(9)

Central Administrative Tribunal, Principal Bench

Original Application No.2880 of 2002

New Delhi, this the 2nd day of September,2003

Hon'ble Mr.Justice V.S.Aggarwal,Chairman
Hon'ble Mr.S.K. Naik,Member(A)

Ajab Singh,
S/o Shri Jagjit Singh,
R/o Vill. & P.O. Santoshpur
P.S. Baghpat,
Dist. Bagpat (U.P.) .... **Applicant**

(By Advocate:Sh.Pradip Dahiya,proxy for Sh.Arun Bhardwaj)

Versus

1. Union of India through
Commissioner of Police,
Delhi Police Headquarters,
M.S.O. Building,I.P. Estate,
New Delhi

2. Joint Commissioner of Police,
(Northern Range)
Police Headquarters, IP Estate,
New Delhi

3. Addl. Commissioner of Police,
(Northern Range)
Police Headquarters, IP Estate,
New Delhi

4. Dy.Commissioner of Police,
Central Distt.,
Vikas Puri,
Delhi ....**Respondents**

(By Advocate: Mrs.Jasmine Ahmed)

O R D E R(ORAL)

By Justice V.S. Aggarwal,Chairman

The applicant Ajab Singh is a Constable in Delhi Police. He seeks setting aside of the orders passed by the disciplinary as well as appellate authority whereby invoking Article 311(2)(b) of the Constitution, he has been dismissed from service.

2. The only question agitated before us has been as to whether in the facts of the case, the respondents were within their rights to invoke Article 311 (2) (b) of the

Constitution or not.

3. The allegations against the applicant were that while posted in Central District, he was attached to ACP/Pahar Ganj as his Wireless Operator. On 18.3.96, he alongwith three other persons while travelling in a Maruti Car intercepted one Maruti Van No.DNA-3400 near Rang Puri Chowk, Airport Road, while it was on its way from IGI Airport to Domestic Airport. The passengers of Maruti Van had consignment of Gold which was cleared by the Customs. The applicant alongwith others came out of the car and threatened the occupants of Maruti Van at the point of a revolver. They asked them to handover the entire consignment of Gold to them. The occupants of the Van resisted and in the meantime a PCR Van successfully apprehended two of the said persons while the applicant managed to make good his escape.

4. The disciplinary authority dismissed the applicant holding:

> "The instances are not uncommon where people have not dared to depose even against an ordinary criminal whereas in the instant case, the deposition by complainant would be required against a police officer who has shown desperate criminal tendency by indulging in a well planned heinous offence of armed robbery and thus acquiring terrorizing effect of much greater magnitude.
>
> Keeping in view the reasons mentioned above, it is not reasonable practicable to hold a departmental enquiry against him.
>
> Keeping in view the overall facts and circumstances of the case, I, AJAY KASHYAP, Dy. Commissioner of Police, Central Distt., Delhi, therefore, order that Const. Ajab Singh, No.719/C PIS No.28883680 is dismissed from the force with immediate effect under Article 311 (ii) (b) of the Constitution of

India."

5. Under Article 311 (2) (b) of the Constitution, the Appointing Authority can dismiss a person if he is of the opinion that it is not reasonably practicable to hold an enquiry.

6. The decision of the Supreme Court in the case of **Union of India and others** v. **Tulsiram Patel and others**, AIR 1985 SC 1416 had gone into the controversy as what would be the meaning of the expression "reasonably practicable to hold an enquiry" and after screening through enumerable precedents, the Supreme Court held:-

> "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 members of his family so that he is afraid 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. The finality given to the decision of the disciplinary authority by Article 311 (3) is not binding upon the court so far as its power of judicial review is concerned and in such a case the court will strike down the order dispensing with the inquiry as also the order imposing penalty."

7. With respect to the second condition about the satisfaction of the disciplinary authority, the Supreme Court further provided the following guide-lines:-

> "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 reason 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."

The said decision of the Supreme Court was again considered by another Bench of the same Court in the case of **Satyavir Singh and others vs. Union of India and others,** 1986 SCC (L&S) 1. The Supreme Court in different paragraphs analysed the decision in the case of Tulsi Ram Patel (supra) and thereupon held that judicial review would

be permissible in matters where administrative discretion is exercised and the court can put itself in the place of the disciplinary authority and consider what in the then prevailing situation, a reasonable man acting in a reasonable manner would have done. Paragraphs 106 and 108 in this regard read:-

> "106. In the case of a civil servant who has been dismissed or removed from service or reduced in rank by applying clause (b) of the second proviso to Article 311 (2) or an analogous service rule, the High Court under Article 226 or this Court under Article 32 will interfere on grounds well-established in law for the exercise of its power of judicial review in matters where administrative discretion is exercised."
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> "108. In examining the relevancy of the reasons given for dispensing with the inquiry, the court will consider the circumstances which, according to the disciplinary authority, made it come to the conclusion that it was not reasonably practicable to hold the inquiry. If the court finds that the reasons are irrelevant, the order dispensing with the inquiry and the order of penalty following upon it would be void and the court will strike them down. In considering the relevancy of the reasons given by the disciplinary authority, the court will not, however, sit in judgment over the reasons like a court of first appeal in order to decide whether or not the reasons are germane to clause (b) of the second proviso or an analogous service rule. The court must put itself in the place of the disciplinary authority and consider what in the then prevailing situation a reasonable man acting in a reasonable manner would have done. It will judge the matter in the light of the then prevailing situation and not as if the disciplinary authority was deciding the question whether the inquiry should be dispensed with or not in the cool and detached atmosphere of a court room, removed in time from the situation in question. Where two views are possible, the court will decline to interfere."

