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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.6859 OF 2019

Udaynath Tirkey s/o Kisun Tirkey]
Age – 32 years,]
R/at Quarter No.A-90/06-II]
JNPT Township, Navi Mumbai,]
Raaigad – 400 707.] .. Petitioner

vs

1] The Director General,]
Central Industrial Security Force,]
CISF Headquarters No.13,]
CGO Complex, Lodhi Road,]
New Delhi – 110 003.

2] The Inspector General,]
CISF Headquarters, West Sector,]
Kharghar Sector 35, Near Owegaon,]
Kharghar, Navi Mumbai-410 210.]

3] The Deputy Inspector General,]
CISF Headquarters, Western Zone-1,]
CISF Complex, Taloja, Kharghar,]
Navi Mumbai – 410 210.]

4] The Senior Commandant]
CISF Unit, JNPT, Nhava Sheva]
Navi Mumai, Raigad-400 707.]

5] Shri P.S. Rawat,]
The Assistant Commandant,]
CISF Unit, JNPT, Nhava Sheva,]
Navi Mumbai, Raigad- 400 707.] .. Respondents

WITH

INTERIM APPLICATION NO. 852 OF 2021

IN

WRIT PETITION NO. 6859 OF 2019

UNION OF INDIA through] .. Applicant
CISF JNPT Unit]

In the matter between

Uday N. Tirkey	]	..	Petitioner
vs			
The Director General,	]		
CISF and ors.	]	..	Respondents

Mr.Rajeev N. Kumar, for Petitioner.

Mr.Ashok Shetty a/w Ms.Anamika Malhotra, for Respondents in WP 6859/19 and for the Applicant in IA 852/21.

CORAM : PRASANNA B. VARALE &
N.R.BORKAR, JJ.

RESERVED ON : 24.09.2021
PRONOUNCED ON : 14.01.2022

JUDGMENT : (PER : N.R.BORKAR, J.)

1] Heard finally at the admission stage, in view of the order dated 12.12.2019.

2] The petitioner was serving as a constable with Central Industrial Security Force and at the relevant time was posted at JNPT, Nhava-Sheva, Mumbai. On 29.03.2018 an FIR came to be lodged against the petitioner for the offences punishable under Section 376 of the Indian Penal Code and 4 and 8 of the Protection of Children from Sexual Offences (POCSO) Act, 2012. According to the FIR the petitioner had sexually abused the daughter of his colleague aged about 4 years and 8 months.

3] After registration of crime, preliminary inquiry was conducted and the report of Intelligence Wing of CISF Unit, JNPT was called. The Respondent No.4- who is Disciplinary Authority of the petitioner, on receipt of preliminary inquiry report and report of Intelligence Wing, passed the order dated 04.04.2018 dismissing the petitioner from the services in terms of sub rule (ii) of Rule 39 read with Rule 34 of CISF Rules, 2001.

4] An appeal filed by the petitioner against the order of Respondent No.4 before Respondent no.3-The Deputy Inspector General, CISF came to be dismissed by order dated 31.05.2018.

5] Against the order of respondent No.3, Revision Petition was filed before Respondent No.2-The Inspector General, CISF, who dismissed the Revision Petition by order dated 23.02.2019,

6] The present petition takes exception to the above said orders passed by Respondent Nos.2 to 4.

7] The learned counsel for the petitioner submits that there is a delay in lodging the first information report. It is submitted that according to the first information report, on 28.3.2018, the first

informant, who is the father of the victim, took her to J.N.P.T. Hospital as she was complaining difficulty in passing urine. It is submitted that according to first informant, in J.N.P.T. Hospital the victim was examined by Dr. Manjusha, who told him that hymen of the victim is ruptured. It is submitted that, according to the first informant, Dr.Manjusha had further informed him to inquire victim as to whether any untoward incident had taken place with her. It is submitted that on inquiry the victim disclosed to the first informant about the alleged incident. It is submitted that, however, the statement of Dr. Manjusha does not indicate that she had informed anything like that to the first informant. It is submitted that on the contrary the statement of Dr.Manjusha is that the victim was brought to the hospital as she was complaining of itching over her private parts and she suspected it to be urinary tract infection and recommended medical test for the same. It is submitted that after lodging of the report, the medical examination of the victim was conducted and medical report is otherwise, i.e. neither there was any injury on private parts nor hymen was ruptured. It is submitted that these facts would show that the report came to be lodged under misconception or *malafidely* at the instance of respondent No.5 -Assistant Commandant P.S. Rawat who in the past was angry with the petitioner.

