

8

**CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL
BENCH**

Original Application No.1322/2004

New Delhi, this the 13th day of January, 2005

**Hon'ble Mr. Justice V.S. Aggarwal, Chairman
Hon'ble Mr. S.K.Naik, Member (A)**

HC Dilbagh Singh
S/o Sh. Nirmal Singh
R/o T-38, Vishnu Garden
Delhi - 18.

... Applicant

**(By Advocate: Sh. Gyanendra Singh proxy of Sh. Arun
Bhardwaj)**

Versus

1. Govt. of NCT of Delhi.
Through Commissioner of Police
Police Headquarter
ITO, New Delhi.

2. Joint Commissioner of Police
Southern Range
New Delhi.

3. Deputy Commissioner of Police
South Distt.
New Delhi.

... Respondents

(By Advocate: Sh. Ram Kwar)

O R D E R(Oral)

By Mr. Justice V.S. Aggarwal:

Applicant joined the Delhi Police and was working as Head Constable. The disciplinary authority invoking Article 311(2)(b) of the Constitution dismissed him from service recording:

“The facts and circumstances of the case are such and evidence is so glaring that it is not required to conduct a



departmental enquiry against the delinquent HC as it has emerged during the investigation to the case FIR No.443/2003 u/s 420/380/34 IPC that due to valuable information provided by the delinquent HC to the notorious criminal, he avoided his arrest in the above said criminal case and managed to evade due process of law for a long time with active abetment of the delinquent HC.

The delinquent has also been heard in O.R. on 21.11.2003 by the undersigned in order to ascertain the gravity of his guilt. But, he failed to put forth any reasonable defence in any manner.

Under these circumstances, I am of the considered view that with this act, the delinquent HC has lost the trust of the entire force and public in general and his retention in service would be prejudicial to public safety. In my opinion he is unfit to be retained in the police service any more. Therefore, I, VIVEK GOGIA, DCP/South Distt. New Delhi deem it proper that HC Dilbag Singh No.419/SD (PIS No.28800519) be dismissed from the service with immediate effect under Article 311(2)(b) of the Constitution of India. The suspension period of the HC 27.8.2003 to the date of issue of this order is treated as the period not spend on duty."

2. The applicant preferred an appeal. The same was dismissed on 5.5.2004. By virtue of the present application, he seeks to assail the said orders.

3. The relevant facts, as alleged by the respondents, are that during the course of the investigation in FIR No.443/2003 with respect to offences punishable under Sections 420/380/34 IPC, it was revealed that some crime

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was committed by one Sanjay Puri, Mehmood Ali and Mehroj Siddique and jewellery worth Rs.22.5 lacs was stolen and sold to one Sharafat Sheikh for Rs.24,000/-. Some drugs through Haider Ali and Firoj, the associates of Sharafat Sheikh had also been sold. Efforts were made by the Investigating Officer of the case to apprehend accused Sharafat Sheikh, Haider Ali and Firoj but all in vain. During in-depth investigation, it was revealed that some mobile phones were used by Sharafat Sheikh. Therefore, the calls were intercepted. It revealed that the applicant who was the Beat Head Constable of Nizam Nagar Basti was providing information to Sharafat Sheikh, a bad character of the P.S. too by his mobile. He was constantly in touch with the notorious criminals and helping them.

4. On discreet inquiry, it became evident that the applicant had nexus with notorious criminal Sharafat Sheikh, a bad character of the area. He was instrumental in keeping the criminal abreast of the progress of the investigation of the case and putting hindrance in apprehending the notorious criminals.

5. For the above misconduct, the applicant was placed under suspension. The disciplinary authority has felt that act of the applicant showed that he had nexus with the criminals and is a liability to Delhi Police and his continuance in Delhi Police is hazardous to the public. The disciplinary authority recorded:

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"The aforesaid misconduct of the delinquent police official shows that he has a nexus with criminals and a liability to the Delhi Police. His continuance in Delhi Police is hazardous to the public. The society expects a police official to protect citizens from criminals and crime but instead of this, HC Dilbag Singh has been found to be a criminal indirectly and he became an associate of a notorious criminal. His act is not only immoral and reprehensible but also reflects a grave misconduct of a police official, a public service entrusted with the responsibility of protecting of the society. Such a gross misconduct by a police official is bound to destroy the faith of public in the department in general."