8. Similarly, in the case of **Chief Security Officer & ors. vs. Singasan Rabi Das,** AIR 1991 S.C. 1043. respondent Singasan Rabi Das was removed from service. The allegations against him were that while on duty outside

Railway yard, certain material had been left and he concealed the same under a tree. The order recited that an enquiry into the misconduct as provided in Rules 44, 45 and 46 of the Railway Protection Force Rules, 1959 was considered not practicable. He was dismissed from service without holding the enquiry. The order as such had not been upheld by the High Court and when the matter came up before the Supreme Court, the appeal had been dismissed holding:-

> "In the present case the only reason given for dispensing with that enquiry was that it was considered not feasible or desirable to procure witnesses of the security/ other Railway employees since this will expose these witnesses and make them ineffective in the future. It was stated further that if these witnesses were asked to appear at a confronted enquiry they were likely to suffer personal humiliation and insults and even their family members might become targets of acts of violence. In our view these reasons are totally insufficient in law. We fail to understand how if these witnesses appeared at a confronted enquiry, they are likely to suffer personal humiliation and insults. These are normal witnesses and they could not be said to be placed in any delicate or special position in which asking them to appear at a confronted enquiry would render them subject to any danger to which witnesses are not normally subjected and hence these grounds constitute no justification for dispensing with the enquiry. There is total absence of sufficient material or good grounds for dispensing with the enquiry."

Our attention has also been drawn to a subsequent decision of the Supreme Court in the case of **Kuldip Singh vs. State of Punjab and others,** (1996) 10 SCC 659. The appellant before the Supreme Court along with others had caused the death of Superintendent and few other Police officers. The case had arisen in the situation obtaining in Punjab during the years 1990-91. The disciplinary enquiry had been dispensed with and in the peculiar facts,

the Supreme Court held that there was little scope for interference and the findings of the Supreme Court read:-

> "It must be remembered that we are dealing with a situation obtaining in Punjab during the years 1990-91. Moreover, the appellate authority has also agreed with the disciplinary authority that there were good grounds for coming to the conclusion that it was not reasonably practicable to hold a disciplinary enquiry against the appellant and that the appellant was guilty of the crime confessed by him. There is no allegation of mala fides levelled against the appellate authority. The disciplinary and the appellate authorities are the men on the spot and we have no reason to believe that their decision has not been arrived at fairly. The High Court is also satisfied with the reasons for which the disciplinary enquiry was dispensed with. In the face of all these circumstances, it is not possible for us to take a different view at this stage. It is not permissible for us to go into the question whether the confession made by the appellant is voluntary or not, once it has been accepted as voluntary by the disciplinary authority and the appellate authority."

Though the Supreme Court has already drawn the conclusions in the case of Satyavir Singh (supra), for the purpose of the present controversy, we can conveniently draw the following conclusions:

(a) judicial review would be permissible against the orders that are passed by the concerned authorities under Article 311(2)(b) of the Constitution dispensing with the departmental enquiry;

(b) the language used in the order is not the conclusive factor. The Tribunal would be competent to go into the details; and

(c) it varies with the facts and circumstances of each case as to whether the order would be justified or not.

With this back-drop, one can revert back to the facts of the present case because the legal position as is apparent from the facts we have reproduced above has already been enunciated. The language used in the order is not material. The facts and circumstances of a case have to be seen. Judicial review is permissible to see reasons.

9. It is true that the allegations against the applicant are serious but still the question that prompts us to go into the facts is that whether it was reasonably practicable to hold an enquiry against the applicant or not. It is not being disputed that in the trial that applicant faced, he has since been acquitted. Therefore, it cannot be stated that it was not reasonably practicable to hold an enquiry. We are conscious of the fact that proof beyond reasonable doubt is not required in a disciplinary enquiry. Acquittal will not be a sole factor in this regard. The question about the nature of evidence that would be forthcoming cannot be prejudged but suffice to say that it was practicable to hold the enquiry pertaining to the alleged dereliction of duty of the applicant. The short-cut method therefore, that has been adopted, could not have been so adopted in the facts of the

present case.

10. For the reasons given above, we -

(a) quash the impugned order. It is directed that the administrative authority, if it so desires, may consider taking action departmentally against the applicant at the stage the impugned order was passed;

(b) the applicant shall continue to be under suspension subject to the orders to be passed by the concerned authority; and

(c) the consequential benefits of arrears would be paid to the applicant, but it shall be in accordance with the rules from the date the representation of the applicant was rejected.

No costs.

(S.K. Naik)
Member(A)

(V.S. Aggarwal)
Chairman

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