CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

OA NO. 1974/2004

New Delhi, this the 1st day of April, 2005

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

Ex. S.I. Vinod Kumar No. D/3045,
S/o Shri Shyam Kumar
R/o 90-DDA Flats,
Mansarovar Park,
Delhi – 32. ...Applicant

(By Advocate: Shri Sachin Chauhan)

-versus-

Govt. of NCT of Delhi through
1. Chief Secretary,
New Sachivalaya,
I.P. Estate,
Delhi.

2. D.C.P. VIth Btn.
DAP through
Police Hqr. MSO Building,
ITO, Delhi.

3. Jt. C.P.,
DAP, Police Hqrs,
MSO Building,
ITO, Delhi. ...Respondents

(By Advocate: Shri Ram Kawar)

O R D E R (ORAL)

Justice V.S. Aggarwal, Chairman:

Applicant was appointed as Sub Inspector in Delhi Police on 9.7.1990. By virtue of the present Original Application, he seeks to assail the order passed by the disciplinary authority dated 29.04.2004 whereby

invoking Article 311(2)(b) of the Constitution, the applicant has been dismissed from service. He had preferred an appeal, which also failed and was dismissed by the Joint Commissioner of Police.

2. The short question agitated before us has been as to if, in the facts of the case, the respondents were justified in invoking Article 311(2)(b) of the Constitution or not?

3. The facts, which prompted the disciplinary authority to invoke Article 311(2)(b) of the Constitution, are that the applicant was involved in three cases, details of which are:

Sl.No.	**Case**	**Allegation in brief**
1.	FIR No. 21/96 u/s 420/3 IPC, P.S. Civil Lines, Delhi.	He along with his two other associates cheated 10 gold biscuits worth Rs. 6 lacs from one Umesh Chandra an employee of Rajender Soni, a jeweler R/o A-63/4, G.T.K. Road, Indl.Area, Delhi.
2.	FIR No. 284/2000 u/s 420/406/34 IPC, P.S. Mansarovar Park, Delhi.	He cheated Rs. 7 lacs from one Dharmender Sharma R/o C-52/40-A, village Gamri, Bhajan Pura, Delhi on the pretext of delivering custom goods in low prices for business purpose.
3.	56/2001 u/s 25/24/59 Arms Act, P.S. New Usmanpur, Delhi.	He thrown two live cartridges in the house of Dharmender Sharma, complainant of above case FIR No. 284/2000 with ulterior motives along with threatening letter that he will got him hanged in false case.

4. He was earlier involved in five other cases and there were four other cases pending and he was under suspension. Taking stock of these

facts the disciplinary authority recorded:

> "Although he has been acquitted in the four criminal cases, earlier, a number of complaints have been received against him.
>
> The similarly of the complaints i.e. cheating indicates that there is truth in these allegations. The acquittal in the four cases also shows that pressure tactics have been applied to intimidate or win the witnesses.
>
> The delinquent was enlisted in Delhi Police as a Sub-Inspector in 1990 and first case against him was registered in 1994 and since then criminal cases have been registered against him regularly for the last ten years.
>
> The delinquent S.I. has shown total disregard of his status as a police officer by involving himself in large number of criminal cases. Instead of discharging his sacred responsibility of upholding the rule of law, he himself indulges in criminal cases, which has not only tarnished the image of Delhi Police but also badly shattered the faith of common man in the government authority. Such misconduct erodes the very basis of police functioning i.e. "public trust" without which the police as a service would become rather irrelevant.
>
> The above facts and circumstances of the case shows that the delinquent S.I. is highly desperate and dangerous person. The instances are not uncommon where people had not dared to depose even against an ordinary criminal whereas in the instant case the deposition by the Prosecution witnesses would be required against police officer, who have shown desperate criminal tendency. It is also clear that during the entire process of departmental proceedings the complainants and witnesses would be put under constant fear of threat to their person and property from the delinquent S.I. It is thus certain that the complainants and witnesses would not be in a position to muster courage to depose against the S.I. due to fear of severe reprisal from him. Under such circumstances it is thus not practicable to conduct a departmental enquiry against him.

> In view of the circumstances explained above, I.P. Dass, Dy. Commissioner of Police, VI Bn. DAP do hereby order to dismiss S.I. Vinod Kumar, No. D/3045 from the force with immediate effect under article 311(2)(b) of the Constitution of India. His suspension period from 28.2.2001 (suspended in four criminal cases four times separately) to the date of issue of this order will be treated as period not spent on duty for all intents and purpose and the same will also not be regularized in any manner. He will deposit all Govt. belongings in his possession including Identify Card, C.G.H.S. Card, Appointment Card and kit articles with the respective branches/stores."

5. The appellate authority in line with the same reasoning held that during the entire process of disciplinary proceedings, complainant and witnesses would be put under constant fear of threat of their person and property and they will not muster enough courage to depose against the applicant. Keeping in view his past record and criminal bent of mind, the appeal was also dismissed.

6. Article 311 (2)(b) of the Constitution of India 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 enquiry 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 that where it is proposed after such inquiry, to impose upon him any such penalty, such penalty may be imposed on the basis of the evidence adduced during such inquiry and it shall not be necessary to give

such person any opportunity of making representation on the penalty proposed:

Provided further that this clause shall not apply -]

(a) where a person is dismissed or removed or reduced in rank on the ground of conduct which has led to his conviction on a criminal charge: or

(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; or"

(c) ...."

7. 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.

8. 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."

9. It is on the touchstone of the aforesaid that the facts of the present case have to be re-appreciated. At the outset, we must make it clear that we are not in any way underpaying the gravity of the offence if committed. We are also not expressing ourselves in this regard because that is not the question to be considered before us.

10. Impugned orders clearly show that Article 311(2)(b) of the Constitution had been invoked because it was held that there was every possibility that the applicant would harass the public witnesses and keep them under constant fear. The order has also been passed keeping in view the bad record of the applicant and that such like persons should not remain in police force. It will destroy the faith of the public in the police.

11. During the course of submissions, it was pointed that in four cases, the applicant has since been acquitted.

12. Though such assertions have been made, our attention has not been drawn to any report that has been received by the police that any of the witnesses had been harassed which prompted them to come to such a conclusion. There is no other report to show that it was not reasonably practicable to hold the departmental enquiry. To come to such a conclusion, there has to be a basis. The same has not been shown. Such conclusions on presumptions and conjectures cannot be arrived at.

13. Similar situation had arisen before this Tribunal in the case of ***Radhey Shyam vs. Union of India*** (OA No. 1066/20001 decided on 14.12.2001) and a similar order was quashed. At the risk of repetition, it is mentioned that sine qua non before invoking Article 311(2)(b) of the Constitution is that it should not be reasonably practicable to hold the enquiry. The conclusions arrived at are not based on any material.

14. The seriousness of the offence cannot be the sole factor nor mere involvement in many cases can be the tilting factor to invoke Article 311(2)(b) of the Constitution. When the law requires a particular thing to be done in a particular manner, it should be done in that manner unless the ingredient that it is not reasonably practicable to hold the enquiry is satisfied or there is any material otherwise to prompt us to come to that conclusion. We find no reason to uphold the impugned order. Resultantly, we allow the present Original Application and quash the impugned orders and direct:

a) if the department so feels, it may initiate departmental proceedings;

b) applicant will continue to be under suspension; and

c) he will be entitled to the consequential benefits, if any.

(S.A. Singh)
Member (A)

(V.S. Aggarwal)
Chairman

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