CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

Original Application No.2951/2004

New Delhi, this the **15th** day of **July, 2005**

Hon'ble Mr. Justice V.S. Aggarwal, Chairman
Hon'ble Mr. S.A.Singh, Member (A)

1. Shri Lokender Pal
Ex. Head Constable (2187/DAP)
S/o Shri Gaj Raj Singh
R/o 187, Police Colony
Vikas Puri
New Delhi – 110 018.

2. Shri Sanjay Singh
Ex. Constable (7555/DAP)
S/o Shri Kamal Nath Singh
R/o Village & Post Office
Awasanpur
P.S. Maharajganj,
District Azamgarh (U.P.). ... Applicants

(By Advocate: Sh. Shyam Babu)

Versus

1. Government of NCT of Delhi
Through its Chief Secretary
Players Building, I.P. Estate
New Delhi.

2. The Joint Commissioner of Police
(Armed Police)
Police Headquarters
I.P.Estate
New Delhi.

3. The Deputy Commissioner of Police
3rd Bn DAP, Vikas Puri
New Delhi. ... Respondents

(By Advocate: Sh. George Paracken)

O R D E R (Oral)

By Mr. Justice V.S.Aggarwal:

On 15.7.2004, the applicants were detailed for duty at 9.15 A.M. vide D.D. No.25-B from Central Jail, Delhi to escort ~~under~~ trial prisoner Jitender for his medical check-up at Rajendra Prasad Eye Hospital, All India Institute of Medical Sciences.

2. In the same ambulance, another under trial prisoner, Virender Chopra was also sent for medical check-up in cancer department of AIIMS. The under trial prisoner, Jitender was involved in the following cases:

1.	FIR No.67/99 U/S 302/307/336 IPC and 25 Arms Act, P.S. Keshav Puram, Delhi.
2.	FIR No.68/99 U/S 302/201/120-B IPC, P.S. Mukherji Nagar, Delhi.
3.	FIR No.125/96 U/S 307/201/34 IPC, P.S. Model Town, Delhi.
4.	FIR No.296/95 U/S 451/427 IPC, P.S. Ashok Vihar, Delhi.

3. Apart from that externment proceedings, under Section 47 of the Delhi Police Act, was also pending against him. After getting the check-up of the under trial prisoner Virender Chopra done in the Cancer Department, HC Ravinder and Constable Satpal waited for HC Lokender and Constable Sanjay along with the UTP in their custody. But they did not turn up with the UTP Jitender. After long wait, HC Ravinder went to search HC Lokender Pal and Constable Sanjay in the premises of Rajender Prasad Eye Hospital. Both were found disheveled and the HC Lokender Pal was also having his service revolver with him. A motley crowd was all

around them and jeering about the 'reputation' of Delhi Police. The under trial prisoner Jitender was not found in the Hospital premises. On receipt of this information, Inspector Diwan Chand Sharma and Shri S.P.S. Sirohi, ACP rushed to the spot. They found that HC Lokender Pal was lying unconscious along with Constable Sanjay. They were rushed to the Emergency Department of AIIMS. The service revolver alongwith live cartridges were also seized. The matter was reported to the local police. The spot inquiry revealed that the applicants had reached the Hospital along with the UTP. They had consumed cold drink offered by UTP Jitender because of which they were lying unconscious. The UTP escaped from their custody. Both were also found not fit to give their statement. It was found that they were most careless and negligence. The disciplinary authority on the next date of the incident, invoked Article 311 (2) (b) of the Constitution of India and dismissed the applicants from service holding:

> "The involvement of both the delinquents in such as act indicates that both of the have mixed up with the dreaded/notorious criminal and his associates/relative and it is highly improbable that they will depose against them. Such dreaded/history sheeter has become free due their nexus with him and looking at his past, he will certainly pose danger to the with ness of the cases being tried against him as he has done in the past. Since both the defaulters are in league with such a criminal, it will impossible for any one to depose against the defaulters as well. Police being the protector of the destroy the citizen's right and indulgence of the delinquents police personnel in such an act would destroy the faith of the people in the

system. Both the delinquents have acted in a manner totally unbecoming of a member of police force, hence their continuation in service would be highly prejudicial to the security of citizens.

