Central Administrative Tribunal
Principal Bench, New Delhi

O.A. No.1912 of 2015

Orders reserved on :12.02.2021

Orders pronounced on : 11.03.2021

Hon'ble Mr. A. K. Bishnoi, Member (A)
Hon'ble Mr. R.N. Singh, Member (J)

Kripal Singh, age-47 years,
S/o Sh. Pauhap Singh,
R/o- Village-Tamrauli, P.O.-Morauli Kalan,
P.S. – Udyog Nagar,
District Bharatpur, Rajasthan

... Applicant

(through Advocate Shri Sachin Chauhan)

Versus

1. Govt. of NCT of Delhi
   Through Commissioner of Police,
   Delhi Police,
   Police Headquarters, I.P. Estate,
   New Delhi.

2. The Joint Commissioner of Police,
   South-East District
   Through Commissioner of Police,
   Delhi Police,
   Police Headquarters, I.P. Estate,
   New Delhi.

3. The Addl. Dy. Commissioner of Police,
   South District,
   Through Commissioner of Police,
   Delhi Police,
   Police Headquarters, I.P. Estate,
   New Delhi.

... Respondents

(through Advocate Shri Vijay Pandita)

O R D E R

Hon'ble Mr. R. N. Singh, Member (J):

In the present Original Application, filed under Section 19 of the Administrative Tribunals Act, 1985, the applicant has challenged the order dated 02.12.2014 (Annexure A-1), passed under the provisions of Article 311 (2) (b) of the Constitution of India whereby penalty of dismissal from service with immediate effect has been inflected upon the applicant. It has further been ordered therein that suspension of the applicant for the period from the date of suspension to the date of issue of the said order is treated as 'period not spent on duty' for all intents and purposes. The applicant has also challenged the appellate order dated 22.9.2015 whereby the appeal of the applicant has been rejected.

2. The brief facts which are not in dispute and which may be taken from the pleadings on record are that the applicant was appointed as a Constable in Delhi Police in the year 1988. While posted at Police Station Vasant Vihar, Delhi, a case FIR No.1095/2014 dated 29.09.2014 under Sections 376, 370, 328, 342, 506 and

34 IPC was registered with the said Police Station Vasant Vihar, Delhi. On 08.10.2014, the statement of victim was recorded under Section 164 of Cr.P.C. by the learned Metropolitan Magistrate, Patiala House Courts, New Delhi. The applicant was arrested on 08.10.2014 and he was placed under suspension w.e.f. 08.10.2014, i.e., the date of his arrest in the aforesaid case FIR No.1095/2014 dated 29.09.2014 vide Office Order dated 08.10.2014.

3. The disciplinary authority ordered a preliminary inquiry to be conducted by Shri Kulbhushan Sharma, ACP, Headquarter, South District under Rule 15(1) of the Delhi Police (Punishment & Appeal) Rules, 1980 vide order dated 8.10.2014. Shri Sharma conducted the said preliminary inquiry and submitted his inquiry report dated 22.10.2014 which concluded as under:-

> *"Perusal of the statements, relevant documents and other material on record reveals that Ct. Kripal No. 3926/SD was supposed to help the complainant for her release from the captivity of accused Vinod, but instead of that he twice committed rape with the lady. He was arrested on 08/10/2014 after the statement of victim u/s 164*

Cr.P.C. had been recorded. Hence, Const. Kripal, No. 3926/SD needs to be dealt with severely."

4. The applicant had applied for bail where the learned Court considered another FIR, being No.36/2014 registered with Police Station Nainital, District Nainital, at the instance of the complainant in the aforesaid FIR registered with the Vasant Vihar Police Station also and has observed that there is no allegations made against the applicant – Kripal Singh (who is the applicant in the present OA) and his name has surfaced in the statement of the complainant recorded under Section 164 of Cr.P.C. The applicant was granted bail by the learned Session Court vide Order dated 18.10.2014 (Annexure A-4/page 61 of the paperbook). Keeping in view the inquiry report dated 22.10.2014, the disciplinary authority passed the impugned order dated 2.12.2014 by invoking his jurisdiction under the provision of Article 311(2)(b) of the Constitution of India. The applicant has preferred a statutory appeal dated 11.12.2014 and when the same was not disposed of even after lapse of more than five

months, the applicant has approached this Tribunal vide the present OA.

5. Pursuant to notice from this Tribunal, the respondents have filed the counter reply wherein they have justified their order and have also stated that the applicant's appeal had been rejected vide order dated 22.9.2015. In view of such development, the applicant preferred a Misc. Application seeking amendment of the Original Application and to take the amended OA on record. The said Misc. Application No.4213/2015 was allowed by this Tribunal vide Order dated 8.1.2016. The respondents filed their reply to the amended OA and the applicant filed rejoinder.

6. The relevant paras of the impugned orders dated 02.12.2014 (Annexure A-1) reads as under:-

> *"O R D E R*
>
> *Const. Kripal No. 3926/SD (PIS No. 28884490) while posted in PS Vasant Vihar, Delhi was found involved in commission of a serious crime (i.e. sexual exploitation of a woman complainant. He was arrested on 08-102014, during investigation of case FIR No.1095/2014 dated 29-9-2014 u/s 376/370/328/342/506/34 IPC, P.S. Vasant Vihar, New Delhi.*
>
> *The undersigned ordered a Preliminary Enquiry to be conducted into the matter by Shri*

Kulbhushan Sharma, ACP/HQ/South Distt., under Rule – 15 (1) of Delhi Police (Punishment & Appeal) Rules, 1980, vide order No. 13821/HAP/SD(P-II, dated 08.10.2014. Shri Kulbhushan Sharma conducted the Preliminary Enquiry and submitted his enquiry report on 22.10.2014, which concludes that "Perusal of the statements, relevant documents and other material on record reveals that Ct. Kripal No. 3926/SD was supposed to help the complainant for her release from the captivity of accused Vinod, but instead of that he twice committed rape with the lady. He was arrested on 08/10/2014 after the statement of victim u/s 164 Cr.P.C. had been recorded. Hence, Const. Kripal, No. 3926/SD needs to be dealt with severely."

