

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, CALCUTTA BENCH, CALCUTTA

**LIBRARY**

O. A. No. 351/00 **564** of 2019

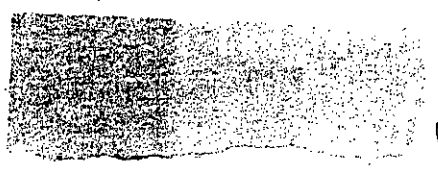
IN THE MATTER OF:

**SMT. KUNJUMOLE**, about 65 years, wife of Late C. Mathai, aged, Ex Sub-Inspector of Police in the Andaman and Nicobar Police Department under A&N Administration, residing at 432/12, Naushad Colony, Ward No. 24, Garacharma, South Andaman-744105.

...**APPLICANT**

**-VERSUS-**

1. **UNION OF INDIA**, service through the Secretary, Ministry of Home Affairs, Government of India, South Block, New Delhi-110001.
2. **THE LIEUTENANT GOVERNOR**, Andaman & Nicobar Islands, Raj Niwas, Port Blair- 744101
3. **THE ANDAMAN & NICOBAR ADMINISTRATION**, service through the Chief Secretary, Secretariat, Port Blair- 744101.
4. **THE DIRECTOR GENERAL OF POLICE**, the Andaman & Nicobar Islands, Andaman &



Nicobar Administration, Secretariat, Port Blair-  
744101.

5. **THE SECRETARY (HOME)**, the Andaman &  
Nicobar Islands, Andaman & Nicobar  
Administration, Secretariat, Port Blair- 744101.

6. **THE ASSISTANT SECRETARY (HOME)**, the  
Andaman & Nicobar Islands, Andaman &  
Nicobar Administration, Secretariat, Port Blair-  
744101.

7. **THE SUPERINTENDENT OF POLICE**, Police  
Headquarter, Andaman & Nicobar  
Administration, South Andaman- 744105.

8. **THE DEPUTY SUPERINTENDENT OF  
POLICE (DDO)**, Police Headquarter, Andaman  
& Nicobar Administration, Secretariat, Port  
Blair- 744101.

...Respondents.

CENTRAL ADMINISTRATIVE TRIBUNAL  
KOLKATA BENCH  
KOLKATA

No.O A.350/564/2019

Date of order : 15.1.2020

Coram : Hon'ble Mrs. Bidisha Banerjee, Judicial Member  
Hon'ble Dr. Nandita Chatterjee, Administrative Member

SMT. KUNJUMOLE  
VS.  
UNION OF INDIA & OTHERS  
(A&N Administration, Police)

For the applicant : Mr. P.C. Das, counsel

For the respondents : Mr.R. Halder, counsel

**ORDER**

**Bidisha Banerjee, Judicial Member**

The applicant, a widow aged about 65 years, wife of Late C. Mathai, a dismissed Sub-Inspector of Police in Andaman & Nicobar Police Department has preferred this O.A. to seek the following reliefs:-

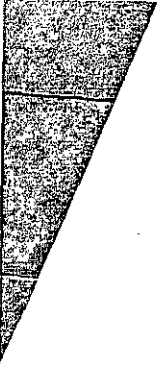
- "a) To quash and/or set aside the impugned order of dismissal from service being Order Book No.6068 dated 20<sup>th</sup> December, 2007 issued by the Director General of Police, Andaman & Nicobar Islands against the husband of the applicant without any enquiry and without issuing any show-cause notice and without being giving the opportunity to be heard to the husband of the applicant by imposing the Article 311(2)(b) of the Constitution of India being Annexure A-1 of this original application;
- b) To quash and/or set aside the impugned office order No.3011 dated 10<sup>th</sup>/17<sup>th</sup> September, 2018 issued by the Lieutenant Governor, Andaman and Nicobar Islands by which he has upheld the impugned order of dismissal from service being Order Book No.6068 dated 20<sup>th</sup> December, 2007 issued by the Director General of Police, Andaman & Nicobar Islands against the husband of the applicant and after a lapse of eleven years the appeal preferred by the husband of the applicant has been rejected which was communicated by the Deputy Superintendent of Police(DDO), Police Headquarter vide office order dated 11<sup>th</sup> October, 2018 being Annexure A-10 of this original application;
- c) To declare that Article 311(2)(b) of the Constitution of India imposed by the Disciplinary Authority against the husband of the present applicant by imposing the order of dismissal from service dated 20<sup>th</sup> December, 2007 is otherwise bad in law and illegal by not complying with the landmark decision

