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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

O.A. No.1248/92

DATE OF DECISION: 23-11-92.

NIRMAL SINGH ..APPLICANT

VERSUS

COMMISSIONER OF POLICE AND OTHERS ..RESPONDENTS

SHRI G.D. GUPTA ..COUNSEL FOR THE APPLICANT

SHRI A.K. AGGARWAL ..COUNSEL FOR THE RESPONDENTS

CORAM:

HON'BLE JUSTICE SHRI RAM PAL SINGH, VICE CHAIRMAN (J)

HON'BLE SHRI I.P. GUPTA, ADMINISTRATIVE MEMBER.

J U D G E M E N T

(DELIVERED BY JUSTICE SHRI RAM PAL SINGH)

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1. Whether reporters of local papers may be allowed to see the judgement?

2. To be referred to the Reporter or not? Yes.

3. Whether their Lordships wish to see the fair copy of the judgement? Yes.

4. Whether it needs to be circulated to other Benches of the Tribunal?

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The applicant was employed as a Sub-Inspector in Delhi Police in year 1977. He continued in service for 15 years. When he was posted at Police Station Lajpat Nagar, a case under F.I.R. No.141 under Section 323/354/4152/506/34 of the IPC was registered on the complaint of one Smt. Sunita against Smt. Poonam and others. The applicant during the performance of his duty as a police officer is alleged to have mis-conducted himself. A complaint was lodged by Smt. Jayanti Patnaik, Chair person of National Commission for Women against the applicant before the vigilance upon which a vigilance enquiry was conducted against the alleged mis-conduct of the applicant. He was alleged to have arrested Smt. Poonam, wife of Sunil Kumar of Lajpat Nagar and locked her up in the lock-up of Police Station, depriving her of food, water and other toilet facilities. He is also alleged to have made obscence gestures towards her and tried to persuade her to indulge in flesh-trade through a known pimp, Kanwaljit Singh. The said pimp is said to be facing several prosecutions under the provisions of Immorale Traffic in Womens Act. For this mis-conduct, the applicant was suspended and an enquiry was held by the Additional Commissioner of Police, South Range, New Delhi. This enquiry was conducted under the provisions of Article 311 (2) proviso 2(b) of the Constitution of India. The said Additional Commissioner of Police in para 4 of the impugned order (A-3) has mentioned that a regular departmental enquiry against the applicant will not be reasonably practicable as it is not uncommon in such cases to find the complainant and the witnesses to turn hostile due to fear of reprisal. The witnesses are also terrorised and intimidated for not giving the evidence during the departmental enquiry. Hence keeping overall facts and circumstances of the case in view, the Additional Commissioner of Police imposed upon him the panelty of removal from service with immediate effect. It is this order Annexure A-3 passed on 1.5.1992, which is being challenged by the applicant in this OA filed under Section 19 of the Administrative

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Tribunal's Act of 1985.

2. Respondents on notice, appeared and filed their counter justifying this enquiry under Article 311(2) proviso 2(b) of the Constitution of India. They have also enumerated the facts of the case in great detail in their counter. During the pendency of this O.A. an inter-locatory application (MP No.2606/92) was filed by India House Wives Federation Anand Niketan, New Delhi, opposing the OA. Another intervention application was filed by National Commission for Women in MP 3111/92. The complainant Smt. Poonam Baluja also filed MP 3112/92, an application for intervention on her behalf against the prayer contained in the OA. All these intervention applications were filed by Shri U.K. Shandilya, Advocate, New Delhi. In these intervention applications, the gory details of the alleged incident is described, by which they have opposed the prayer of the applicant mentioned in the OA.

3. We have heard Shri G.D. Gupta, counsel for the applicant and Shri A.K. Aggarwal, counsel for the official respondents. Shri Shandilya, the counsel for the interveners was also heard later. The applicant had also prayed for interim relief containing the prayer that he should not be evicted from the residential quarter he is occupying during the pendency of the OA. The said prayer for interim relief was rejected by us on 12.8.1992.

4. The sole question which appears to emerge is whether the removal from service of the applicant under Article 311 (2) of the Constitution is just and proper and whether he has been prejudiced because he has been removed from service without a proper inquiry as provided in the rules framed under the Delhi Police Act. Proviso 2(b) to Article 311 (2) of the Constitution is reproduced below for convenience:

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"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 charges; 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 notreasonably practicable to hold such enuiry, or

(c) where the President or the Governor, as the case may be, is satisfied that in the interest of the security of the State it is not expedient to hold such enquiry.