Const. Kripal No. 3926/SD (PIS No.28884490) was arrested on 08/10/2014 after the statement of victim u/s 164 Cr.P.C. was recorded by Sh. Sunil Kumar Sharma, Ld. MM-05, Room No. 23, Patiala House Court, Delhi. He was placed under suspension w.e.f. 08.10.2014, i.e., the date of his arrest in case FIR No. 1095/2014 dated 29-9-2014 u/s 376/370/328/342/506/34 IPC, P.S. Vasant Vihar, New Delhi, vide this office order No.13800-830/HAP/SD/(P-II), dated 08.10.2014.

The above said act on the part of Const. Kripal No. 3926/SD (PIS No. 28884490) shows his criminal propensity and immoral attitude. He, being member of disciplined force, is responsible for protecting the society and citizens of his country from immoral and disreputable activities, but instead of discharging his duty ethically and sincerely, he has not only tarnished the image of Delhi Police, but has also rudely shaken the faith of the citizens on the entire police force, which is supposed to be their protector. He has acted in a most reprehensible manner, which is unexpected from the members of the disciplined force and which is undoubtedly extremely prejudicial to the personal safety and security of the citizens.

The involvement of Const. Const. Kripal No. 3926/SD (PIS No. 28884490) in such a shameful

activity has eroded the faith of common people in police force and his continuance in the force is likely to cause irreparable loss to the functioning and credibility of Delhi Police. The defaulter Const. has acted in a manner highly unbecoming of a police official.

After such act of serious misconduct, if the defaulter Const. Const. Kripal No. 3926/SD (PIS No. 28884490) is allowed to be cont6inued in police force, it would be detrimental to 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 Const. as there is a reasonable belief that no witness/complainant would come forward to depose against him.

In the backdrop of the position explained in the foregoing paras, it is crystal clear that Const. Const. Kripal No. 3926/SD (PIS No. 28884490) is public servant of immoral bent of mind and there is every possibility that the witnesses/complainant would not come forward to depose against him in case a departmental enquiry is initiated against him.

Under these set of compelling circumstances, the rules under Article 311(2)(b) of Constitution of India are invoked in this case for the sake of justice. Const. Const. Kripal No. 3926/SD (PIS No. 28884490) has become a liability to the department and should be dismissed. It would be both in the interest of general public and society as well as for the establishment of rule of law, which is expected by public and society at large. In my opinion, he is totally unfit to be retained in the police force any more. Therefore, I P.S. Kushwah, Addl. Dy. Commissioner of Police, South Distt., New Delhi do hereby DISMISS defaulter Const. Const. Kripal No. 3926/SD (PIS No. 28884490) from service with immediate effect under article 311(2)(b) of the Constitution of India. His suspension period from the date of suspension to the date of this order is treated as 'period not spent on duty' for all intents and purposes. He will deposit all Government

belongings, i.e., Identity Card, CGHS Card and uniform articles with the department forthwith. He is not in possession of Govt. accommodation.

His particulars as per his service record are as under:-

1.	*Name*	*Kripal Singh*
2.	*Rank & No.*	*Const. No.3926/SD*
3.	*PIS No.*	*28884490*
4.	*Father's name*	*Shri Pauhap Singh*
5.	*Date of birth*	*22.07.1968*
6.	*Date of enlishment*	*15.03.1988*
7.	*Caste*	*Jat*
8.	*Height*	*174 Cms.*
9.	*Identification mark*	*-*
10.	*Permanent address*	*Vill. Tamrauli, P.O. – Morauli Kalan, P.S. – Udyog Nagar, Distt. – Bharatpur, Rajasthan.*

Let a copy of this order be given to Const. Const. Kripal No. 3926/SD (PIS No. 28884490) free of cost. He can file an appeal against this order to the Joint C.P./South-Eastern Range, New Delhi within 30 days of its receipt on a non-judicial stamp paper by enclosing a copy of this order, if he so desires."

A few relevant paras of the appellant orders dated 22.09.2015 read as under:-

"He has taken further plea that the questioned criminal case is yet to be tried in the court of law and the presumption of the competent authority that the appellant had committed serious offence/misconduct is totally premature.

This plea of the appellant is not maintainable vis-a-vis the report of preliminary enquiry conducted against him. Evidently the misconduct of the appellant is very grave and

such police officials are not required to be retained in Police department. A good police official is supposed to render service to the public and not to terrorise or commit atrocities on general public.

His next plea is that he was a permanent employee of Delhi Police and department should not have resorted to the practice of adopting short cut procedure by invoking provisions of Article 311 (2) (b) of Constitution. In this regard he has also mentioned the matter of 'V.P. Ahuja v/s State of Punjab, AIR 2000 SC 1080 : 2000 (2) SLR 1 SC : 2000 (3) SCC 239'.

This plea of the appellant has no weight. The involvement of the appellant in such a shameful activity has eroded the faith of common people in police force and his continuance in the force is likely to cause irreparable loss to the functioning and credibility of Delhi Police. The appellant had acted in a manner highly unbecoming of a police official. Hence, the Disciplinary Authority intends to invoke Article 311(2)(b) of the Constitution of India, keeping in mind the judgment of the case of UOI V/s Tulsi Ram Patel, AIR 1985 SC 1416'. Hence, a PE was conducted under Rule 15 of Delhi Police (Punishment & Appeal) Rules and facts were brought on record.

Keeping in view the above facts and circumstances, I reach to the conclusion that Disciplinary Authority has rightly dispensed with the conduct of D.E. proceedings as it was not reasonably practicable to hold the proceedings. In view of the gravity of the offence committed by him with the association of his co-accused as explained above as well as apprehension of likely intimidation to the witnesses, the Disciplinary Authority has rightly invoked Article 311(2)(b) of the Constitution of India. Showing any leniency in such matters will only send a wrong signal of misplaced sympathy, but will also be grossly detrimental to the norms of discipline that is expected from a police official. Undue sympathy to impose inadequate punishment would do more harm to the discipline in the Police Department to

undermine the public confidence. I find no reason to intervene with the observations of Disciplinary Authority. The appeal is rejected."