*made by the Hon'ble Supreme Court of India in Tulsi Ram Patel's case and there is no explanation in the order either by the disciplinary authority or appellate authority that why the enquiry is not possible;*

*d) To declare that the entire proceeding against the husband of the present applicant without holding the any enquiry, the order of the disciplinary authority as well as the order of the appellate authority are illegal and bad in law and may be liable to be quashed and/or set aside and the applicant being the wife of the deceased employee namely Late C. Mathai, Ex-SHO of PS Ograbranj, the Andaman and Nicobar Police Department be directed to give all consequential benefits regarding retiral and pensionary benefits in favour of the present applicant from the date of dismissal from service of the husband of the applicant including all consequential arrear benefits with interest thereon to be paid to the present applicant so that she can survive in rest of her life by imposing an exemplary cost upon the Andaman and Nicobar Administration for making a false allegations against the husband of the applicant which has been quashed and/or set aside by the competent criminal court of law by passing an acquittal order in favour of the husband of the applicant."*

2. The applicant has pleaded that her husband namely, C. Mathai while serving as SHO of Police station Ograbranj, Andaman was arrested by CBI on 19.12.2007 on the basis of a trap executed by the CBI on the alleged grounds of accepting illegal gratification of Rs.10,000/- . On 20.12.2007 he was dismissed from police service vide impugned order of dismissal dated 20.12.2007 issued by Director General of Police, A&N Islands invoking power under Article 311(2)(b) of the Constitution of India without assigning any reason and without explaining the reason as to why the dismissal was ordered without enquiry and why enquiry was not possible. The applicant has alleged that the dismissal order hits the principle laid down by Hon'ble Apex Court in its landmark decision in **Tulsi Ram Patel** where Hon'ble Apex Court clearly held that a reasonable explanation has to be given why an enquiry was not possible. It is the further case of the applicant that her husband preferred an appeal on 08.01.2008 before the Lieutenant Governor who sat tight over the matter for a long time until 27<sup>th</sup>/30<sup>th</sup> November,




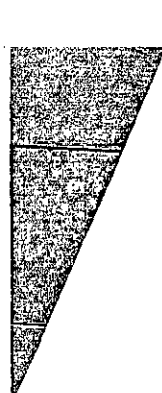


2015 when he dismissed the appeal without considering the order of acquittal by the Special Judge, Andaman & Nicobar Islands, Port Blair in Special Case No.13 of 2007 dated 30<sup>th</sup> November, 2016. However, on 26<sup>th</sup> April, 2016 husband of the applicant was called for personal hearing by the Lieutenant Governor on 27.04.2016 at 10:30 A.M. at Raj Niwas. Thereafter on 26<sup>th</sup> October, 2016 again he was called for personal hearing on 17.11.2016 at 3:30 P.M. at Raj Niwas. Her husband attended both the hearings. Meanwhile acquittal order was issued. The applicant has averred that on 03.10.2017 her husband expired and due to his dismissal from service no death benefits accrued to him which left the entire family in chill penury. The order of acquittal was assailed by the CBI before the Hon'ble High Court at Calcutta which abated due to death of husband of the applicant. By an order dated 10<sup>th</sup>/17<sup>th</sup> September, 2018 the Lieutenant Governor affirmed the order of dismissal from service without considering the acquittal order passed in the CBI case. The applicant has, therefore, challenged the impugned order dated 10<sup>th</sup>/17<sup>th</sup> September, 2018 and the dismissal order on the ground that they are cryptic and stereotyped orders which do not explain why enquiry was not possible to be undertaken and why without hearing her husband dismissal order had to be issued on 20<sup>th</sup> December, 2007.



3. At hearing Id. counsel for the applicant would place a decision of this Tribunal in **O.A.No.1158/2017(A&N)[Etwā Ekka Vs. Lieutenant Governor, Andaman & Nicobar Islands & Others]** where legality and






propriety of an order passed by the Appellate Authority on a dismissal from service invoking second proviso to Article 311(2)(b) of the Constitution was under challenge. Having noted the true import of the decision in **Tulsi Ram Patel** and having noticed that the dismissal order was issued long before the applicant's discharge from criminal case and therefore, without having any occasion to come across or deal with the order of acquittal and having noted that the Disciplinary Authority failed to record reasons why it found holding of enquiry as not reasonably practicable and the Appellate Authority solely banked upon the wisdom of the Disciplinary Authority instead of appreciating the order of acquittal and correctness of invoking the proviso, the Appellate Authority's order was quashed with opportunity to the said authority to act in accordance with law.

