CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

Original Application No.967/2004

New Delhi, this the **24th** day of **December, 2004**

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

Ex. Ct. Rishipal No.1021/E
S/o Sh. Puran Chand
R/o Village & Town Rajapur
Dist. Ghaziabad UP. ... Applicant

(By Advocate: Sh. Sachin Chauhan)

Versus

1. Govt. of N.C.T.D,
Through its Secretary
New Sachivalaya
I.P.Estate,
New Delhi.

2. Joint Commissioner of Police
Armed Police
Police Headquarters, I.P.Estate
M.S.O.Building
New Delhi.

3. Add. Dy. Commissioner of Police
East District, New Delhi. ... Respondents

(By Advocate: Sh. Harvir Singh)

O R D E R(Oral)

By Mr. Justice V.S.Aggarwal:

Applicant seeks to assail the order passed by the disciplinary authority and the appellate authority dated 17.3.2003 and 22.3.2004, respectively. Invoking Article 311(2)(b) of the Constitution, his services have been put an end to.

2. The relevant facts alleged are that the applicant along with Head Constable Yash Pal were posted at Police Station Vivek Vihar. FIR No.68/2003 with respect to offences punishable under Sections 384/419/411/34 IPC was registered at Police Station

Lahori Gate at the instance of one Shri Patel Govind. He had reported that on 4.3.2000 at about 3 PM while he was in his office, three persons posing to be from the Crime Branch had visited and made inquiry about his business as well as the cash present. They asked him to put all the money in a bag and threatened to shoot him if he did not follow their instructions. He complied with the directions and had put the money amounting to Rs.80,000/- in the bag which was snatched at pistol point by Constable Manoj Kumar.

3. By the time the miscreants had stepped out, the people had gathered outside the shop. Constable Manoj Kumar and his associates were apprehended. Service pistol was recovered from Constable Manoj Kumar. Som Pal and Manoj Kumar were handed over by the public to the Police while third person had escaped. Som Pal had been arrested also in the case and was produced before the Court. On interrogation, it was revealed that the applicant and one Pramod were also with him when the offence was committed.

4. The disciplinary authority invoking Article 311 (2) (b) of the Constitution recorded:

> "The aforesaid misconduct of the defaulter police officials shows that they are a desperate character and a liability on the Delhi Police and their continuance in Delhi Police is hazardous to the public. The society excepts a policeman to protect citizens from criminals and crime, but instead this they have been found to the a criminal themselves extorting money with impunity. Their act are not only immoral and reprehensible, but also reflect a grave misconduct of criminal nature by a police officer, a public servant entrusted with the responsibility of protecting the society. Such a misconduct by a police officer is bound to destroy the faith of people in the administration in general and police in particular. The

involvement of HC Yash Pal No.166/E and Constable Rishi Pal No.1021/E in such a shameful and criminal act have eroded the faith of common people in police and their continuance in police force is likely to cause further irreparable loss in police force is likely to cause further irreparable loss to the functioning and credibility of Delhi Police. The defaulter have acted in a manner highly unbecoming of police officials and highly prejudicial to the safety and security of the citizens. They have also tarnished the image of Delhi Police. Not only they have indulged in a criminal act against a public person, whom as a police officer they were entrusted to protect but have also breached the trust and confidence of fellow police officers for whom they have to gain the faith of the people.

It is not possible to conduct a departmental inquiry and conclusively establish the allegations against the defaulters. After an act of such serious misconduct, If they are allowed to continue in the police force it would be detrimental to public interest. Besides, it is a common experience that terrorizing and intimidating the witnesses not to come forward to depose against the delinquents in the departmental inquiry has now become common tactics adopted by the involved police officials. It also calls for great courage and guts to depose against such a desperate person and the task becomes more acute and difficult when the delinquents are a police officials, who may lose their job on their statement/deposition. In the instant case the possibility of victims being unduly pressurized and threatened also can never be ruled out. It would indeed be too much to expect from such helpless victims to show requisite resolve throughout the spun of departmental proceedings against the defaulters police officials and then invite the wrath of such a disgruntled lot throughout their life."

5. The application is being contested.

6. The learned counsel for the applicant contended that the applicant had been discharged in FIR No.70/2003 by the learned Metropolitan Megistrate and further in any case, it was not a fit case where Article 311(2)(b) of the Constitution could be invoked.

(6)

7. The copy of the order passed by the learned Metropolitan Megistrate in FIR No.70/2003 had been produced to show that the learned Court held that there was not sufficient material on record to make out a prima-facie case for the offence punishable in the above said FIR. The applicant had been discharged.

8. Under Section 239 of the Criminal Procedure Code, if there is some evidence against a person, charge is framed and otherwise the Court can discharge the said person. For the FIR referred to above, the applicant had been discharged or in other words, so far as the FIR 70 of 2003 in the concerned Police Station is concerned, there was no material against the applicant. To that extent, it can easily be stated that though the offence named was heinous, there was precious little against the applicant.

9. Otherwise also, we know from 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."
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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."

10. From the aforesaid, it is clear that the disciplinary authority had been swayed by the fact that Article 311 (2)(b) of the Constitution can only be invoked when the necessary conditions of the same are satisfied. The disciplinary authority should record in writing its reasons that it was not reasonably practicable to hold the inquiry. Such a finding necessarily has to be arrived at on the basis of some material. If authority cannot be swayed by the fact that the offence was heinous, simply because if he was a Police Officer by itself will not be a sole ground to conclude that it was not reasonably practicable to hold the inquiry.

11. Our attention had not been drawn to any such material that the applicant had tried to interfere in the administration of justice and thus nature of offence cannot be a tilting factor. On both the counts, the application must be allowed because

(14)

necessary ingredients of Article 311(2)(b) of the Constitution are not satisfied.

12. For these reasons, we allow the present application and quash the impugned order. It is directed that the disciplinary authority, if deemed appropriate, may initiate the disciplinary proceedings in accordance with law but consequential benefits should be paid to the applicant as per the Rules.

(Sarweshwar Jha)
Member (A)

(V.S.Aggarwal)
Chairman

/NSN/