7. Shri Chauhan, learned counsel for the applicant, has argued that the impugned orders passed by the disciplinary and appellate authorities are in violation of principles of natural justice and the provisions of the rules laid down by the Department under the grab of provisions of Article 311(2)(b) of the constitution of India. The respondents have not even made the slightest possible efforts to conduct the departmental inquiry, as only after making the efforts in this regard, the disciplinary authority can come to the conclusion as to whether a departmental inquiry is reasonably practicable or not and the finding of the disciplinary authority that in the present case, departmental inquiry is not reasonably practicable is based on surmises and conjectures. The disciplinary authority arbitrarily dispensed with the departmental inquiry in as much as sufficient reasons therefor have not been recorded. He argues that there is nothing on record to indicate that efforts were made to trace the

witnesses. He submits that the witnesses were not only traceable but were also willing and ready to come forward to lead the evidence. The complainant and prosecution witnesses have neither been terrorized nor been influenced in whatsoever manner directly or indirectly by the applicant and/or on his behalf. He reiterates that in the facts and circumstances, the finding of the disciplinary authority that departmental inquiry was not reasonably practicable is without any basis and the same rests only on suspicions, presumption, surmises and conjectures and, therefore, the disciplinary authority's order is not tenable in the eyes of law. He further submits that complainant of the said case FIR has not even named the applicant in the case FIR and the name of the applicant for the first time came in the statement of the prosecutrix under Section 164 of Cr.P.C. recorded by the learned Metropolitan Magistrate and the same was for ulterior reasons viz-a-viz for extortion of money or to get rid of investigation into her immoral activities by the local police. He further adds that a copy of the aforesaid preliminary inquiry report was never served to the applicant. The same

came to the knowledge of the applicant only through the impugned disciplinary authority's order. He further argues that impugned orders passed by the disciplinary and appellate authorities are vitiated as the same are in violation of provisions of Rules 15 (3) and Rule 16 (3) of the Delhi Police (Punishment & Appeal) Rules, 1980 as the previously recorded statement of the witnesses can also be brought on record in case of non-availability of the witnesses. He has also placed reliance on the DOP&T OM dated 11.11.1985 and 4.4.1986 to contend that the conditions under which provisions of Article 311 (2) (b) of the Constitution of India can be exercised are completely missing in the present case. He also submits that the gravity of the allegations/the charge will not be a tilting factor as to whether a departmental inquiry is reasonably practicable or not. Graver the charges more opportunity to defend, is required to be accorded. The appellate authority has also passed the order in appeal in a mechanical manner and without application of mind. The learned counsel further argues that the punishment inflicted upon the applicant is most severe and disproportionate. He

has also argued that even the Commissioner of Police vide the circular dated 11.9.2007 has recorded a finding that between 1.1.2000 to 31.12.2005 on analysis by the Delhi Police Headquarter, it was found that in 38 cases, action under the provisions of Article 311 (2) (b) of the Constitution of India was taken against the defaulters and only one such action was upheld by this Tribunal and Hon'ble High Court of Delhi and rest of the cases have been remanded to the department for initiation of departmental inquiry. In this background, a decision has been circulated vide said circular that when any disciplinary authority intends to invoke the provisions of Article 311 (2) (b) of the Constitution of India, he must keep in mind the Judgment of the Hon'ble Supreme Court in ***Union of India and others vs. Tulsi Ram Patel***, AIR 1955 SC 1416 and the said circular dated 11.09.2007 (Annexure A/3) as under:-

> *"Only in cases where Disciplinary Authority is personally satisfied on the basis of material available on file that the case is of such a nature that it is not practicable to hold an enquiry in view of threat, inducement, intimidation, affiliation with criminals etc. and keeping in view the specific circumstances of the case it is not possible that*

PWs will depose against the defaulter and disciplinary authority has no option but to resort to Article 311 (2) (b) should such an action be taken. Prior to such an order, a PE has to be conducted and it is essential to bring on record all such facts. It has also been decided that before passing an order under Art. 311 (2) (b) of the Constitution, the Disciplinary Authority has to take prior concurrence of Spl./CP/Admn.)"

8. Shri Chauhan argues that in spite of the aforesaid specific order, neither the law laid down by the Hon'ble Apex Court in ***Tulsi Ram Patel*** (supra) has been followed nor there is a case of the respondents that in view of threat, inducement, intimidation, affiliation with criminals etc., it was found that PWs will not depose against the applicant and the disciplinary authority had no option but to resort to Article 311 (2) (b) of the Constitution of India. Shri Chauhan, learned counsel for the applicant further argues that during pendency of the OA, the applicant has not only been honourably exonerated from all the charges levelled against him in the said case FIR but the learned counsel had also ordered for taking cognizance of offence in terms of Section 344 of Cr.P.C. against the prosecutrix for giving false evidence in the court vide

Order/Judgment dated 18.1.2020 (Annexure MA1) to MA 536/2020. He by inviting our attention to the said Order/Judgment dated 18.1.2020 has argued that prosecution has examined 9 witnesses to support their case, i.e., PW1, i.e., prosecutrix herself, PW2, i.e., Head Constable Mukesh Kumar, PW3, i.e., the owner of the premises, PW4, i.e., one friend of the prosecutrix, PW5, i.e., the Doctor, who conducted the medical examination, PW6, i.e., the lady who is stated to have taken the prosecutrix from Munirka and kept at the residence of PW4, PW7, i.e., Constable, PW8, i.e., Sub Inspector of Delhi Police, i.e., main I.O. of the case FIR. Learned counsel for the applicant submits that from the aforesaid, it is evident that the witnesses were available and willing to depose whenever it has been required by the respondents. They have not only deposed before them but they have also gone to the extent of deposing before the learned Metropolitan Magistrate Court and the learned Session Court. There is nothing on record to show that the applicant has in any manner intimidated and/or influenced the witnesses to lead their evidence against him and in this view of the matter, the

respondents' finding in the impugned penalty order that it was not found reasonably practical to hold a regular departmental inquiry against the applicant is nothing but is based on surmises and conjectures and, therefore, the same vitiates the orders impugned by the applicant in the present OA.