4. Ld. counsel for the applicant would seek similar direction in the present O.A. on the ground that :-

- (i) The employee was dismissed without enquiry invoking clause (b) of second proviso to Article 311(2) of the Constitution i.e. straightway, without enquiry, though circumstances were not such that would have indicated holding of enquiry as not "reasonably practicable";
- (ii) The widow is reeling under penurious circumstances due to dismissal of her husband without any enquiry, as the service rules have no provision for release of any compassionate allowance or part pension or gratuity on account of such dismissal.

5. Ld. counsel for the respondents would draw our attention to the order passed on 3<sup>rd</sup> November 2017 in CRA No.004 of 2017[The State(CBI) Vs. Shri Chacko Mathai] to contend that the appeal was not





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 enquiry 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.

XX

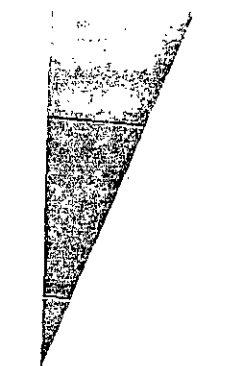
131. It was submitted that where a delinquent government servant so terrorizes the disciplinary authority that neither that officer nor any other officer stationed at that place is willing to hold the inquiry, some senior officer can be sent from outside to hold the inquiry. This submission itself shows that in such a case the holding of an inquiry is not reasonably practicable. It would be illogical to hold that the administrative work carried out by senior officers should be paralysed because a delinquent government servant either by himself or along with or through others makes the holding of an inquiry not reasonably practicable.

132. It is not necessary that a situation which makes the holding of an inquiry not reasonably practicable should exist before the disciplinary inquiry is initiated against a government servant. Such a situation can also come into existence subsequently during the course of an inquiry, for instance, after the service of a charge-sheet upon the government servant or after he has filed his written statement thereto or even after evidence has been led in part. In such a case also the disciplinary authority would be entitled to apply clause(b) of the second proviso because the word 'inquiry' in that clause includes part of an inquiry. It would also not be reasonably practicable to afford to the government servant an opportunity of hearing or further hearing, as the case may be, when at the commencement of the inquiry or pending it the government servant absconds and cannot be served or will not participate in the inquiry. In such cases, the matter must proceed ex parte and on the materials before the disciplinary authority. Therefore, even where a part of an inquiry has been held and the rest is dispensed with under clause (b) or a provision in the service rules analogous thereto, the exclusionary words of the second proviso operate in their full vigour and the government servant cannot complain that he has been dismissed, removed or reduced in rank in violation of the safeguards provided by Article 311(2).

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.







8. The decision of the Disciplinary Authority to invoke the proviso does not reflect that conditions as in paragraphs 130-131 supra were prevailing at the material time when the clause was invoked to dismiss him without enquiry.

9. While embarking upon the task of dealing with the legality and propriety of the order of the Appellate Authority dated 11.10.2018, upholding the dismissal from service invoking clause (b) to the second proviso to Article 311(2) of the Constitution, we fail to decipher any material or justification recorded therein in terms of Para 137 of **Tulsiram Patel (supra)** that why enquiry could not be held subsequently after appeal was filed. Similarly we failed to discern any discussion in the Appellate order in regard to the order passed by the CBI Court acquitting husband of the applicant from the charges of taking and accepting illegal gratification as a Station House Officer of a Police Station which had led to his arrest, detention and removal without enquiry. We would note that the criminal court had relied upon several decisions of the Hon'ble Apex Court that mere recovery of tainted money was not sufficient to convict the accused when the substantive evidence in the case was not reliable and that mere recovery by itself cannot prove the charge against the prosecution in absence of any evidence to prove payment of bribe or to show that the accused voluntarily accepted the money knowing it to be a bribe. We further find the following recorded in the order passed by the CBI Court