The facts and circumstances of the case are such that it would not be reasonably practicable to conduct a departmental enquiry against the delinquents, under these circumstances I am of the considered view that the delinquents have brought bad name to the entire police force and their retention in service would be prejudicial to police safety. In my opinion they are unfit to be retained in the police service any more. Therefore, I.P Dass, Dy. Commissioner of Police, III Bn., Dap order to dismiss head Const. Lokender, No.2187/DAP and Const. Sanjay No.7555/DAP from the service with immediate effect under Article 311(2)(b) of the Constitution of India. The suspension period of the above delinquents from 15.7.2004 to the date of issue of this order is treated as period not spent on duty."

4. They preferred an appeal, which was dismissed on 3.11.2004. By virtue of the present application, they seek to assail both the orders. The learned counsel for the applicants argued that it was not a fit case to invoke Article 311 (2) (b) of the Constitution because it was reasonably practicable to hold the inquiry. But the respondents' learned counsel urged that keeping in view the desperate character of the applicants, it was not reasonably practicable to hold the inquiry.

5. Under Article 311 of the Constitution, dismissal from service can only be after giving a reasonable opportunity to defend to the said person. However, Article 311 (2) (b) of the Constitution is one of the three exceptions to the said Rule. It can be invoked if the authority empowered to impose the penalty records in writing

and is satisfied that it is not reasonably practicable to hold an inquiry.

6. The decision of the Supreme Court in the case of **UNION OF INDIA AND OTHERS** v. **TULSIRAM PATEL AND OTHERS,** AIR 1985 SC 1416 had gone into the controversy as what would be the meaning of the expression "reasonably practicable to hold an enquiry" and after screening through innumerable precedents, the Supreme Court held:-

> "130. The condition precedent for the application of clause (b) is the satisfaction of the disciplinary authority that "it is not reasonably practicable to hold" the inquiry contemplated by clause (2) of Article 311. What is pertinent to note is that the words used are "not reasonably practicable" and not "impracticable". According to the Oxford English Dictionary "practicable" means "Capable of being put into practice, carried out in action, effected, accomplished, or done; feasible". Webster's Third New International Dictionary defines the word "practicable" inter alia as meaning "possible to practice or perform: capable of being put into practice, done or accomplished: feasible". Further, the words used are not "not practicable" but "not reasonably practicable". Webster's Third New International Dictionary defines the word "reasonably" as "in a reasonable manner: to a fairly sufficient extent". Thus, whether it was practicable to hold the inquiry or not must be judged in the context of whether it was reasonably practicable to do so. It is not a total or absolute impracticability which is required by clause (b). What is requisite is that the holding of the inquiry is not practicable in the opinion of a reasonable man taking a reasonable view of the prevailing situation. It is not possible to enumerate the cases in which it would not be reasonably practicable to hold the inquiry, but some instances by way of illustration may, however, be given. It would not be reasonably practicable to hold an inquiry where the government servant, particularly through or together with

> his associates so terrorizes, threatens or intimidate witnesses who are going to give evidence against him with fear of reprisal as to prevent them from doing so or where the government servant by himself or together with or through others threatens, intimidates and terrorizes the officer who is the disciplinary authority or members of his family so that he is afraid to hold the inquiry where an atmosphere of violence or of general indiscipline and insubordination prevails, and it is immaterial whether the concerned government servant is or is not a party to bringing about such an atmosphere. In this connection, we must bear in mind that numbers coerce and terrify while an individual may not. The reasonable practicability of holding an inquiry is a matter of assessment to be made by the disciplinary authority. Such authority is generally on the spot and knows what is happening. It is because the disciplinary authority is the best judge of this that clause (3) of Article 311 makes the decision of the disciplinary authority on this question final. A disciplinary authority is not expected to dispense with a disciplinary inquiry lightly or arbitrarily or out of ulterior motives or merely in order to avoid the holding of an inquiry or because the Department's case against the government servant is weak and must fail. The finality given to the decision of the disciplinary authority by Article 311 (3) is not binding upon the court so far as its power of judicial review is concerned and in such a case the court will strike down the order dispensing with the inquiry as also the order imposing penalty."