9. Learned counsel for the applicant to substantiate his aforesaid arguments has placed reliance on the Order/Judgment dated 26.5.2010 (Annexure A/5) of the coordinate Bench of this Tribunal in OA 2837/2009, titled ***Ex-Constable (Driver) Satyawan Vashist*** vs. ***Government of NCT of Delhi and others***, the common Order/Judgment of a Division Bench of Hon'ble High Court of Delhi in Writ Petition (Civil) No.11694/2018 and other connected cases, titled ***Commissioner of Police and others*** vs. ***Kaushal Singh,*** etc. etc., Order/Judgment dated 1.11.2019 of the coordinate Bench of this Tribunal in OA 2097/2019, titled ***Neeraj Kumar*** vs. ***Commissioner of Police and another*** and Order/Judgment dated 11.12.2019 of a Division Bench of the Hon'ble High Court of Delhi in

Writ Petition (Civil) No.4078/2017, titled ***Commissioner of Police and others*** vs. ***Ashwani Kumar and others***.

10. Pursuant to notice from this Tribunal, the respondents have filed their reply. Factual matrix as recorded hereinabove is not in dispute. However, with the assistance of the averments made therein in the reply, Shri Vijay Pandita, learned counsel for the respondents has argued that in view of preliminary inquiry report dated 22.10.2014, referred to hereinabove, the act at the end of the applicant showed his criminal propensity and immoral attitude. He being a person of disciplined force was responsible for protecting the society and citizens of this country from immoral and disreputable activities. However, instead of discharging his duty ethically and sincerely, he tarnished the image of the Department and had also shaken the faith of the citizens in the entire police force. The involvement of the applicant in such shameful activities had eroded the faith of the common people in police force and the applicant's continuation in police force was found as likely to cause irreparable loss to the

functioning and credibility of the Delhi Police. He has also argued that the applicant was a public servant of immoral bent of mind and there was every possibility that witnesses/complainant would not come forward to depose against him in a departmental inquiry if initiated against him. He submits that in such facts and circumstances, when the applicant was found as a liability to the Department, the disciplinary authority passed the impugned order of dismissal by invoking his jurisdiction under the provisions of Article 311 (2) (b) of the Constitution of India. A copy of penalty order was supplied to the applicant on 4.12.2014 and on receipt of his statutory appeal dated 11.12.2014, the same was considered by the appellate authority. However, the same was rejected by the aforesaid order dated 22.9.2015 impugned in the present OA. He has also argued that a preliminary inquiry was ordered under the provisions of Rule 15 of the Delhi Police (Punishment and Appeal) Rules, 1980 and the inquiry report dated 22.10.2014 was considered by the competent disciplinary authority. The necessary approval of Special C.P./Administration, Delhi was

obtained for dismissing the applicant by resorting to the provisions of Article 311 (2) (b) of the Constitution of India. He also submits that Rule 15 of the Delhi Police (Punishment and Appeal) Rules, 1980 reads as under:-

> ***"15. Preliminary enquiries.*** *- (1) A preliminary enquiry is a fact finding enquiry. Its purpose is (i) to establish the nature of default and identity of defaulter(s), (ii) to collect prosecution evidence, (iii) to judge quantum of default and (iv) to bring relevant documents on record to facilitate a regular departmental enquiry. In cases where specific information covering the above-mentioned points exists a Preliminary Enquiry need not be held and Departmental enquiry may be ordered by the disciplinary authority straightway. In all other cases a preliminary enquiry shall normally proceed a departmental enquiry.*
>
> *(2) In cases in which a preliminary enquiry discloses the commission of a conganizable offence by a police officer of subordinate rank in his official relations with the public, departmental enquiry shall be ordered after obtaining prior approval of the Additional Commissioner of Police concerned as to whether a criminal case should be registered and investigated or a departmental enquiry should be held.*
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> *(3) The suspected police officer may or may not be present at a preliminary enquiry but when present he shall not cross-examine the witness. The file of preliminary enquiry shall not form part of the formal departmental record, but statements therefrom may be brought on record of the departmental proceedings when the witnesses are no longer available. There shall be no bar to the Enquiry Officer bringing on record any other documents from the file of the preliminary enquiry, if he considers it necessary after supplying copies to the*

accused officer. All statements recorded during the preliminary enquiry shall be signed by the person making them and attested by enquiry officer."

11. Shri Pandita further has further submitted that judgment referred to and relied upon by the learned counsel for the applicant is of no help to the applicant as they have been passed in the particular facts and circumstances of those cases. He has submitted that impugned orders have been passed by the competent authorities by invoking their jurisdiction under the provisions of Article 311 (2) (b) of the Constitution of India and relevant rules on the subject. He has further argued that in view of law laid down by the Hon'ble Apex Court in Order/Judgment dated 29.10.2020 in SLP (Civil) No.30763/2019, titled ***State of Rajasthan and others*** vs. ***Heem Singh*** and the Order/Judgment dated 29.10.2020 of the Hon'ble High Court of Delhi in Writ Petition (Civil) No.6005/2017, titled Constable ***Mukesh Kumar Yadav*** vs. ***Govt. of NCT of Delhi and others***, the present OA lacks any merit.

12. We have heard the learned counsels for the parties. We have also perused the pleadings on record and have also gone through the judgments referred to and relied upon by the learned counsels for the parties and have precisely noted hereinabove.

13. Before analyzing the facts of the present case, we may refer to the law settled on the subject and noted by this Tribunal and also what has been held by this Tribunal in the judgments relied upon by the learned counsel for the applicant and also the law laid down by the Hon'ble High Court in the cases relied by the learned counsels for the parties and noted hereinabove.

