CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No. 475 OF 2004

New Delhi, this the 16th day of August, 2004

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

Shri Jai Charan Verma,
S/o Hukam Singh,
R/o village Dallupura,
Delhi-110 094. ...Applicant

(By Advocate: Shri Naresh Kaushik)

-versus-

1. Union of India through
Secretary,
Ministry of Home Affairs,
North Block,
New Delhi.

2. Govt. of NCT of Delhi through its
Secretary Home,
Department of Home,
Delhi.

3. Commissioner of Police,
Delhi Police Hqrs.,
I.P. Estate, ITO,
New Delhi.

4. Joint Commissioner of Police,
Delhi Police Hqrs.,
I.P. Estate, ITO,
New Delhi. ...Respondents

(By Advocate: Sh. Saurabh Ahuja proxy for Sh. Ajesh Luthra)

O R D E R (ORAL)

By Mr. Justice V. S. Aggarwal:

The applicant (Jai Charan Verma) was Inspector in Delhi Police. The Joint Commissioner of Police invoked Article 311(2)(b) of the Constitution and dismissed the applicant from service vide order of 22.7.2003. He preferred an

appeal, which was dismissed on 29.01.2004. By virtue of the present application, he seeks to assail the said orders.

2. The only argument advanced before us was that in the facts of the present case, Article 311(2)(b) of the Constitution could not be pressed into service.

3. To appreciate the whole question in controversy, it would be appropriate to extract the order that has been passed by the disciplinary authority, which reads:

> "A complaint dated 20.6.2002 from one Smt. Raj Bala w/o Sh. Trilok Chand Vats R/o J-32/57, East Vinod Nagar, PS Kalyan Puri, Delhi was received wherein the complainant alleged that she and her family were being victimized by Jai Charan Verma @ Gurjar, SI (now Inspector No. D-I/1065, under suspension), a known land grabber of East Delhi and she had filed a case in the court in this regard. She further alleged that she and her family had a threat to their life as he had earlier made a murderous attack on her husband. She also alleged that she was being constantly intimidated to withdraw the case from the court otherwise her family would be eliminated. The complaint was got enquired into through Special Cell which revealed that Inspr. Jai Charan Verma No. D-I/1065 does not enjoy a good reputation and is known to be a land-grabber and a "terror in the area". His name also exists in the agreed list of persons of doubtful integrity. As per record, he has been involved in the following cases relating to trespass, attempt to murder, grievous hurt, criminal intimidation etc:-
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> (i) Case FIR No. 517/73 u/s 447 IPC PS Farsh Bazar, wherein he was arrested along with his three associates for trespassing on Government land but was acquitted by the Hon'ble Court on 23.6.77. Since the old records containing the judgment/order of the case have reportedly been destroyed, the reasons for acquittal are not possible to ascertain.
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> (ii) Case FIR No. 350/82 u/s 147/148/149/307/34 IPC, PS Kalyan Puri, wherein the defaulter Inspector was involved along with his 5 associates in rioting and attempt to murder of one Padam Sharma. The Inspector has been acquitted by the Hon'ble Court of Shri S.M. Aggarwal, Addl. Sessions Judge, Shahdara on 12.4.89 since the prosecution was unsuccessful in bring home the guilt of the accused persons beyond reasonable doubt. Thus a doubt about the complicity of the defaulter Inspector remains very much alive, but for the absence of prosecution witnesses despite service of summons.
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> (iii) Case FIR No. 220/83 u/s 325/34 IPC for causing grievous hurt to one Zile Singh with the help of his two associates. The case was reportedly compromised on 12.9.86 in the Hon'ble Court of

the Shiv Charan MM Shahdara. The copy of judgment is not available because the records concerning the judgment have been destroyed, making it impossible to ascertain the circumstances under which the complainant was forced to compromise the case.

(iv) Case FIR No. 123/84 u/s 452/323/34 IPC PS Kalyan Puri wherein the Inspector had trespassed and beaten one Karam Singh along with 6 of his associates. He was acquitted on 11.9.90 and judgment record has been reportedly destroyed.

