enquiry is an exception. The Authority dispensing with the enquiry under Article 311 (2) (b) must satisfy itself by reasons which are to be recorded that it is not reasonably practicable to hold an enquiry.

17. While dealing with the issue of recording the reasons before passing the order of removal from service under Rule 19 (ii) of the Rules of 1958, the Coordinate Bench of this Court has held in the case of **Bhinya Ram Vs. State of Rajasthan and Ors.:** **S.B.Civil Writ Petition No.5669/2021** as under:



"In the case of Banwari Lal (supra), again a case of sub- Inspector and Constables, this Court, even in a case where some reasons were indicated, came to the conclusion that same were not founded on valid reasons permissible under law, set aside the order of punishment.

So far as the judgment in the case of Tulsiram Patel (supra) is concerned, the same has upheld the validity of the provisions providing for dispensing with the inquiry, however, the said judgment nowhere provides that requirement of recording of satisfaction in writing can be given a go-bye.

In the present case, as noticed hereinbefore, there is no reason worth the name indicated for dispensing with the inquiry and, therefore, in view of express provisions of law and various judgments of Hon'ble Supreme Court and this Court, the order impugned passed by the respondents cannot be sustained.

Consequently, the writ petitions filed by the petitioners are allowed. The orders impugned dated 1/3/2021 passed by the disciplinary authority in both the writ petitions and order passed by the appellate authority dated 12/10/2021 in SBCWP No.16751/2021 are quashed and set aside. The petitioners are held entitled to reinstatement with all consequential benefits. However, it would be open for the respondents to initiate departmental inquiry against the petitioners, if they so desire. The payment of back wages shall abide by the result of such inquiry. Such an inquiry, if any, must be initiated as expeditiously as possible."

18. The aforesaid order passed in the case of **Bhinya Ram (supra)** was challenged by the State before the Division Bench by way of filing D.B. Special Appeal Writ No.848/2022 and the same was dismissed on 05.04.2023 by the Court by holding as under:

"Learned counsel for the State would argue that the invocation of power under Rule 19(ii) of the Rajasthan Civil Service (Classification, Control and Appeal) Rules, 1958 (hereinafter referred to as 'the CCA Rules') by the disciplinary authority is perfectly in accordance with the law. Referring to the contents of the show cause notice and the preliminary enquiry report on the basis of which, decision was taken to dispense with the services, it is vehemently contended before us that the order of the disciplinary authority passed on 01.03.2021 and also the order passed by the appellate authority on



10.10.2021 clearly reveal on a comprehensive view, that there did exist reasons why the authority found that it is not reasonably practicable to follow the procedure prescribed in the Rules.

We have gone through the order passed by the learned Single Judge.

Keeping in view the requirement of Rule 19(ii) of the CCA Rules that the disciplinary authority is satisfied for reasons to be recorded in writing that it is not reasonably practicable to follow the procedure prescribed in the rules, special procedure may be followed, learned Single Judge has examined not only the impugned order dated 01.03.2021 but also the relevant files of administrative side produced before the Court.

On a literal reading of the order dated 01.03.2021, we are of the clear view that this order, by no stretch of imagination, fulfills the legal requirement of arriving at satisfaction for reasons to be recorded in writing that it is not reasonably practicable to follow the procedure prescribed in the Rules. It merely contains a conclusion bereft of any material constituting reasons as mandated under the law.

Learned Single Judge has also looked into administrative files and has recorded a finding that there is no material available on record and rather not a word has been indicated qua the reasons of dispensing with the enquiry. Keeping in view the law laid down by Hon'ble the Supreme Court in the cases of Sudesh Kumar, Tarsem Singh and Reena Rani, a conclusion has been arrived at that the decision to dispense with enquiry is in clear contravention of the provisions contained in Rule 19(ii) of the CCA Rules.

In view of the above consideration by the learned Single Judge, we find no scope of interference against the impugned orders passed by the learned Single Judge.

Therefore, the appeals are without any substance and are dismissed."

19. The sole reason for passing the impugned order is that the audio clip containing the voice of the petitioner demanding lakhs of rupees for releasing the liquor/doda post vehicle stood viral on social media and the voice of the petitioner was recognized and verified by three police officials.





20. Now the question which comes before this Court for its consideration is that 'whether the audio clip was authentic and there was no element of the same being tampered or altered.?' If the authorities had made the exercise of first finding the truthfulness or authenticity of the audio clip, there would be no argument based thereon with regard to the allegations depicted in the said audio clip being true. The audio clip would come within the words and expressions used for "document" under Section 3 of Indian Evidence Act, 1872 (for short, 'Evidence Act') and the evidentiary value of the audio clip shall have to be examined similarly as a document is examined. It is well known principle of law that documents would provide far better evidence than the oral evidence provided the authenticity of documents is beyond question. If, therefore, there is a doubt with regard to genuineness of a document, the same would have no evidentiary value, unless corroborated.

21. In the instant case, the respondent has used two different yardsticks to deal with the situation which arose on 04.02.2020. For the incident which occurred on 04.02.2020, the respondent has removed the petitioner without holding any enquiry while in the case of similarly placed person Prasann Kathath, he was placed under suspension and domestic enquiry was initiated against him. Both orders in this regard were passed by the Superintendent of Police, Ajmer on the same day i.e. 27.02.2020. Time and again it has been held by the Hon'ble Apex Court to ensure parity among co-delinquents. While dealing with this issue of parity between co-delinquents, Hon'ble Apex Court in the case



of **Rajendra Yadav Vs. State of Madhya Pradesh and ors.**

reported in **(2013) 3 SCC 73** has held in para 9 to 12 as under:

“9. The Doctrine of Equality applies to all who are equally placed; even among persons who are found guilty. The persons who have been found guilty can also claim equality of treatment, if they can establish discrimination while imposing punishment when all of them are involved in the same incident. Parity among co-delinquents has also to be maintained when punishment is being imposed. Punishment should not be disproportionate while comparing the involvement of co-delinquents who are parties to the same transaction or incident. The Disciplinary Authority cannot impose punishment which is disproportionate, i.e., lesser punishment for serious offences and stringent punishment for lesser offences.