14. In the case of ***Ex-Constable (Driver) Satyawan Vashist*** (supra), the coordinate Bench of this Tribunal noted in paragraphs 6 to 8, 10 to 13 and 19 to 20 as under:-

> *"6. Before we delve into the analysis of the facts on the issue, we would like to scan through the settled position in law in respect of dismissal of employees under Article 311 (2) (b). In a catena of judgments, the Hon'ble Supreme Court has held that in order to justify an order of dismissal/removal/reduction in rank under Article 311(2)(b), the authority empowered to do so must record reasons in writing. Such an order must unambiguously show that, for good, convincing and sufficient reasons, it was not reasonably practicable to hold the departmental enquiry, as the Article 311 (2) basically grants a reasonable opportunity to be provided to the*

delinquent to defend himself and establish his innocence. It has also been 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 [Union of India & Anr. etc. v. Tulsi Ram Patel etc., 1985 (3) SCC 398; Satyavir Singh & Ors. etc. v. Union of India & Ors., 1985 (4) SCC 252; Chief Security Officer & Ors. v. Singasan Rabi Das, 1991 (1) SCC 729; Jaswant Singh v. State of Punjab & Ors., 1991 (1) SCC 362; Union of India & Ors. v. R. Reddapa & Anr., 1993 (4) SCC 269; Kuldip Singh v. State of Punjab & Ors., 1996 (10) SCC 659; and Sudesh Kumar v. State of Haryana & Ors., 2005 (11) SCC 525].

7. Relying on the ratio of these judgments of the Apex court, this Tribunal has, time and again, quashed the orders of the respondents dispensing with the departmental enquiry in terms of Article 311 (2)(b) [Jagdish v. Union of India & Ors., [2003 (2) [(CAT (PB)-Full Bench)] ATJ 5]; Ex. Constable Gopal Lal Meena v. Union of India & Ors., in OA No. 2305/2006, decided on 14.05.2007; SI Anandi Parsad v. Govt. of N.C.T.D. & Ors., in OA No. 1903/2006 decided on 23.02.2007; Ex. Constable Radhey Shayam v. Union of India & Ors., in OA No. 1066/2001, decided on 14.12.2001; Ex. Constable Vinod Kumar v. Union of India & Ors., in OA No.731/1997 decided on 02.12.1997; Head Constable Suresh Kumar Versus Government of NCTD and Others in OA No.2500/2006 decided on 5.6.2007]. Some of these orders, when challenged in the Hon'ble High Court, have been upheld.

8. Further, we may look at the scenario from another point of view that is what may be the possible reasons when and where the competent authority may find the same as not reasonably practicable to hold the enquiry. In the case of Satyavir Singh and Others versus Union of India and Others (supra) the Hon'ble Supreme Court

provides some such scenario and has observed as follows:

(59) It is not possible to enumerate the cases in which it would not be reasonably practicable to hold the inquiry. Illustrative cases would be-

(a) where a civil servant, particularly through or together with his associates, so terrorizes, threatens or intimidates witnesses who are going to give evidence against him with fear of reprisal as to prevent them from doing so, or

(b) where the civil 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 or direct it to be held, or

(c) where an atmosphere of violence or of general indiscipline and insubordination prevails, it being immaterial whether the concerned civil servant is or is not a party to bringing about such a situation. In all these cases, it must be remembered that numbers coerce and terrify while an individual may not.

(60) The 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 civil servant is weak and must fail." We may note that none of the above ingredients or circumstances in which it would not to reasonably practicable to hold a departmental disciplinary enquiry, are present or have been pleaded in the OA before us."

.....

10. Further, in the case of Ex-Constable Radhey Shyam versus Union of India and Others. (supra), coordinate Bench of this Tribunal has observed thus:

"7. Furthermore, the action of the disciplinary authority is also not in consonance with the Government of India's instructions issued in OM No. 11012/1185/Estt(A) dated 11.11.1985, where in certain circumstances have been described, where the disciplinary authority can resort to Article 311 (2)(b) for dispensing with the enquiry. None of these conditions exist in the present case. It appears that the disciplinary authority on its ipsi dixit resorted to the provisions without application of mind. Once the witnesses are cited in the criminal trial and their statements are recorded under Section 161 of the CrPC their presence would have been easily secured in the disciplinary proceedings. Apart from it, as per the provisions of Rule 16(3) of the Delhi Police (Punishment & Appeal) Rules, 1980, in the event the witnesses are not available, their earlier statements can be made admissible for the purpose of treating it as a piece of evidence.

x x x

9. In view of their own circular of 8.11.1993 where the Commissioner of Police has decided that where the police officials have been involved in cases of Rape or Dacoity or any such heinous offences should not be dismissed straight away and where there is a grave question of law and fact and criminal proceedings are instituted a departmental enquiry can be conveniently held and would not be straightaway dispensed with. The disciplinary authority has not applied his mind to their own instructions and passed the order without any justified reasons."

11. Further, Hon'ble Supreme Court in the matter of Union of India & Anr. etc. v. Tulsi Ram Patel etc., 1985 (3) SCC 398 has clearly held that the authority must record its reasons in writing while dispensing with departmental enquiry. Hon'ble Supreme Court in the matter of Satyavir Singh & Ors. etc. v. Union of India & Ors., 1985 (4) SCC 252, has held that disciplinary enquiry cannot be lightly dispensed with on ipsi dixit of the Disciplinary Authority and can be done only when it is not reasonably practicable to proceed with it. Recording of

presumption and surmises would not be a sufficient compliance of the constitutional provisions.

12. We may refer to the judgement of Hon'ble Delhi High Court in case of R.K. Mishra v. G.M., N. Railway, [1977 Lab.IC 643] to note what connotation the word 'practicable' in the context of the present case under Article 311 (2) (b) means? We take the extract of following observations in the R. K. Mishra case :-

"The word 'practicable' in the context of the disciplinary rule would imply some `physical or legal impediment_ to the holding of inquiry, such as a situation may arise where it is not reasonably practicable to secure the attendance of delinquent or the persons who are to conduct the inquiry or those who are to give evidence. The mere anxiety to take drastic or swift action, however expedient from the point of view of administration, could not be said to have rendered the holding of an enquiry impracticable."