(v) Case FIR No. 11/84 u/s 325/37 IPC PS Kalyan Puri for causing grievous hut in conjunction with two of his associates to SI P.R. Kaushik of Delhi Police. The matter was compromised on 18.1.86 in the Hon'ble court of Shri Shiv Charan, MM, Shahdara. The records pertaining to this case have been destroyed, hence the copy of the judgment is not available.

(vi) Case FIR No. 129/93 u/s 506 IPC PS Shahdara for threatening the Naib Court Ct. Jagdish Prasad who filed an affidavit against the SI (now Inspector) in case FIR No. 398/90 u/s 308/34 IPC PS Kalyan Puri wherein the Inspector had produced a dummy accused. The Inspector has been acquitted in the case.

(vii) Case FIR No.558/91 u/s 147/148/149/186/353/332/ 307/ 308/ 427 IPC PS Kalyan Puri for rioting and assaulting the police. The case has however been withdrawn with the permission of the Hon'ble L.G., Delhi on 7.6.95.

(viii) Case FIR No. 398/90 u/s 308/34 IPC PS Kalyan Puri for assaulting one Mahender Singh in common intention with three of his associates. Though the Inspector was acquitted in the case, the case has been reopened by the orders of the Hon'ble ASJ Karkardooma Court. The case is now pending trial. He has threatened the complainant, and even the Naib Court in this case for which he was arrested in case FIR No. 129/93 u/s 506 IPC PS Shahdara. SSP, Panipat has also been asked by DCP/East Distt. For extending protection to the complainant Mahender Singh in Haryana, in view of the threat perception.

(ix) Case FIR No. 400/2000 u/s 325/34 IPC PS Kalyan Puri for assaulting one Gurnam Singh in common intention along with his son and 3 other associates. The case is pending trial.

He is further involved in the following Civil cases:-

(i) 6/2000, in the hon'ble court of Ms. Preeti Aggarwal, Civil Judge, Tis Hazari Court.

(ii) 24/2000 in the hon'ble court of Sh. Bhupender Kumar, Civil Judge, Tis Hazari Court.

(iii) FAO No. 246/2001 and CN No. 418/2001, in the hon'ble court of Sh. S.N. Kapoor and Sh.O.P. Saini, the High court of Delhi.

Besides the above mentioned cases, he has also been proceeded against departmentally and was dismissed, but was later reinstated on the directions of hon'ble CAT and 2 years approved service has been forfeited permanently.

The enquiry into the misconduct of the default Inspector reveals that he is a notorious land-grabber. A number of criminal cases have been registered against him, a couple of which are still pending trial. The cases are of grave nature including rioting, attempt to murder, trespass, criminal intimidation, wrongful restraint, grievous hurt, obstructing public servants in discharge of their official duties etc., and show his desperate character, disregard for the law, in spite of being a police officer. His propensity to threaten the witnesses and complainants is well known. He has not spared even members of the police force in his criminal activities. He has threatened a naib court in the court complex for filing an affidavit against him. He has threatened the aforementioned Smt. Rajbala and her family including her husband, who is a HC in Delhi Police, of dire consequences if the complaint she made against him was not withdrawn. He has shown total disregard of his status as a police officer by colluding with other criminal elements, thereby tarnishing the image of the Delhi Police. Most of the criminal activities he has indulged in have involved a number of his associates which has resulted into an atmosphere of violence and consequently it can be a fortiori stated that the witnesses are terror-stricken for fear of reprisal that their joining any departmental enquiry does not seem at all possible. Though the defaulter Inspector has been acquitted in a number of cases, yet in the absence of copies of judgments/orders, it is very difficult to infer whether the acquittals were honourable, more so in view of the gravity of the offences committed by him and the number of his accomplices involved. These objective facts and overall circumstances sufficiently show that it is not reasonably practicable to hold an enquiry into any misconduct committed by the Inspector.