:-



"In the prevailing system of administration, there may be instances betraying suspicious deals and transactions between the public servants and the public at large. Sometimes, the public indulged in illegal activities use the public machineries unlawfully for their goal. Similarly public officials also sometimes use their power and privilege in a suspicious manner without recourse to law for some reason or other. So, the allegation of illegal gratification is very common in the present State of affairs, and for the purpose of starting a case against a public servant, it is incumbent upon the complainant as well as the person taking cognizance to be very cautious in finding out the materials. Sometimes traps are laid for detecting such illegal gratification cases. But in the present case no such plan was hatched up nor any trap was laid earlier. On the other hand, mere allegation was converted into a case under Section 7 of the Act and the investigation was illegally made, may be with the idea that the alleged crime can never be punished. Be that as it may, without making any further comment on the nature of investigation required in such cases, I am convinced from the materials-on-record do not support the prosecution case nor the investigation was lawfully done, and sanction of prosecution was not lawfully obtained. All such illegalities and lacunae make the entire case unworthy of credence.

Considering all, I think the prosecution i.e. CBI has miserably failed to bring home the charge levelled against the accused persons and the accused deserves acquittal from this case.

Hence it is,

**ORDERED**

That the accused Chacko Mathai is found not guilty of the offences punishable under section 7 and 13(1)(d) of the Prevention of Corruption Act, 1988 punishable under section 13(2) of the Prevention of Corruption Act, 1988 and he is acquitted under section 235(1) of Cr.P.C.

He is discharged from his bail bond.

Seized documents be returned from whom it was seized according to law after expiry of appeal period and the seized money in this case be returned to its actual owner on proper verification."

In the aforesaid backdrop we note that the penalty order records the following:-

"Whereas, Sub-Inspector C. Mathai, while posted as Station House Officer, Police Station, Ograbraj has been caught red handed by the C.B.I. in a trap case, bearing No.RC0102007A0046 dated 17-12-2007 of C.B.I. ACB, Kolkata while demanding and accepting an illegal gratification of Rs.10,000/-.

XX

The accused S.I. C. Mathai was arrested on 18-12-2007 at PS Ograbraj and subsequently remanded to the Judicial Custody on 19/12/2007 by the Ld. Special Judge, Port Blair.

2. And whereas, the act of taking illegal gratification by S.I. C. Mathai, being a Station House Officer of a Police Station, which led to his being

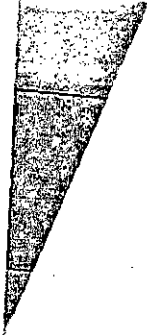
caught red handed by the C.B.I. is a shameful and most degraded act of corruption and in violation of all norms, ethics and morality of a disciplined police force. Such acts of obsessive corruption and gross misuse of powers speaks of the debauch character, which cannot be tolerated in any disciplined force. This is the case where protector of law has turned into extortionist and has abused the power bestowed on him. He instead of performing his lawful duty demanded money from the complainant with malafide intention. Showing even a bit of leniency towards him would be a bad precedent and would encourage other members of the force in believing that these acts are minor delinquencies, which would be overlooked. Corruption is eating into the vitals of our society and if the guardians of law themselves indulge in such nefarious activities in flagrant violation of decent behaviour, it becomes all the more important to check them forth.

3. And whereas, the accused S.I. C. Mathai being a member of a disciplined force was responsible for protecting the life and property of the citizens of the country but he instead of discharging his duty honestly and sincerely, he himself indulged in corrupt practice, which is most abhorrible, most reprehensible and most unexpected from a member of a disciplined police force. If the Policeman, who is charged with sacred responsibility of upholding the rule of law indulges in such acts of crime and lawlessness, it shatters the faith of the common man in the Government's law and order machinery. It also attracts immediate public attention and compels the authorities to take stern action against erring officials. Such acts of Police misdemeanour produce undesirable and negative impact on the organisation. Such gross misconduct directly erodes the very basis of Police functioning i.e. "Public Trust", the foundation on which Police work is built. Without people's trust, the Police as service to people would become irrelevant. Reputation and image assiduously built on sustained and good teamwork, suffer irreparable damage when an individual member of the service trips and indulges in such an abhorrent act.


