CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A.No.1696/2002

New Delhi, this the 20th day of February, 2003.

HON'BLE MR. JUSTICE V.S. AGGARWAL, CHAIRMAN
HON'BLE MR. A.P. NAGRATH, MEMBER(A)

Shri Udai Singh
S/o Shri Bharat Singh
R/o Village Parnala
P.O.Bahadur Gargh
P.S.Bahadur Garh, District Rohtak
Haryana. ....Applicant

(By Mrs.Avnish Ahlawat, Advocate)

-versus-

1. Union of India
Through Secretary
Ministry of Home Affairs
South Block (U.T.Cadre)
New Delhi.

2. Govt.of N.C.T. Delhi
through Commissioner of Police
Police Headquarter, I.P.Estate
New Delhi.

3. Addl. Commissioner of Police
Armed Police,
Delhi.

4. Deputy Commissioner of Police
5th Batalion, DAP,
Delhi. .... Respondents

(By Shri Harvir Singh, Advocate)

O R D E R(ORAL)

JUSTICE V.S.AGGARWAL:-

Applicant Udai Singh was a Constable in Delhi Police. His services had been dismissed invoking Article 311(2)(b) of the Constitution.

2. Some of the relevant facts are that the applicant had joined the Delhi Police as a temporary

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Constable on 15.12.1982. His quasi permanency was passed for a period of six months with effect from 16.12.1983. His services were terminated vide order dated 20.6.1986 because of indifferent record. He had challenged the said order in this Tribunal. On 4.5.1989, the order terminating his services was quashed and the applicant was directed to be reinstated in service with consequential benefits. Thereafter, he again misconducted himself in the written test for promotion list 'A' which was scheduled to start at 7 A.M. on 31.5.1992. He had created nuisance and shouted despite coming late. He even tried to instigate other Constables. He was arrested under the Delhi Police Act. He is further alleged to have misconducted himself on 30.5.1992 when he boarded a three wheeler scooter and sat along with the driver. Smt.Pratibha Rani was a passenger therein. When he was asked to get down, he shouted at her and used unparliamentary language.

3. The service record of the applicant indicated that he was absent for many days and finally he absented from 1.3.1997 for more than an year.

4. The Deputy Commissioner of Police had taken note of these facts and passed the following order:-

"I do not see any point of holding a departmental enquiry against him as in this

case he is habitual absentee and incorrigible type of constable. There is no room for such a DESERTER type of man in a disciplined force like Delhi Police. He was given ample opportunity to report back but to no avail. If a person is not reporting for duty without reason/information only for a reasonable period, he may be deemed as absent from duty. But if a person is absent for such long a period as 1239 days in total, then definitely this is not a case of absence but DESERTION FROM THE FORCE. It is a matter of interpretation as to where absence stops and desertion begins. As the controlling and disciplinary authority I, A.A. SIDDIQUI, DEEM IT AS DESERTION FROM DUTY. Thus I take recourse to the provision of para 17, Section 3, Sub-Rule, B, of Delhi Police (Punishment & Appeal) Rules to dispense with the formality of holding a D.E. and also considering his over all past conduct. I find him wholly incorrigible and unwilling and to retain him in service would spell disaster for the force's DISCIPLINE,which is the back-bone of any uniformed service. This I find him unfit for police service and therefore DISMISS him from service in Delhi Police with immediate effect in exercise of powers vested in me by Article 311(ii) (b) of the Constitution of India. His absence period be treated as not spent on duty and treated as (Dies Non)."

5. According to the applicant, the said order so passed is illegal and in violation of the spirit of the Constitution and his appeal even has wrongly been dismissed.

6. The application has been contested. According to the respondents, the applicant was running absent from 1.3.1997. Absentee notices were issued to him but he remained absent. After considering the whole case,his continuous desertion from duty, noticing that the applicant was incorrigible, unwilling and unfit to be retained in service, the impugned order was passed.

7. During the course of submissions, the learned counsel for the applicant urged that in peculiar facts, Article 311 (2) (b) of the Constitution could not be pressed into service.

8. 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

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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."

9. 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 Satavir 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.

It is obvious from the aforesaid that whenever Article 311(2)(b) of the Constitution is pressed into service, the condition precedent is the satisfaction of the

disciplinary authority that it is not reasonably practicable to hold an enquiry contemplated under clause (b) of Article 311 (2) of the Constitution. Under Article 311 of the Constitution, the basic rule is to give a reasonable opportunity of contesting the disciplinary enquiry with respect to the punishments referred to. The exceptions have been carved out and one of them has been referred to above. Whenever the disciplinary authority invokes Article 311(2)(b) of the Constitution, judicial review is permissible as to whether in the peculiar facts, the enquiry should be reasonably practicable or not. The language used is not the conclusive factor. The Tribunal can lift the veil and find out as to whether it was reasonably practicable to hold the enquiry or not.

10. In the present case in hand, a perusal of the record reveals that irrespective of the earlier dereliction of duties, presently the applicant was found absent from duty and he had not reported despite absentee notices. When such was the situation, a departmental enquiry could be held. It is a different matter that the applicant does not appear or if he does not appear, he could be proceeded ex parte. If he is unwilling worker who cannot correct his ways that does not imply that it is not reasonably practicable to hold the enquiry. There are no

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circumstances that are apparent from the impugned order to prompt us to conclude that it was not reasonably practicable to hold the enquiry earlier when it was simply to be shown that the applicant had remained absent from duty for a specific period. We are of the considered opinion that Article 311(2)(b) of the Constitution could not have been pressed into service in the facts of the present case.

11. For these reasons, we allow the present application and quash the impugned order. The respondents would be at liberty to proceed against the applicant in accordance with law afresh, if deemed appropriate. No costs.

Announced.

(A.P.NAGRATH)
MEMBER (A)

(V.S.AGGARWAL)
CHAIRMAN

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