Inspr. Jai Charan Verma No. D-I/1065 is a stigma to the name of the Delhi Police and his activities are required to be stopped forthwith. The Inspector's continuance in the force is ipso facto against the principles of general discipline and the Rule of law, particularly in the aftermath of all the criminal activities undertaken by him. He has displayed muscle-power and the authority of his

> uniform to victimize innocent people. Society expects a police officer as the executive hand of state to be a protector of law and of the property of the public. His criminal acts are reprehensible in character and have an effect on the morale of the force itself and, understandably, the common man, whose confidence the Delhi Police so keenly cherishes to maintain. After a plethora of acts of such a serious nature, if the Inspector is allowed to continue in the force, it would be detrimental to public interest. However, as discussed above, it is asking too much from the hapless victims of this Inspector to come forward and show enough resolve by deposing against him during any departmental enquiry, notwithstanding various complaints civil as well as criminal, made by them. Thus it is a foregone conclusion in this case that the continuance of the Inspector in a disciplined force like the Delhi Police is not at all desirable. At the same time, nevertheless, it is also crystal clear that it is not reasonably practicable to hold the DE against him in view of the above discussion. Thus there are enough grounds to proceed under Article 311(2)(b) of the Constitution of India against the Inspector."

4. The Original Application as such has been contested.

5. Article 311(2)(b) of the Constitution draws one of three exceptions to the general rule that before a person can be dismissed from service, a reasonable opportunity to contest must be granted. However, if it is not reasonably practicable to hold the enquiry in that event Article 311(2)(b) comes into play and without holding the enquiry, services of a person can be dispensed with.

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 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."
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> "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."

7. More recently the Hon'ble Supreme Court in the case of ***State of Haryana and Others vs. Ram Kumar and Ors. Etc.,*** Civil Appeal No. 6361-6363 of 2002 decided on 9.3.2004, though concerned with somewhat different facts, had dealt with this position of law and held:

> "A perusal of Article 311(2)(b) shows that it can be invoked only when the authority is satisfied from the material placed before him that it is not reasonably practicable to hold a departmental enquiry. 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 was based on certain objective facts and is not the outcome of the whim or caprice of the officer. A disciplinary authority is not expected to dispense with a departmental enquiry lightly or arbitrarily or merely to avoid the holding of an enquiry or because the case of the department against the government servant is weak (see para 130 of the judgment of the Constitution Bench of this court in the case of **Union of India vs. Tulsiram Patel** reported in AIR 1985 SC 1416). In the present case, the reasons recorded by the disciplinary authority for dispensing with the enquiry were non-participation by the delinquents in the enquiry; destruction of the records by the delinquents in the course of the enquiry; abusing the enquiry officer and giving of threats to senior police officers. In our view on facts of this case, there is no sufficient ground for dispensing with the enquiry under clause (b) of the second proviso to Article 311(2) of the Constitution. What we found here that the enquiry was being held by senior police officers; the delinquents were head constables and nothing prevented the enquiry officer from proceeding with the enquiry ex parte under the above circumstances. On the facts of the case, we are of the view that the reasons given in this case for dispensing with the enquiry do not fall within the expression "not reasonably practicable" under clause (b) of the second proviso to Article 311(2) of the Constitution and accordingly, we are in agreement with the view taken by the High Court."

Therefore from the aforesaid, it is clear that the question as to whether it is reasonably practicable to hold the enquiry is firstly a question of fact. Going with the facts of each case, the enquiry has not to be dispensed with lightly or arbitrarily merely because the case is likely to be weak.

8. With this proposition of law having been settled, we can revert back to the facts of the present case. In the impugned order, which we have reproduced above in extenso and was upheld in appeal, it is obvious that the applicant indeed had been involved in a large number of cases but in most of the cases he had been acquitted and in one case the Lieutenant Governor had himself withdrawn the case. They pertained to the incidents of almost 10 years or more than ten years. In

face of these facts, it would not be proper to draw inferences and attract Article 311(2)(b) of the constitution at this late stage.

