CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A. NO. 1618/2004

New Delhi, this the 9th day of February, 2005

HON'BLE MR. JUSTICE V. S. AGGARWAL, CHAIRMAN
HON'BLE MR. S.A. SINGH, MEMBER (A)

Shri Rahul Dhingra,
S/o Sh. Puran Chand Dhingra,
Ex-Warder Roll No. 621,
Central Jail Tihar,
R/o Quarter No. 508,
Central Jail Tihar,
New Delhi – 110 064. ...Applicant

(By Advocate: Sh. S.C. Luthra)

-versus-

1. Government of N.C.T. of Delhi through
Principal Secretary (Home),
Delhi Sachivalya,
I.P. Estate,
New Delhi – 110 002.

2. Director General Cum I.G. (Prisons)
Prison Head Quarters,
Near Lajwanti Garden Chowk,
New Delhi – 110 065. ...Respondents

(By Advocate: Shri Vijay Pandita)

O R D E R

Justice V.S. Aggarwal, Chairman:

The applicant (Rahul Dhingra), by virtue of the present Original Application, seeks to assail the orders passed by the disciplinary authority whereby invoking Article 311 (2)(b) of the Constitution, he has been dismissed and all the subsequent orders passed by the appellate authority dated 26.09.2001 and 07.06.2004 respectively.

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2. Some of the relevant facts are that the applicant was working as a Warder in Tihar Jail. FIR 499/2000 dated 19.6.2000 had been registered against the applicant with respect to offences punishable under Sections 394/397 of the Indian Penal Code read with Section 27/54/59 of the Arms Act and he was arrested. The Additional Director General (Prison), who was the disciplinary authority, recorded:

> "....The facts and circumstances of the case are such that it would not be reasonably practicable to hold a departmental enquiry against said Sh. Rahul Dhingra, Warder, Roll No. 621, since it is certain that during the entire departmental proceedings the witnesses would be put to constant fear of threat to their persons by the delinquent official due to his image of dreaded and nefarious criminal activities. In such a situation conducting departmental proceedings would become virtually non practicable.
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> It would be extremely difficult for the witnesses to muster enough courage due to fear of severe reprisal from the delinquent official and as such keeping in view the above reasons, I feel totally satisfied that it would not be reasonably practicable to hold a departmental enquiry against the official who has emerged in a dreaded criminal action which clearly indicates criminal propensity on his part."

Accordingly, the applicant was dismissed.

3. The applicant preferred an appeal, which was dismissed on 26.09.2001 but it was specifically mentioned that the claim of the applicant can be reviewed after decision of the Court.

4. The applicant faced trial before the Court of Additional Sessions Judge at New Delhi. The learned Additional Sessions Judge on 2.12.2003 acquitted the applicant according him the benefit of doubt. The applicant submitted a fresh petition with the appellate authority. The appellate authority rejected the claim vide his subsequent order, to which we have

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referred to above, noting that the three material witnesses had not identified the applicant. The Head Constable Omvir Singh had supported the prosecution case but his evidence was not given any weightage and benefit of doubt had been accorded. It was thereafter recorded that still Article 311(2)(b) of the Constitution should be invoked. The matter has already been scrutinized and accordingly his subsequent request was rejected. This prompts the applicant to file the present Original Application, contending:

a) the order has been passed by an authority, who was not the disciplinary authority;

b) in the peculiar facts of the case, Article 311(2)(b) of the Constitution could not have been invoked;

5. Needless to state that in the reply filed the application is being contested.

6. During the course of submissions both the pleas were pressed. In our considered opinion, it is unnecessary to ponder with the first question.

7. On behalf of the applicant, as already referred to above and re-mentioned at the risk of repetition, it has been urged vehemently that Article 311(2)(b) of the Constitution could not be attracted because it was reasonably practicable to hold the enquiry. On the contrary, the respondents took up the plea that in the peculiar facts, keeping in view the gravity of the offence, and also that the applicant patently was a desparate character and could threaten the witnesses, it was not reasonably practicable to hold the enquiry.

8. We have heard the parties' counsel and have seen the relevant records.

9. 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.

10. 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 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 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 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 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 view are possible, the court will decline to interfere."

