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Central Administrative Tribunal  
Principal Bench

O.A. No. 1711 of 1997

New Delhi, dated this the 3<sup>rd</sup> JULY, 2001

HON'BLE MR. S.R. ADIGE, VICE CHAIRMAN (A)  
HON'BLE DR. A. VEDAVALLI, MEMBER (J)

Shri Naval Kishor,  
Inspector of Police,  
S/o late Shri Gopi Ram,  
R/o 3295, Gali No. 26,  
Beedan Pura, Karol Bagh,  
New Delhi-110005.

.. Applicant

(By Advocate: Dr. J.C. Madan)

Versus

1. Lt. Governor of Delhi  
through the Chief Secretary,  
Govt. of NCT of Delhi,  
5, Sham Nath Marg,  
Delhi.

2. The Commissioner of Police,  
Delhi Police Headquarters,  
I.P. Estate,  
New Delhi.

3. Addl. Commissioner of Police,  
Northern Range,  
Delhi Police Headquarters,  
I.P. Estate,  
New Delhi.

.. Respondents

(By Advocate: Shri Rajan Sharma)

ORDER

S.R. ADIGE, VC (A)

Applicant impugns the disciplinary authority's order dated 22.3.96 (Annexure A-1), and the appellate authority's order dated 5.5.97 (Annexure A-2). He seeks reinstatement with consequential benefits.

2. Applicant was dismissed from service vide impugned order dated 22.3.96 in accordance with the provisions of Article 311 (11)(b) of the Constitution

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of India, without holding a departmental inquiry, upon being arrested in case FIR No. 14 dated 18.3.96 u/s 395/397/34 IPC and 27/54/59 Arms Act, P.S. Mahipalpur, New Delhi.

3. Shortly stated on 18.3.96, four persons came from Dubai by flight and brought with them a total of 20 Kgs. gold after customs clearance. While they were on their way from IGI Airport to Domestic Airport, Palam in a Maruti Van and reached near Rangpuri Chowk, Airport Road at about 6.10 A.M. they were intercepted by a Maruti car, four persons stepped out of the car, of whom two were carrying revolvers. They threatened the occupants of the Maruti Van to hand over the entire consignment of gold failing which they would be shot. While those four desperadoes were trying to snatch away the attache case containing the gold, a PCR van reached the spot and two of the robbers were immediately arrested, while two others fled away. The person arrested was identified as Constable Dheer Singh and Constable Bishan Kumar. Subsequently the third accused was identified to be the present applicant who was arrested the same day. A case FIR No. 14 dated 18.3.96 u/s 395/397/34 IPC read with Section 27/54/59 Arms Act P.S. Mahipalpur was registered. The fourth absconding accused Const. Ajaib Singh was arrested on 22.3.96.

4. Subsequently the assets of Inspector, Naval Kishor was checked, and they were found to be beyond his known source of income. Consequently a case FIR No. 69/96 dated 23.3.96 u/s 13 Prevention of Corruption Act 1988 read with Section 7 of the ACT P.S. Prashad Nagar was registered against him, which was stated to be under investigation in the impugned order dated 22.3.96.

5. The disciplinary authority in his impugned order dated 22.3.96 concluded that it was not reasonably practicable to hold an inquiry, and accordingly ordered that applicant be dismissed from service under Article 311 (ii)(b) of the Constitution. The basis on which he came to the conclusion, that it was not reasonably practicable to hold an inquiry, are contained on the paragraphs extracted below:

"The act of Inspector Naval Kishor No. D-34 that he planned and participated in an armed robber shows his criminal propensity and desperate character. The Inspector being a member of the uniformed disciplined force is having much greater responsibility of protecting the life and property of the citizens of this country, but instead of discharging his duty enjoined upon him by law, he himself indulged in a well planned act of looting innocent citizens who were coming from abroad and bringing with them genuine consignment of gold. The entire dastardly act of Inspector Naval Kishor which has not only tarnished the image of Delhi Police but also rudely shaken the faith of the citizens of Delhi in the entire police force who is supposed to be their protector. Inspector Naval Kishor has indulged in a most reprehensible act totally unexpected from a member of the disciplined uniformed police force and which was undoubtedly extremely prejudicial to the personal safety and security of the law abiding citizens.

The facts and circumstances of the case shows that Inspector Naval Kishor is a highly desperate and dangerous person who is having several associates having similar dangerous criminal propensity and as such, it would not be reasonably practicable to hold a regular departmental enquiry against Inspector Naval Kishor. Due to his highly dangerous and desperate character, and his association with such people, it is certain that the complainants and witnesses will not be in a position to muster enough courage to depose against the delinquent inspector due to fear of severe reprisal from him.

It is also certain that during the entire process of departmental proceedings, these complainants and witnesses would be put under constant fear of threat to their person and property from the delinquent inspector and his associates and in such a situation, the conducting of departmental proceedings will become totally impossible.

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 terrorising effect of much greater magnitude.

Keeping in view the reasons mentioned above, it is not reasonably practicable to hold a departmental enquiry against him.'

6. Applicant's appeal was rejected by impugned order dated 30.7.97, in which the appellate authority, while agreeing with the disciplinary authority observed as follows:

"An examination of the relevant documents on record shows that the disciplinary authority had judiciously exercised the powers conferred under Article 311(2)(b) of the Constitution of India. The appellant indulged in a day light robbery using firearms while posted as Addl.