13. On facts, unless there was material to show that the Applicant had terrorized or intimidated the witnesses, inquiry could not be dispensed with [Shyamlender B. Kanji Lal v. Union of India, 1989 (7) SLR (CAT-CAL) 288].

.....

19. When the facts are on the side of the Applicant, can it be stated that the ingredients of Article 311(2)(b) of the Constitution would be satisfied by the reasoning given in the order of dismissal? In our considered opinion, the answer would be in the negative. The serious nature of the alleged offence is not the tilting factor in support of the Respondents. The Disciplinary Authority had recorded the reasons but once the reasons are checked, and on verification it was found that the complainant minor girl child Rani and her father and mother appeared before the Trial Court on the same set of charges, to say that departmental enquiry would not be reasonably practicable, did not convince us. It is not a case where the enquiry was not practicable. Merely because the complainant is a minor girl child

is not a ground to conclude that the departmental enquiry is not practicable. Consequently, the impugned orders, in the peculiar circumstances, cannot be legally sustained because it was practicable to hold the enquiry more so when there is little for us to conclude that there is no other material to state otherwise.

20. Taking the totality of facts and circumstances of the case into consideration, we are of the considered view that the reasons assigned by the respondents for coming to the conclusion that it was not reasonably practicable to hold a departmental enquiry are not at all satisfactory. It is settled proposition of law that Article 311(2) is primarily about granting a reasonable opportunity of hearing to a delinquent to defend himself in order to establish his innocence. Hence, dispensing with such an enquiry is an exception, and such exception has to be resorted to only in rare cases. The main intention of the Article 311(2) of the Constitution has been violated in the current case. In the catena of judgments, as referred to above, it is legally settled position that in order to justify an order of dismissal/removal/reduction in rank under Article 311(2)(b), the Disciplinary Authority must record reasons in writing to show that for good, sufficient and convincing reasons, it would not be justifiably practicable to hold the departmental enquiry. The reasons recorded by the Disciplinary Authority in dispensing the departmental enquiry are not convincing and are not acceptable in the eyes of law. Hence, we are of the opinion that the Respondents_ orders are liable to be quashed and set aside."

15. The Hon'ble High Court of Delhi in common Order/Judgment dated 16.5.2019 in the case of ***Commissioner of Police and others*** vs. ***Kaushal Singh,*** etc. etc. (supra) held as under:-

"7. It is based on these facts that the Tribunal from para 27 to para 30, after taking note of various legal provisions and judgments on the question, has dealt with the issue in the following manner:

"27. It is manifest from the record that the respondents have conducted a PE and basing on the same, formed an opinion that he was guilty of the charges levelled against him. The relevant part of the appellate order dated 22.05.2014 reads as under:-

"A fact finding enquiry (PE) was got conducted from P.G. Cell/SED. During enquiry, the appellant's involvement in the commission of crime and omission from his govt. duty (absence marked vide DD No.50 dated 07.11.2013, Distt. Lines/SED) has been revealed.

The Disciplinary Authority, after perusal of the enquiry report, took the view that the appellant brought bad name to the entire police force. The indulgence of police personnel in such a dastardly act would destroy the faith of the common people in the law enforcement system and no witness will come forward for an enquiry. The involvement of the appellant in such criminal activities is not only undesirable, but also amounts to serious misconduct, indiscipline and totally unbecoming of a police officer. It is under these compelling circumstances, Rule under article 311 (2)(b) of Constitution of India has been invoked in this case for the sake of justice. The appellant has become a liability to the department and should not be allowed to continue in police service and needs to be dismissed. The Disciplinary Authority found him unfit to be retained in the police force anymore and ***dismissed*** *the*

appellant from service vide order No.11042- 11142/HAPISED(P-I) dated 27.11.2013".

28. Similarly, the respondents conducted PE proceedings against the applicants in all the OAs and basing on the said report, came to the conclusion that the applicants does not deserve to be continued in service. Except the allegation that the applicants in OA Nos.2067/2015 and 2413/2015 fired on their colleagues while trying to apprehend them, there was no other material before the respondents to form an opinion that no witnesses will come forward to depose against the applicants in the event of conducting a regular departmental enquiry. In view of the fact that the respondents were able to conduct PE against the applicants and without there being any sufficient material, jumped to the conclusion that it is not practicable to hold a regular departmental enquiry, we are of the view, that the facts in ***Tarsem Singh 's case*** *(supra) are squarely applicable to these OAs.*

(emphasis supplied)

29. In ***Tarsem Singh 's case*** *(supra), the Hon'ble Apex Court while allowing the appeals categorically observed "if a preliminary enquiry could be conducted, we fail to see any reason as to why a formal departmental enquiry could not have been initiated against the appellant. Reliance placed upon such a preliminary enquiry without complying with the minimal requirements of the principle of natural justice is against all canons affair play and justice". Accordingly, in the facts of the present OAs, we hold the issue in favour of the applicants*

(emphasis supplied)

30. In the circumstances and for the aforesaid reasons, all the OAs are allowed and the impugned orders are set aside with all consequential benefits. Since the applicants were under suspension as on the date of passing of the impugned orders, they would thus remain under suspension and the respondents

shall take an appropriate decision regarding revocation or continuation of the same. The respondents shall proceed against the applicants departmentally, as per rules and the treatment of suspension period shall be dependent on the same. No costs.

Let a copy of this order be placed in all the files."

Thereafter, the applications were allowed.

8. In our view, the discretion exercised by the Tribunal and the reasons given for holding so is reasonable, based on proper consideration of the material that came on record; and there is nothing based on which we can hold the aforesaid decision to be perverse or unreasonable, in any manner whatsoever."