11. On behalf of the respondents, strong reliance was being placed on the decision of the Supreme Court in the case of ***Union Territory, Chandigarh vs. Mohinder Singh***, JT 1997 (2) SC 504. In the said case, the order of dismissal was passed on the report of one Sri Baldev Singh, Superintendent of Police (Intelligence). The Report indicated that Mohinder Singh had arrested one Ranjit Singh from his house along with two of his friends. He brought Ranjit Singh to the Police Station and tortured him mercilessly. At that time Mohinder Singh was in a drunken condition and he was asking Ranjit Singh about the whereabouts of a particular terrorist. He told him that he was being harassed at the instance of his superiors and demanded Rs. 60,000/- from Ranjit Singh. Ultimately, a sum of Rs. 20,000/- was paid. The Supreme Court held that in the peculiar facts, Article 311(2)(b) of the Constitution could be invoked and further concluded that Superintendent of Police (Intelligence) had recorded that Mohinder Singh was a terror in the area. His very presence intimidated Ranjit Singh, who has terrified. Therefore, the order, so passed, had been upheld. It is obvious from aforesaid that it was a decision confined to its peculiar facts rather than to be quoted that in every case such an order must be upheld.

12. Our attention was further drawn towards an earlier decision of the Supreme Court in the case of ***Shivaji Atmaji Sawant vs. State of Maharashtra & Ors.***, (1986) 2 SCC 112. In the said case also, it was Article 311(2)(b), which had been pressed into service. The appellant before the Supreme Court was a Constable. He was alleged to have been one of the active instigators and leaders who were responsible for creating serious situation, which rendered all normal functioning of the police force and normal life in the city of Bombay to be impossible. There was an attempt by members of the police force to stir up a mutiny like

situation. It was held that in the peculiar facts, Article 311(2)(b) of the Constitution was rightly invoked. Once again, it was held that it was the peculiar facts of the case, which prompted the Supreme Court in upholding such an order.

13. Even the decision in the case of ***Ikramuddin Ahmed Borah vs. Superintendent of Police, Darrang & Ors.***, 1988 (Supp) SCC 663 will not help the version of the respondents in the facts of the present case. The question before the Supreme Court was as to whether it was reasonably practicable to hold the enquiry in the facts of that case. Ikramuddin Ahmed Borah was a Sub Inspector of Police in Assam. Under Article 311(2)(b) of the Constitution, he was dismissed. It was found that he was misusing his position to the detriment of the general social well being for personal gains. Thus, on that fact being so satisfied, it was held that there was no ground to interfere in the order of dismissal.

14. At this stage, it is worth noting the plea that under clause (3) of Article 311 of the Constitution, it has specifically been provided that the decision of the concerned authority as to whether it was reasonably practicable to hold the enquiry or not is final but we hasten to add that it is subject to judicial review. Even in the case of ***Tulsi Ram Patel*** (supra), it was categorically held that whether it is practicable to hold the enquiry or not must be judged in the context whether it was reasonably practicable to do so. Even in the case of ***Chandigarh Administration, Union Territory, Chandigarh & Ors. vs. Ajay Manchanda & Ors.***, (1996) 3 SCC 753, it was emphatically again reiterated that the decision of the empowered authority that holding of departmental enquiry was not reasonably practicable does not exclude the scope of judicial review

altogether. In this backdrop, therefore, the contention of the respondents must fail.

15. Before proceeding further, one can take advantage in referring to other decisions, referred to at the Bar, in the case of ***Jaswant Sinjgh vs. State of Punjab & Ors.,*** (1991)1 SCC 362. After reiterating the decision that it is not reasonably practicable to hold the enquiry is subject to judicial review, the Supreme Court held that authority is obliged to show that his satisfaction was based on objective facts. In the said case, it was found that Joginder Singh on enquiry was dismissed from service. He was thereafter reinstated. He joined services. He was thereafter again placed under suspension on 6.4.1981. After that an incident of alleged attempt to commit suicide took place. He was dismissed invoking Article 311(2)(b) of the Constitution. The Supreme Court held that the State failed to disclose to the Court the material in existence on the date of passing of the order in support of subjective satisfaction. The earlier departmental enquiries were being conducted. Taking stock of these facts, the Supreme Court held:

> "5.h 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. In the counter filed by respondent 3 it is contended that the appellant, instead of replying to the show cause notices, instigated his fellow police officials to disobey the superiors. It is also said that he threw threats to beat up the witnesses and the Inquiry Officer if any departmental enquiry was held against him. No particulars are given. Besides it is difficult to understand how he could have given threats, etc. when he was in hospital. It is not shown on what material respondent 3 came to the conclusion that the appellant had thrown threats as alleged in