With respect to the second condition about the satisfaction of the disciplinary authority, the Supreme Court further provided the following guide-lines:-

> "133. The second condition necessary for the valid application of clause (b) of the second proviso is that the disciplinary authority should record in writing its reason for its satisfaction that it was not reasonably practicable to hold the inquiry contemplated by Article 311 (2). This is a Constitutional obligation and if such reason is not recorded in writing, the order

> dispensing with the inquiry and the order of penalty following thereupon would both be void and unconstitutional."

The said decision of the Supreme Court was again considered by another Bench of the same Court in the case of **SATYAVIR SINGH AND OTHERS** v. **UNION OF INDIA AND OTHERS,** 1986 SCC (L&S) 1. The Supreme Court in different paragraphs analysed the decision in the case of *Tulsi Ram Patel (supra)* and thereupon held that judicial review would be permissible in matters where administrative discretion is exercised and the court can put itself in the place of the disciplinary authority and consider what is the then prevailing situation, a reasonable man acting in a reasonable manner would have done. Paragraphs 106 and 108 in this regard read:-

> "106. In the case of a civil servant who has been dismissed or removed from service or reduced in rank by applying clause (b) of the second proviso to Article 311 (2) or an analogous service rule, the High Court under Article 226 or this Court under Article 32 will interfere on grounds well-established in law for the exercise of its power of judicial review in matters where administrative discretion is exercised."

> "108. In examining the relevancy of the reasons given for dispensing with the inquiry, the court will consider the circumstances which, according to the disciplinary authority, made it come to the conclusion that it was not reasonably practicable to hold the inquiry. If the court finds that the reasons are irrelevant, the order dispensing with the inquiry and the order of penalty following upon it would be void and the court will strike them down. In considering the relevancy of the reasons given by the disciplinary authority, the court will not, however, sit in judgment over the reasons like a court of first appeal in order to decide whether or not the reasons are germane to clause (b) of

the second proviso or an analogous service rule. The court must put itself in the place of the disciplinary authority and consider what in the then prevailing situation a reasonable man acting in a reasonable manner would have done. It will judge the matter in the light of the then prevailing situation and not as if the disciplinary authority was deciding the question whether the inquiry should be dispensed with or not in the cool and detached atmosphere of a court room, removed in time from the situation in question. Where two views are the possible, the court will decline to interfere."

7. From the aforesaid, it is clear that it is not the *ipse dixit* of the appointing authority or the disciplinary authority but it must satisfy the necessary ingredients that it was not reasonably practicable to hold the inquiry. We do not dispute that the negligence was grave as alleged. But even if the applicants are stated to be desperate character, still it is not one of those cases where there is anything to show that they have threatened the witnesses. The facts indicate that witnesses mostly would be from the police department itself.

8. The disciplinary authority had gone by the fact that probably the applicants were associated with the dreaded criminals or their associates and that they had acted in a manner unbecoming of a member of the police force. That cannot be taken to be a ground to hold that it was not reasonably practicable to conduct the inquiry because what was to be seen was the conduct of the applicants, details of which have been given. If they have brought bad name to the Department, they can be dealt departmentally. In fact, on the very next date of incident, powers under Article 311 (2) (b) of the Constitution have been exercised

but the facts indicate that it was not a fit case to conclude that it was not reasonably practicable to hold the inquiry. Necessary ingredients of the Article 311 (2) (b) were not satisfied.

9. For these reasons, the OA is allowed and we hold:

(a) Impugned order is quashed.

(b) If the department feels, they may initiate the departmental action.

(c) Nothing said herein would restrain the respondents from passing any order including suspending the applicant, if deemed appropriate.

(d) Consequential benefits, if any, would accrue to the applicant as per law.

(S.A.Singh)
Member (A)

(V.S.Aggarwal)
Chairman

/NSN/