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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

O.A. NO.3070/2002

New Delhi, this the 27th day of August, 2003

HON'BLE MR. JUSTICE V.S. AGGARWAL, CHAIRMAN
HON'BLE MR. S.K. NAIK, MEMBER (A)

Bhisam Kumar,
S/o Shri Kham Chand,
V & PO Chaprauli,
Distt: Bagpat (UP)

.... Applicant

(By Advocate : Shri Arun Bhardwaj)

Versus

1. Union of India through
Commissioner of Police,
Police Headquarters, I.P. Estate,
New Delhi

2. Sr. Additional Commissioner of Police,
A P & T
Police Headquarters IP Estate,
New Delhi

3. Addl. Commissioner of Police,
(Armed Police)
Police Head Quarter,
I.P. Estate, New Delhi

4. Deputy Commissioner of Police,
III Bn DAP,
Vikas Puri,
Delhi

... Respondents

(By Advocate : Shri Ajay Gupta)

O R D E R (Oral)

BY HON'BLE MR. JUSTICE V.S. AGGARWAL, CHAIRMAN :

Applicant, Bhisam Kumar, was a Constable in Delhi Police. He seeks setting aside the orders passed by the disciplinary and appellate authorities and also rejecting his representation. The applicant was dismissed invoking Article 311 (2) (b) of the Constitution of India.

2. The short question agitated has been as to whether in the facts of the case, the respondents were within their

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rights to invoke Article 311 (2) (b) of the Constitution or not.

3. Some of the relevant facts are that it was alleged that the applicant with some other accomplices on 18.3.1996 while riding in a Maruti car forcibly stopped a Van driven by the complainant Prem Narain. One Constable Dheer Singh was armed with a revolver and he put it on the temple of the Van driver Prem Narain and took out the keys of the Van and gave it the applicant. The other two accomplices opened the door of the Van. Constable Dheer Singh threatened the occupants that they should hand over the gold to him otherwise he will shoot them. They were got red handed. A criminal case with respect to the offence punishable under Section 395/397/34 of IPC, besides under Section 27/54/59 of the Arms Act was registered.

4. The disciplinary authority, keeping in view the nature of the assertions and gravity of the offence, dismissed the applicant and passed the following orders:-

> "WHEREAS above facts and circumstances show that Const. Dheer Singh No. 2563/DAP and Const. Bhisham Kumar No. 2317/DAP have actively participated in attempting armed robbery which shows their desperate and dangerous character. Both the Constables, being members of disciplinary force, were having greater responsibility of protecting the person and property of the citizens of this country but instead of protecting the person and property of the citizens of this country they themselves tried to commit armed robbery which in the eyes of the public cannot be over-looked and is not expected from the members of the police force. This also shows the desperate and dangerous character of the Constables and most likely it is certain that victims/witnesses may not dare to depose against them either in the departmental enquiry or in the criminal case.
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> WHEREAS keeping in view the circumstances

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of the case as explained above holding of enquiry against Const. Dheer Singh No. 2563/DAP is not reasonably practicable expedient. Therefore, I, Naresh Kumar, Deputy Commissioner of Police, III B. DAP, Delhi do hereby order that Cons;table Dheer Singh No.2563/DAP and Constable Bhisham Kumar No.2317/DAP be dismissed from the force with immediate effect under the provisions of Article 311 (2) (b) of the Constitution of India. Both the Constables were placed under suspension by the undersigned w.e.f. 18.3.1996 (date of arrest) vide DD no. 31 dated 19.3.96). Their suspension period from 18.3.1996 to date for dismissal from service is treated as not Spent On Duty for all intents and purposes."

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."

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."

7. 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

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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 has to be seen. Judicial review is permissible to see reasons.

8. It is true that the allegations against the applicant are serious, but still the question that prompts us to go into the facts is whether it is reasonably practicable to hold the enquiry against the applicant or not. In the trial that the applicant has faced, he has since been acquitted. Therefore, it cannot be stated that it is not reasonably practicable to hold the enquiry. We are conscious of the fact that proof beyond reasonable doubt is not required in departmental proceedings. Acquittal will not be the sole factor in this regard. But it will not be permissible to further hold that it will not be reasonably practicable to hold the enquiry. Those factors are not available in the present case. The short-cut method only available is that administrative authorities are able to show that ingredients of Article 311 (2) (b) are satisfied. In the present case they are not satisfied.

9. In almost identical terms in the cases of **Shri Keshav Kumar** v. **Union of India and Ors.** in OA No.1096/2001 decided on 11.9.2002; **Ravinder Singh** v. **Commissioner of Police and Others** in OA No.157/2002 decided on 17.4.2002; **Constable Krishan Singh** v. **Commissioner of Police and Others** in OA No.2097/2001 decided on 10.7.2002 and a Full Bench of this Tribunal in the case of **Jagdish** v. **Union of India and Others** in OA No.1515/2001 decided on 7.2.2003 did not approve of invoking Article 311 (2)(b) of the Constitution of India. It was held that heinous nature of the offences is not the tilting factor. If the reasons recorded by the inquiry officer did not come upto the mark, the order would not be sustained. Herein these ingredients are absent.

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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