9. Great stress was led on behalf of the State on the fact that one Smt. Rajbala had made a complaint against the applicant. It had been enquired and it was found that the applicant is a known land-grabber and is a terror in the area. His name exists in the list of persons of doubtful integrity. In the complaint, Smt. Rajbala had stated that she and her family had a threat to their life and there were a murderous attack on her husband. It further indicates that matter was enquired into.

10. In this regard the applicant's learned counsel had drawn our attention to the order that has been passed by a Civil Judge in the litigation between Smt. Rajbala and the applicant in civil suit no. 331/1999. Prima facie, Civil Judge concluded that it was Smt. Rajbala, who was trying to encroach upon the land of the applicant, who was defendant therein. The prima facie findings in this regard are:

> "4. I have heard the arguments of the Ld. Counsels for the parties and in order to succeed in hi application the plaintiff has to show following three factors in her favour i.e. (1) Prima facie case (2) Balance of Convenience (3) Irreparable Loss; I will first deal with prima facie case.
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> Prima Facie case – It is the main grievance of the defendant that as per her own version the plaintiff claims to be the owner of the land measuring 125 sq.yards where as on the measurement given with site plan attached with the plaint the area comes only about 92.96 sq.yd. and thus it is clear that the plaintiff is trying to encroach upon the land of the defendant, to this the reply to the Ld. Counsel for the plaintiff is that in any case the plaintiff is doing construction over her own land and the different had no concern with the land of forming part of Khasra No. 76/2 in as much as he has come to be the owner of land falling Khasra No. 73/3 only, but it is to be noted at a very outset that the relief claimed by the plaintiff in her suit and in the application under order 39 Rule 1 & 2 are same as it is the settled legal position that the interim injunction should not be granted in cases where the interim relief claimed in the injunction application is same and the grant of interim relief, will therefore amount to decretal of the suit at this very stage and as such when the relief claimed in the interim application and in the main suit are same. The

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> injunction cannot be granted except in the case of a great hardship and Ld. Counsel for the plaintiff had failed to show any such hardship on record, thus the relief cannot be granted at this stage and the position of law is settled in the case reported as Shalimar Pains vs. Philps and company decided by the Hon'ble High court of Delhi, in view of this I am of the opinion that no relief can be granted at this stage, and as such there is no question of considering the other factors or this question prima facie case any further at this stage. The interim application is disposed off accordingly. Now to come up on 6.12.1999 for documents, additional documents and issues in matters. "

11. At this stage further opinion need not be expressed because the matter must be still pending but it has to be viewed in the light of the present controversy as to if Article 311(2)(b) of the Constitution could be invoked. It appears that in face of the civil litigation already pending between Smt. Rajbala and the applicant it cannot be termed that it is not reasonably practicable to hold the enquiry against the applicant.

12. In the impugned order, much stress has been laid on the past conduct of the applicant to which we have already referred to above. The disciplinary authority further referred to the fact that the applicant has been acquitted in a number of cases yet in the absence of copies of the judgments, it was difficult to infer whether acquittal was honourable or not. We fail to understand as to why the disciplinary authority was not in a position to get the copies of the judgments in those cases particularly when all other particulars were available and have been reproduced in the order.

13. It is true that allegations made are serious but law must take its own course. It appears that disciplinary enquiry had already been started against the applicant but in face of the order it had been kept in abeyance. We have already mentioned that it can be reasonably practicable to hold the enquiry. The general conduct of the applicant in this regard, therefore, keeping in view the totality of facts, does not prompt us to hold that it was not reasonably practicable to hold the enquiry.

14. No other argument was advanced.

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15. For these reasons, we allow the Original Application with the following directions:

a) Impugned order is quashed;

b) If the applicant was under suspension, he would continue to be under suspension;

c) Nothing said herein would restrain the respondents from re-starting the inquiry, if deemed proper; and

d) Consequential benefits, if any, are to be paid to the applicant in accordance with law within a period of four months.

(S.K.Naik)
Member (A)

(V.S.Aggarwal)
Vice Chairman

/Na/