10. The principle stated above is seen applied in few judgments of this Court. The earliest one is **Director General of Police and Ors. v. G. Dasayan** (1998) 2 SCC 407, wherein one Dasayan, a Police Constable, along with two other constables and one Head Constable were charged for the same acts of misconduct. The Disciplinary Authority exonerated two other constables, but imposed the punishment of dismissal from service on Dasayan and that of compulsory retirement on Head Constable. This Court, in order to meet the ends of justice, substituted the order of compulsory retirement in place of the order of dismissal from service on Dasayan, applying the principle of parity in punishment among co-delinquents. This Court held that it may, otherwise, violate Article 14 of the Constitution of India.

11. In **Shaileshkumar Harshadbhai Shah case (supra)**, the workman was dismissed from service for proved misconduct. However, few other workmen, against whom there were identical allegations, were allowed to avail of the benefit of voluntary retirement scheme. In such circumstances, this Court directed that the workman also be treated on the same footing and be given the benefit of voluntary retirement from service from the month on which the others were given the benefit.

12. We are of the view the principle laid down in the above mentioned judgments also would apply to the facts of the present case. We have already indicated that the action of the Disciplinary Authority imposing a comparatively lighter punishment to the co-





delinquent Arjun Pathak and at the same time, harsher punishment to the Appellant cannot be permitted in law, since they were all involved in the same incident. Consequently, we are inclined to allow the appeal by setting aside the punishment of dismissal from service imposed on the Appellant and order that he be reinstated in service forthwith. Appellant is, therefore, to be re-instated from the date on which Arjun Pathak was re-instated and be given all consequent benefits as was given to Arjun Pathak. Ordered accordingly. However, there will be no order as to costs."

22. The respondent has caused discrimination in the case of petitioner and co-delinquent Prasann Kathath and without recording the reasons the order impugned was passed against the petitioner.

23. In a given set of circumstances, availability of overwhelming evidence may be one of grounds to dispense with the enquiry, but in no case, it can be sole ground. In the present case also, at the most, availability of the evidence, which was overwhelming according to the respondent, but disputed by the petitioner, is also one of the grounds for dispensing with the enquiry. A presumption has been drawn by the respondent about demand of money by the petitioner on the basis of the said audio clip without there being any evidence of its veracity and admissibility or without there being any corroborative evidence.

24. Without holding any enquiry and procedure contained under Rule 16, 17 and 18 of the Rules of 1958, the petitioner has been removed from service by the respondent in exercise of its powers contained under Rule 19 (ii) of the Rules of 1958. The disputed question of fact that whether the audio clip was containing voice of the petitioner or not, could have been proved or disproved after



conducting enquiry against him and the respondent should have conducted enquiry against the petitioner to find out the truth.

25. Hence, it is clear that no worthy reasons have been recorded by the respondent for dispensing with the enquiry against the petitioner and therefore, in view of express provisions of law and various judgments of the Hon'ble Supreme Court and this Court, the impugned order passed by the respondent cannot be sustained and the same is liable to be quashed and set aside.

26. It is worthy to note here that impact of setting aside such order would give the liberty to the respondent to initiate the departmental enquiry against the petitioner like the co-delinquent Prasann Kathath, if they so desire but since the petitioner has expired during pendency of this petition and his legal representatives have been taken on record, hence, under these circumstances no departmental enquiry can be held against a dead person. The Hon'ble Apex Court in the case of **Basudeo Tiwari vs. Sido Kanhu University and Ors.** reported in 1998

(8) SCC 194 dealt with such situation in para 13 and 14 as under:

"13. Admittedly in this case notice has not been given to the appellant before holding that his appointment is irregular or unauthorised and ordering termination of his service. Hence the impugned order terminating the services of the appellant cannot be sustained.

14. The appellant has since demised during the pendency of these proceedings, no further direction either as to further inquiry or reinstatement can be given. We declare that the termination of the appellant by the respondent as per the notification referred to by us is invalid. Consequently, it would be deemed that the appellant had died in harness. Needless to say that the appellant would become entitled to the payment of arrears of salary from the date of termination of his services upto the date of his death on the basis of last pay drawn by him. Let Respondent take action within a period of three months from today to work out the arrears due to the appellant from the date of his



termination till his death and pay the same to his legal representatives.”

Conclusion:

27. Consequently, the writ petition stands allowed and the impugned order dated 27.02.2020 is quashed and set aside.

28. Since the petitioner has demised during the pendency of this petition, no further direction either as to further enquiry or reinstatement can be given. This Court declares the removal order of the petitioner as invalid. Consequently, it would be deemed that the petitioner had died in harness. Needless to say that the petitioner would become entitled to the payment of arrears of salary from the date of termination of his services up to date of his death, on the basis of last pay drawn by him.

29. The respondent is directed to pay the arrears of the salary of the petitioner from the date of his termination till death and pay all the terminal benefits to his legal representatives.

30. Needful be done by the respondent within a period of three months from the date of receipt of certified copy of this order.

31. All applications (pending, if any) stand disposed of.

32. The parties are left free to bear their own costs.

(ANOOP KUMAR DHAND),J

KuD/56/pcg