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paragraph 3 of the impugned order. On a close scrutiny of the impugned order it seems the satisfaction was based on the ground that he was instigating his colleagues and was holding meetings with other police officials with a view to spreading hatred and dissatisfaction towards his superiors. This allegations is based on his alleged activities at Jullundur on April 3, 1981 reported by SHO/GRP, Jullundur. That report is not forthcoming. It is no one's contention that the said SHO was threatened. Respondent 3's counter also does not reveal if he had verified the correctness of the information. To put it tersely the subjective satisfaction recorded in paragraph 3 of the impugned order is not fortified by any independent material to justify the dispensing with of the inquiry envisaged by Article 311(2) of the Constitution. We are, therefore, of the opinion that on this short ground alone the impugned order cannot be sustained."

16. Similarly, in the case of ***Chief Security Officer & Others vs.Singasan Rabi Das,*** (~~1999~~ 1991) 1 SCC 729, a delinquent was a Member of Railway Protection Force. He was removed from service without enquiry. The Supreme Court held that there was total absence of sufficient material or good grounds for dispensing with the enquiry and merely stating that it would expose the witnesses and make them ineffective was not just and sufficient ground. The findings are:

> "5.....In the present case the only reason given for dispensing with that enquiry was that it was considered not feasible or desirable to procure witness of the security/other railway employees since this will expose these witnesses and make them ineffective in the future. It was stated further that if these witnesses were asked to appear at a confronted enquiry they were likely to suffer personal humiliation and insults and even their family members might become targets of acts of violence. In our view these reasons are totally insufficient in law. We fail to understand how if these witnesses appeared at a confronted enquiry, they are likely to suffer personal humiliation and insults. These are normal witnesses and they could not be said to be placed in any delicate or special position in which asking them to appear at a confronted enquiry would render them subject to any

danger to which witnesses are not normally subjected and hence these grounds constitute no justification for dispensing with the enquiry. There is total absence of sufficient material or good grounds for dispensing with the enquiry."

17. From the aforesaid, the conclusions are obvious:

a) it is the satisfaction of the concerned authority to record whether it is reasonably practicable to hold the enquiry or not;

b) Under Clause (3) of Article 311 of the Constitution, the decision is final but it is subject to judicial review;

c) The authority, conducting the judicial review, is competent to look into the fact as to whether there was sufficient material before the authority to dispense with the enquiry and there was sufficient material that ingredients of Article 311(2) (b) of the Constitution were satisfied or not.

18. With this backdrop, we revert back to the facts of the present case. At the outset, it must be mentioned that during the course of submissions, our attention has not been drawn to any material before the authority on basis of which it has been concluded that it was not reasonably practicable to hold the enquiry. There is no report from any authority that witnesses would be put to constant fear of threat and that they will not be in a position to depose during the departmental enquiry. We are, therefore, of the opinion that in the absence of any such material having been brought to the notice of this Tribunal by itself, it cannot be stated that keeping in view that the alleged act of the applicant was serious and detrimental to the Force would be a ground to uphold the

order. Necessarily, there had to be some material to come to such a conclusion and our attention is not being drawn to any such facts.

19. Otherwise also, pertaining to the same controversy, the appellant faced trial before the Court of Additional Sessions Judge, New Delhi. Before the Court, witnesses had appeared. There is nothing to show that they had made statement under threat. It would be difficult to presume unless recorded. One official witness, pertaining to recovery of the revolver from the applicant, even supported the prosecution case. Once the witnesses had come and appeared in the trial, we find no reason to conclude that they would not be appearing in the departmental enquiry. It is a matter of appreciation of evidence regarding which we need not express any opinion but the conclusion that is obvious is that there was little ground to conclude that it was not reasonably practicable to hold the enquiry.

20. Simply because if the applicant was an official and was involved in a serious offence by itself cannot be a ground for such a conclusion. Apprehension drawn by the concerned authorities is not supported by any material, which was brought to our notice.

21. Therefore, we conclude that in the peculiar facts of the present case, it cannot be held that the conclusion drawn can be sustained.

22. For these reasons, we allow the present Original Application and quash the impugned orders. It is further directed:

a) though the impugned orders are quashed, respondents would be at liberty to proceed with the departmental enquiry against the applicant, if deemed proper;

b) the applicant, who was under suspension, shall continue to be so. The disciplinary authority would be at liberty to take a further decision in this regard.

(S.A. Singh)
Member (A)

(V. S. Aggarwal)
Chairman

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