16. The coordinate Bench of this Tribunal in its Order/Judgment dated 1.11.2019 in the case of ***Neeraj Kumar*** (supra), held in paragraphs 11 to 13 as under:-

"11. The main plea of the applicant in this OA is that the DA did not afford him reasonable opportunity to defend himself, which is against the principles of natural justice. Reliance was placed by the applicant on Hon'ble Apex court judgment in ***Tarsem Singh Vs. State of Punjab and Ors.*** *(2006) 13 SCC 581. That was also a case in which, the DA dismissed an employee by invoking Article 311(2)(b). After discussing the matter at length, the Hon'ble Supreme Court held as under:-*

"9. It is not disputed before us that in awarding the punishment of dismissal from service upon the appellant no formal enquiry was held purportedly on the ground that the same enquiry could be dispensed with, under proviso (b) appended to Clause (2) of Article

311 of the Constitution of India, which reads as under:

"311. Dismissal, removal or reduction in rank of persons employed in civil capacities under the Union or a State.-

*(1) * * **

(2) No such person as aforesaid shall be dismissed or removed or reduced in rank except after an inquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges:

* * *

Provided further that this clause shall not apply-

*(a) * * **

(b) where the authority empowered to dismiss or remove a person or to reduce him in rank is satisfied that for some reason, to be recorded by that authority in writing, it is not reasonably practicable to hold such inquiry;"

10. It is now a well-settled principle of law that a constitutional right conferred upon a delinquent cannot be dispensed with lightly or arbitrarily or out of ulterior motive or merely in order to avoid the holding of an enquiry. The learned counsel appearing on behalf of the appellant has taken us through certain documents for the purpose of showing that ultimately the police on investigation did not find any case against the appellant in respect of the purported FIR lodged against him under Section 377 IPC. However, it may not be necessary for us to go into the said question.

11. We have noticed hereinbefore that the formal enquiry was dispensed with only on the ground that the appellant could win over aggrieved people as well as witnesses from giving evidence by threatening and other

means. No material has been placed or disclosed either in the said order or before us to show that subjective satisfaction arrived at by the statutory authority was based upon objective criteria. The purported reason for dispensing with the departmental proceedings is not supported by any document. It is further evident that the said order of dismissal was passed, inter alia, on the ground that there was no need for a regular departmental enquiry relying on or on the basis of a preliminary enquiry. However, if a preliminary enquiry could be conducted, we fail to see any reason as to why a formal departmental enquiry could not have been initiated against the appellant. Reliance placed upon such a preliminary enquiry without complying with the minimal requirements of the principle of natural justice is against all canons of fair play and justice. The appellate authority, as noticed hereinbefore, in its order dated 24-6-1998 jumped to the conclusion that he was guilty of grave acts of misconduct proving complete unfitness for police service and the punishment awarded to him is commensurate with the misconduct although no material therefor was available on record. It is further evident that the appellate authority also misdirected himself in passing the said order insofar as he failed to take into consideration the relevant facts and based his decision on irrelevant factors."

12. Hon'ble Apex Court's judgment in ***Jaswant Singh*** *Vs.* ***State of Punjab****, (1991) 1 SCC 362, had also ruled as under:-*

"5.....The decision to dispense with the departmental enquiry cannot, therefore, be rested solely on the ipse dixit of the concerned authority. When the satisfaction of the concerned authority is questioned in a Court of law, it is incumbent on those who support the order to show that the satisfaction is based on certain objective facts and is not the

outcome of the whim or caprice of the concerned officer."

13. In ***Union of India & Anr.*** *Vs.* ***Tulsiram Patel & Ors.*** *(AIR 1985 SC 1416) also the Hon'ble Supreme Court observed as under:-*

"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 10 OA No. 2097/2019 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."

Further in paragraphs 15 and 16, the coordinate Bench of this Tribunal in ***Neeraj Kumar*** (supra) has held as under:-

"15. Article 311 provides for protection to a public servant from indiscriminate actions by the employer. Any punishment can be imposed only after conducting inquiry. That cannot be dispensed with indiscriminately. It is only in rare cases such as where security of State is involved, that recourse can be taken to Article 311(2)(b) of the Constitution. In this case, the preliminary inquiry itself has virtually declared that the applicant is guilty

of grave misconduct. At the same time, regular inquiry is dispensed with. The whole exercise is not only opposed to the law laid down by the Hon'ble Supreme Court, but also is a contradiction in terms.

16. In view of the Hon'ble Apex Court's judgments, the DE can be dispensed with only on the grounds which are robust, clear and substantial. We do not find any such ground or fact which has been brought on record. We are not commenting on acts and omissions alleged against the applicant. It is only about the denial of reasonable opportunity for presenting his case to the applicant in a DE and denial of natural justice."

17. Further Division Bench of Hon'ble High Court of Delhi in Order/Judgment dated 11.12.2019 in the case of ***Commissioner of Police and others*** vs. ***Ashwani Kumar and others*** (supra) in paragraph 7 has held as under:-

"7. .....The mandate of the law is clear that before dispensing with an enquiry, a subjective satisfaction is to be arrived at by the Disciplinary Authority („DA") that it is not reasonably practicable to hold a regular departmental enquiry. These reasons must be based on an objective criterion and not on the whims and fancies of the DA. In other words, it cannot be based on surmises and conjectures, but must reflect the actual ground reality, which makes it impossible for the DA to order a regular departmental enquiry."

18. Shri Pandita, learned counsel for the respondents, has placed reliance on the Order/Judgment dated 29.10.2020 in the case of ***Heem Singh*** (supra). In the said case, the respondent therein was a police constable, filed a petition under Article 226 of the Constitution to challenge his dismissal from service after a disciplinary enquiry. The learned Single Judge of the High Court, by a Judgment dated 01.02.2018, dismissed the petition. The Division Bench of the High Court reversed the judgment and concluded that there is no evidence in the disciplinary enquiry to sustain the finding that the respondent committed a murder while on leave from duty. Independently, he has also been acquitted in a Sessions trial on the charge of murder. The Division Bench granted the respondent reinstatement in service with no back wages for the seventeen years that elapsed since his termination. Therefore, the State filed an appeal before the Hon'ble Apex Court. From the facts thereof the said judgment and precisely noted hereinabove, it is evident that the said case related to dismissal of the respondent from service after a disciplinary inquiry.