8] It is further submitted that the *malafides* on the part of respondent No.5 are writ-large as the order of suspension was passed even before registration of crime. It is submitted that considering these facts and circumstances, the respondents ought to have conducted regular departmental inquiry and ought to have granted opportunity to the petitioner to defend the charges. It is submitted that the circumstances mentioned by the respondent No.4 in the order impugned are not sufficient to invoke the powers under sub rule (ii) of Rule 39 of the CISF Rules and arriving at the conclusion on the basis of the said circumstances that it is not reasonably practicable to hold the regular departmental inquiry.

9] On the other hand, the learned counsel for the respondents submits that the Disciplinary Authority has recorded reasons as to why it is not reasonably practicable to conduct regular departmental inquiry. It is submitted that considering the facts and circumstances of the case, no interference is called for in the orders impugned.

10] The sub-rule (ii) of Rule 39 of CISF Rules reads thus :

> *(ii) where the disciplinary authority is satisfied for reasons to be recorded by it in writing that it is not reasonably practicable to hold an inquiry in the manner provided in these rules;*

11] It is apparent from perusal of Rule 39(ii) that it is akin to the provision contained in Article 311(2) of the Constitution of India.

12] The Hon'ble Supreme Court in the case of ***Union of India vs. Tulsiram Patel*** reported in ***1985 (3) SC 398***, while interpreting Article 311(2) (b) has observed :

> *"130. The condition precedent for the application of clause (b) is the satisfaction of the disciplinary authority that "it is not reasonably practicable to hold" the inquiry contemplated by clause (2) of Article 311. What is pertinent to note is that the words used are "not reasonably practicable" and not "impracticable". According to the Oxford English Dictionary "practicable" means "Capable of being put into practice, carried out in action, effected, accomplished, or done; feasible". Webster's Third New International Dictionary defines the word "practicable" inter alia as meaning "possible to practice or perform : capable of being put into practice, done or accomplished : feasible". Further, the words used are not "not practicable" but "not reasonably practicable". Webster's Third New International Dictionary defines the word "reasonably" as "in a reasonable manner : to a fairly sufficient extent". 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 member 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. A disciplinary authority is not expected to dispense with a disciplinary inquiry lightly or arbitrarily or out of ulterior motives or merely in order to avoid the holding of an inquiry or because the Department's case against the government servant is weak and must fail."

13] In the present case, the disciplinary authority to arrive at the conclusion that it is not reasonably practicable to hold the disciplinary inquiry has taken into consideration following circumstances :

(i) The conducting of disciplinary inquiry may hurt the sentiments and emotions of local residents and fellow members of the force.

(ii) Producing victim as prosecutor witness in disciplinary inquiry is not feasible. The victim cannot be further subjected to trauma of cross-examination.

(iii) The petitioner is already under arrest and will be either in police custody or judicial custody for long period.

(iv) The petitioner committed heinous crime.

14] We must state that dismissal from service is the harshest punishment and it is akin to economic death penalty for an employee. Therefore, more objective approach was required to be adopted by the disciplinary authority while dispensing with the inquiry. However, it appears from the order impugned that respondent No.4 disciplinary authority had got swayed away by the fact that petitioner is involved in heinous crime and conducting of disciplinary inquiry may hurt the sentiments and emotions of local residents and fellow members of the force. None of the circumstances, which the disciplinary authority has taken into consideration, can be said to be sufficient to dispense with disciplinary inquiry, if tested on the touchstone of the illustrative instances mentioned by the Hon'ble Supreme Court in the case of *Union of India v/s. Tulsiram Patel* (*supra*).

15] Considering the overall facts and circumstances of the case, the orders impugned cannot be sustained. In the result, the following order is passed.

O R D E R

1. The Petition is allowed.

2. The orders impugned are quashed and set aside.

3. The respondents shall reinstate the petitioner in service with all consequential benefits.

4. Needless to state that the respondents are not precluded from initiating departmental inquiry against the petitioner, or suspending him after reinstatement during the pendecy of disciplinary inquiry/criminal trial in accordance with law.

5. In view of disposal of the main petition, nothing survives in the Interim Application and accordingly, the same is disposed of.

[N.R.BORKAR, J] **[PRASANNA B. VARALE, J]**