6. The application is being contested.

7. The learned counsel for the applicant urged that it was not a case where Article 311 (2)(b) of the Constitution could be invoked.

8. The provisions of Article 311(2)(b) of the Constitution 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. The inquiry contemplated as enshrined under Article 311 of the Constitution refers to giving a reasonable opportunity to defend to the person alleged to have committed the misconduct.

9. The decision of the Supreme Court in the case of **Union of India and others v. Tulsiram Patel and others**, AIR 1985 SC 1416 which had gone into the controversy as

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what would be the meaning of the expression "reasonably practicable to hold an enquiry" and after screening through enumerable precedents, the Supreme court held:-

"130. The condition precedent for the application of clause (b) is the satisfaction of the disciplinary authority that "it is not reasonably practicable to hold" the inquiry contemplated by clause (2) of Article 311. What is pertinent to note is that the words used are "not reasonably practicable" and not "impracticable". According to the Oxford English Dictionary "practicable" means "Capable of being put into practice, carried out in action, effected, accomplished, or done; feasible". Webster's Third New International Dictionary defines the word "practicable" inter alia as meaning "possible to practice or perform " capable of being put into practice; done or accomplished: feasible". Further, the words used are not "not practicable" but "not reasonably practicable". Webster's Third New International Dictionary defines the word "reasonably" as "in a reasonable manner : to a fairly sufficient extent". Thus, whether it was practicable to hold the inquiry or not must be 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

As Ag

13

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

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reason is not recorded in writing, the order dispensing with the inquiry and the order of penalty following thereupon would both be void and unconstitutional.”

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

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

“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

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15

void and the court will strike them down. In considering the relevancy of the reasons given by the disciplinary authority, the court will not, however, sit in judgment over the reasons like a court of first appeal in order to decide whether or not the reasons are germane to clause (b) of the second proviso or an analogous service rule. The court must put itself in the place of the disciplinary authority and consider what in the then prevailing situation a reasonable man acting in a reasonable manner would have done. It will judge the matter in the light of the then prevailing situation and not as if the disciplinary authority was deciding the question whether the inquiry should be dispensed with or not in the cool and detached atmosphere of a court room, removed in time from the situation in question. Where two views are possible, the court will decline to interfere."

10. The aforesaid would clearly show that not only the act is subject to judicial review but necessary ingredient is that it should not be reasonably practicable to hold the inquiry. The disciplinary authority must be satisfied and should record reasons in writing that it was not reasonably practicable to hold the inquiry. The gravity of the offence is not a tilting factor. We do not dispute that if there is gravity of the misconduct, which is proved, the disciplinary authority can deal with the same in accordance with law but where it is reasonably practicable to hold the inquiry, Article 311(2)(b) of the Constitution should not be pressed into service. When the law requires a particular thing to be done in a manner, Article 311(2)(b) of the Constitution is an exception to Rule that ordinarily disciplinary proceedings

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should be initiated. But therein too, the necessary ingredients must be satisfied.

11. In the present case in hand, the disciplinary authority in the impugned order itself has recorded that the dereliction of duty is grave, ~~the~~ evidence is so glaring that it was not required to conduct a departmental inquiry. It is one thing to state that inquiry is required to be conducted and it is another where it is not reasonably practicable to hold the inquiry and, therefore, in that view of the matter, the impugned order cannot be sustained.

12. For these reasons, we allow the Original Application and the following order is passed:

- a) The impugned order is quashed;
- b) The applicant is under suspension. He will continue to be under suspension till the disciplinary authority, in accordance with law and the rules, within the time prescribed passes a fresh order;
- c) Nothing said herein would restrain the respondents from conducting the departmental proceedings against the applicant; and
- d) The applicant would be entitled to the consequential benefits.

S.K. Naik
(S.K.Naik)
Member (A)

V.S. Aggarwal
(V.S.Aggarwal)
Chairman

/NSN/