However, in the present case, the facts are entirely different in as much as the basic grievance of the applicant in the present OA is that no disciplinary inquiry has been conducted against him and in absence of sufficient material, the respondents have dismissed the applicant from their employment by invoking their jurisdiction under Article 311 (2) (b) of the Constitution of India. As the facts of the said case, relied upon by the respondents' counsel, are not even remotely comparable to the facts of the case in hand, we are of the considered view that the judgment of the Hon'ble Apex Court in ***Heem Singh's*** case (supra), relied upon by the learned counsel of the respondents, is of no help to the respondents.

19. So far as the Order/Judgment of the Hon'ble High Court of Delhi in ***Mukesh Kumar Yadav's*** case (supra), referred to and relied upon by the learned counsel for the respondents is concerned, it is an admitted case that the said Order/Judgment has been considered by the coordinate Bench of this Tribunal along with the law laid down by the Hon'ble High Court

of Delhi and Hon'ble Supreme Court in catena of cases in the case of ***Neeraj Kumar*** (supra). Therefore, we are of the considered view that the same also does not require further detailed consideration in the present case.

20. In view of various judgments and the rules, referred to hereinabove, it is evident that before dispensing with an inquiry subjective satisfaction is to be arrived at by the disciplinary authority that it is not reasonably practicable to hold a regular departmental inquiry. The reasons must be recorded which must be based on objective criterion and not on the whims and fancy of the disciplinary authority. The reasons given by the disciplinary authority must reflect the actual ground reality which makes it impossible for the disciplinary authority to order departmental inquiry. The inquiry cannot be dispensed with lightly or arbitrarily or out of ulterior motive or merely in order to avoid holding of a departmental inquiry. If it is a case that preliminary inquiry has been conducted, statements there from may be brought on record of the departmental proceedings

when the witnesses are no longer available. The Enquiry Officer may bring on record any other document from the file of the preliminary enquiry, if he considers it necessary after supplying copies to the accused officer. However, in absence of any document to support that the witnesses are not traceable, they are not willing to come forward to adduce their evidence or the said witnesses are threatened, intimidated or coerced, terrorised, influenced by and/or on behalf of the delinquent for leading their evidence or security of the State is likely to put under danger etc., it may not be sufficient to say that the departmental proceeding is not reasonably practicable. However, it may suffice in saying that departmental inquiry is not probable whereby an atmosphere of violence or of any general indiscipline and insubordination prevails or the delinquent is in affiliation with criminals. Furthermore, the provisions of Rule 15 of the Delhi Police (Punishment & Appeal) Rules, 1980 clearly indicate that the purpose is not only to judge acquaintance of default but also to collect prosecution evidence and to bring on record relevant documents to facilitate a regular departmental inquiry.

Mere gravity of the allegations against the defaulter shall not be sufficient and good reason not to hold that the enquiry is not reasonably practicable. The word 'Practicable' has been considered and explained by the Hon'ble High Court of Delhi in the case of ***R.K. Mishra*** (supra).

21. From the facts recorded hereinabove, it is evident that inquiry report dated 22.10.2014 was based on the statements, relevant documents and also the statement of victim under Section 164 of Cr.P.C. In spite of the fact that report appearing to be on the basis of the statement, documents as well as statement of victim under Section 164 of Cr.P.C., the disciplinary authority in absence of any material came to the conclusion about criminal propensity and immoral attitude of the applicant and also that in all the probability that witnesses/complainant would not come forward to depose against him in case a departmental inquiry is initiated against him. There is nothing on record to show that any effort has been made by the respondents to conduct the departmental enquiry. Further, there is nothing on record to support such conclusion of the disciplinary authority that departmental enquiry is not

reasonably practicable in as much as there is not even an allegation that any of the prosecution witnesses including the victim has been terrorized, intimated, coerced and/or has/have been adversely influenced by the applicant and/or on his behalf by anybody else. Rather it appears from the very inquiry officer's report that certain statements were recorded by the inquiry officer. It is further evident from the Order/Judgment dated 18.1.2020 of the learned Trial Court that 8/9 prosecution witnesses including the victim, the doctor, police officials and other witnesses have not only joined the preliminary investigation but have also come forward and have adduced their evidences in the criminal trial. Such facts also indicate that the disciplinary authority has ignored the directions of the Commissioner of Police contained in Circular dated 11.9.2007, referred to hereinabove, wherein it is mandated that whenever any disciplinary authority intends to invoke Article 311 (2) (b) of the Constitution of India, he must keep in mind the Judgment of the Hon'ble Supreme Court in the case of ***Tulsi Ram Patel*** (supra) and only in those cases where the disciplinary authority is personally satisfied on the basis of material available on file that the case is of such a nature that it is not practicable to hold an enquiry in

view of threat, inducement, intimidation, affiliation with criminals etc. and keeping in view the specific circumstances of the case it is not possible that PWs will depose against the defaulter and disciplinary authority has no option but to resort to Article 311 (2) (b) of the Constitution of India. It is further pertinent to note that applicant in his appeal (Annexure A/2) has taken various grounds. However, the appellate authority without dealing with the same has mechanically upheld the order passed by the disciplinary authority and has rejected the appeal of the applicant.

22. In view of the facts and circumstances of the case in hand, we are of the considered view that reasons assigned by the respondents for coming to the conclusion that it was not reasonably practicable to hold departmental inquiry are not at all satisfactory. The reasons recorded by the disciplinary authority for dispensing with the departmental inquiry are not convincing and the same do not connect with any material on record and accordingly, the same are not acceptable in the eyes of law.

23. In the result and for the reasons recorded hereinabove, the OA deserves to be allowed. Accordingly, the same is allowed and the impugned

penalty order dated 2.12.2014, passed by the disciplinary authority and the appellate authority's order dated 22.9.2015 are set aside with all consequential benefits to the applicant in accordance with the relevant rules. Since the applicant was under suspension as on the date of passing of the impugned orders, the applicant shall thus remain under suspension and the respondents shall take an appropriate decision regarding revocation or continuation of the same. The respondents shall be at liberty to proceed against the applicant departmentally as per the relevant rules and the treatment of period of suspension of the applicant shall be depending upon the same. However, in the facts and circumstances, there shall be no order as to costs.

(R.N. Singh)
Member (J)

(A. K. Bishnoi)
Member (A)

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