4. Not only the above mentioned act of corruption in which he was caught red handed, S.I. C. Mathai's conduct subsequent to his arrest, reflects his desperate character. After such acts of gross misconduct, if the accused Sub-Inspector C. Mathai is allowed to be continued in Police force, it would be detrimental to the public interest. The facts and circumstances of the case are such that it would not be reasonably practicable to conduct a regular departmental enquiry against the defaulter Sub-Inspector, as it is a common experience that due to threat and intimidation, witnesses do not come forward to depose against such delinquents in the departmental enquiries. This kind of intimidation is a common tactic adopted by the unscrupulous police personnel. In the instant case, this belief is further strengthened by the violent conduct of S.I. C. Mathai shown immediately after his arrest. It calls for great courage to depose against such desperate persons and the task becomes more acute and difficult where the delinquent is a Police Officer, who may use his influence against the Prosecution Witnesses. Moreover, the aforesaid corruption and criminal cases may take time and holding of regular departmental enquiry against the said accused police officer is not reasonably practicable keeping in view of his remaining length of service.

5. It is under these given set of compelling circumstances, the Article 311(2)(b) of the Constitution of India has been invoked in this case for the sake of justice. The Sub-Inspector has become a liability to the department and should be dismissed. It would be both in the public interest as well as for the establishment of rule of law, which is expected by public at large."





The order does not reflect, why an enquiry to find out whether in fact the employee had demanded and accepted bribe which obviously had to be conducted on a later date could not be conducted at the material time, whether members of the trap team could possibly be terrorised by the accused leading him to conclude safely that it was not reasonably practicable to hold an enquiry when it is trite law that mere recovery of tainted money was not sufficient to establish the charge of acceptance of bribe.




10. In view of the above, we are of the considered opinion that it was incumbent upon the Appellate Authority to apply his mind on the materials on record, the order of acquittal, the circumstances prevailing at the time when the proviso had to be invoked and subsequently when appeal was decided, absence of an explanation, why enquiry was not found reasonably practicable as on the date the dismissal order was issued and subsequently when appeal was decided.

11. We further note that Rule 41 of CCS(Pension) Rules envisage the following:-

**"41. Compassionate allowance**

(1) A Government servant who is dismissed or removed from service shall forfeit his pension and gratuity :

Provided that the authority competent to dismiss or remove him from service may, if the case is deserving of special consideration, sanction a compassionate allowance not exceeding two - thirds of pension or gratuity or both which would have been admissible to him if he had retired on compensation pension.



(2) A compassionate allowance sanctioned under the proviso to sub-rule (1) shall not be less than the amount of [Rupees three hundred and seventy-five] per mensem."

The Government of India's decisions spell out the following:-

**"(1) Guiding principles for the grant of Compassionate Allowance.** - It is practically impossible in view of the wide variations that naturally exist in the circumstances attending each case, to lay down categorically precise principles that can uniformly be applied to individual cases. Each case has, therefore, to be considered on its merits and a conclusion has to be reached on the question whether there were any such extenuating features in the case as would make the punishment awarded, though it may have been necessary in the interests of Government, unduly hard on the individual. In considering this question it has been the practice to take into account not only the actual misconduct or course of misconduct which occasioned the dismissal or removal of the officer, but also the kind of service he has rendered. Where the course of misconduct carries with it the legitimate inference that the officer's service has been dishonest, there can seldom be any good case for a compassionate allowance. Poverty is not an essential condition precedent to the grant of a compassionate allowance, but special regard is also occasionally paid to the fact that the officer has a wife and children dependent upon him, though this factor by itself is not, except perhaps in the most exceptional circumstances, sufficient for the grant of a compassionate allowance.

[G.I., F.D., Office Memo. No. 3(2)-R-II/40, dated the 22nd April, 1940.]"

In view of the above, and having noted the acquittal of her husband from the criminal case where his 'demand' and 'acceptance' of bribe could not be proved,, the widow's right to get Compassionate Allowance invoking Rule 41(ibid), cannot be ruled out.

12. Accordingly, we set aside and quash the impugned speaking order passed by the Appellate Authority and remand the matter back to the said authority to delve into the allegations levelled against the husband of the applicant, the reasons furnished by the Disciplinary Authority while invoking clause (b) of second proviso to Article 311(2) of the Constitution of India and Rule 41 of CCS(Pension) Rules , to act in accordance with law and pass an order afresh within 3 months from the date of receipt of this order. In the event the Appellate Authority is



of the opinion that the Disciplinary Authority had wrongly invoked the provision., he would release all the retiral/death benefits of husband of the applicant, to the applicant if she is otherwise not ineligible, within the said period or else grant benefits in terms of Rule 41.

The O.A. accordingly stands disposed of. No order as to costs.



**(Dr. Nandita Chatterjee)**  
Administrative Member



**(Bidisha Banerjee)**  
Judicial Member

sb