SHO/Nabi Karim, and was in possession of disproportionate assets which indicates the gravity of his misconduct. This act of the appellant has not only tarnished the image of the force but also has badly shaken the faith of ordinary citizens in the entire police force, who they look up to, as their protectors. Instead of unholding the process of law the appellant was subverted it, with impunity. The facts and circumstances of the case, justify the conclusion of the disciplinary authority that it would not be reasonably practicable to hold the departmental enquiry against the delinquent. None of the appellant's contentions have any force.

In the overall circumstances of the case, I do not find any reason to interfere with the orders of the disciplinary authority. I, therefore, reject the appeal."

7. During hearing applicant's counsel furnished a copy of judgment of the Addssl. Sessions Judge, New Delhi dated 18.1.2000 in case FIR No. 14/96 u/s 395/397/398/120 B IPC which has ended in the acquittal of applicant as well as the others accused, as the star witnesses for the prosecution were not available. Copy of the aforesaid judgment dated 18.1.2000 is taken on record. Nothing has been shown to us to establish that any appeal has been filed against the aforesaid judgment.

8. During hearing neither party apprised us of the final outcome of the other case against applicant, namely case FIR No. 69/96 dated 23.3.96 u/s 13 Prevention of Corruption Act read with Section 7 of the Act.

9. In the aforesaid facts and circumstances, as we are now called upon to adjudicate on the legality of the disciplinary authority's order dated 22.3.96 dismissing applicant from service in accordance with the provisions of Article 311 (ii)(b) of the Constitution without holding a departmental enquiry, which order has been upheld by the appellate authority.

10. In this connection Respondents' counsel has invited our attention to ~~the~~ Para<sup>5</sup> 55 to 58 of the Hon'ble Supreme Court's judgment in Satyavir Singh & Others Vs. Union of India & Others AIR 1986 SC 555 wherein it has been held that there are two conditions precedent which must be satisfied before Clause (b) of the second proviso to Article 311(2) can be applied namely (i) there must exist a situation which makes the holding of an inquiry contemplated by Article 311(2) not reasonably practicable and (ii) the disciplinary authority should record in writing its reason for its satisfaction that it is not reasonably practicable to hold such inquiry. 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) of the second proviso. 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, which is the matter to be assessed by the Disciplinary Authority and must be judged in the light of the circumstances then prevailing. The disciplinary authority is generally on the spot and knows what is happening. It is because the disciplinary authority is the best judge of the prevailing situation that Clause (3) of Article 311 makes the decision of the disciplinary authority on this question final.

11. Respondents' counsel urged that in the present case as the Disciplinary Authority, after assessing the situation which was then prevailing concluded that it was not practicable to hold an enquiry for the reasons contained in his impugned order which also been upheld by the appellate authority, the same had, therefore, to be treated as final, and it is not open to the Tribunal to reassess whether an enquiry was reasonably practicable at that point of time or not.

12. However, in Jaswant Singh Vs. State of Punjab & others (1991) 1 SCC 362 to which our attention has been drawn by applicant's counsel, the Hon'ble Supreme Court after noticing their judgment in Satyavir Singh's case (supra) as well as several other judgments, including Union of India & Others Vs. Tulsi Ram Patel AIR 1985 SC 1416 has held that in a case of dismissal under Article 311 (2)(b) after

dispensing with the D.E., the subjective satisfaction of the authority that it was not reasonably practicable to hold such an enquiry, was open to judicial review, and the authority was obliged to show that his satisfaction was based on objective facts. In the absence of any independent materials justifying the reliance on clause (b) of the second proviso, the order of dismissal could not be sustained.

13. In the present case, no independent materials justifying the reliance on clause (b) of the second proviso to Article 311 of the Constitution has been referred to, either in the impugned Disciplinary Authority's order or indeed in the impugned order of the appellate authority and even during the course of hearing, no such independent materials were shown to us.

14. Furthermore nothing has been shown to us to establish that any attempt was made by Respondents to contact the complainants and witnesses, and/or they were actually put to constant fear of threat to their person/property at the hands of applicant and/or his associates.

15. In the foregoing conspectus of facts and circumstances, following the Hon'ble Supreme Court's ruling in Jaswant Singh's case (supra), we are of the considered opinion that the impugned orders of



respondents cannot be sustained in law, and are therefore quashed and set aside. However, this does not mean that applicant shall be reinstated in service. Following the Hon'ble Supreme Court's ruling in State of Punjab & Others Vs. H.S. Greasy JT 1996 (5) SC 403 the matter is remitted to the Disciplinary Authority to follow the procedure from the stage of service of memo of allegations upon applicant, and thereafter to take further action in accordance with law. Meanwhile applicant shall be deemed to be under suspension from the date of issue of this order. The manner in which the period from the date of applicant's dismissal till the date of issue of this order, as well as the period of suspension from the date of issue of the order till the date of conclusion of the disciplinary proceedings against him is to be treated, will be determined by respondents in accordance with rules, instructions and judicial pronouncements on the subject.

16. The O.A. succeeds and is allowed to the extent contained in Para 12 above. No costs.

A. Vedavalli

(Dr. A. Vedavalli)  
Member (J)

karthik

S.R. Adige  
(S.R. Adige)  
Vice Chairman (A)