(3) If, in respect of anysuch person as aforesaid, a question arises whether it is reasonably practicable to hold such inquiry as is referred to in clause (2), the decision thereon of the authority empowered to dismiss or remove such person or to reduce him in rank shall be final."

The provision of sub-clause (b), as quoted above, provides that where the authority empowered to dismiss or remove a person or reduce him in rank is satisfied that for some reasons, to be recorded by that authority in writing, it is not reasonably practicable to hold such an inquiry, then he can pass an order for dismissal/removal of the delinquent. The conditions, therefore, required to be satisfied are that an opinion has to be formed that looking to the gravity of the misconduct the delinquent deserves to be dismissed or removed from service or reduced in rank and after evaluating this fact, that authority is required to record in writing the reasons that the holding of such an inquiry is not practicable. Thus, the authority has to pass through two stages - 1st the authority has to form an opinion that looking to the gravity of the misconduct, the delinquent deserves to be dismissed or removed from serivce and 2nd reasons to be recorded in writing that, it is not reasonably practicable to hold an inquiry. To hold an inquiry for a misconduct of the delinquent employee is the normal rule when those rules are framed under Article 309 of the Constitution of India. Thus, this provision in the Constitution, brushing aside a departmental inquiry is an exception to the general rule that a delinquent cannot be removed from service without holding an enquiry. This provision is also an exception to the Pleasure Doctrine contained in Article 310 (1) of the Constitution

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which gives constitutional mandate to the audi alteram partem rule of natural justice. The key words in the second proviso that this clause shall not apply is mandatory in nature and not directory, by which the disciplinary authority form an opinion for not holding an inquiry whenever anyof these three sub-clauses (a), (b) and (c) are applicable. The second proviso has been introduced in public interest and for public good and has to be strictly construed. Although natural justice principles are implicit in Article 14 of the Constitution, those principles having been expressly excluded by the second proviso, in such a situation, the delinquent cannot complain that he is deprived of his livelihood. The rules framed under Article 309 cannot liberalise the complete exclusion of natural justice principles effected by the second proviso and if a rule does so, it would have to be read as directory, otherwise it would be ultra vires. A complete thesis has been laid down by the Constitution Bench of the apex court on the subject in the judgement rendered in **Union of India and Ors. vs. Tulsi Ram Patel (AIR 1985 SC 1416)** but it has to be remembered that a disciplinaryauthority is not expected to dispense with the disciplinary inquiry lightly or arbitrarily or out of ulterior motive 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. A situation which makes the holding of an inquiry not reasonably practicable can exist before the disciplinary inquiry is initiated against the Government servant. Such a situation can also come into existence subsequently during the course of an inquiry. In such a case also, the disciplinary authority would be entitled to apply clause (b) of the second proviso to Article 311 (2) of the Constitution because the word "inquiry" in that clause includes part of an inquiry. Therefore, even where a part of an inquiry has been held and the rest is dispensed with under clause (b) or a provision in the service rules analogous thereto, the exclusionary words of the second proviso to Article 311 (2) operate

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in their full vigour and the Government servant cannot complain that he has been dismissed/reoved or reduced in rank in violation of the safeguards provided under Article 311 (2) of the Constitution.

5. Their Lordships of the Supreme Court in **Tulsi Ram Patel** (supra) in para 102 of the judgement have mentioned that a Government servant is not wholly without any opportunity of being heard whenever the second proviso applies; though there is no prior opportunity to a Government servant to defend himselv against the charges made against him, he has the opportunity to show it in an appeal filed by him that the charges made against him are not true. According to their Lordships, the opportunity of providing the delinquent an opportunity for filing an appeal is sufficient compliance with the requirements of principles of natural justice. The observations of the apex court are as below:

> "102. In this connection, it must be remembered that a servant is not wholly without any opportunity. Rules made under the proviso to Article 309 or under Acts referable to that Article generally provide for a right of appeal except in those cases where the order of dismissal, removal or reduction in rank is passed by the President or the Governor of a State because they being the highest Constitutional functionaries, there can be no higher authority to which an appeal can lie from an order passed by one of them. Thus where the second proviso applies, though there is no proper opportunity to a government servant to defend himself against the charges made against him, he has the opportunity to show in an appeal filed by him that the charges made against him are not true. This would be a sufficient compliance with the requirements of natural justice....."

This very principle was also enunciated in the case of Maneka Gandhi (AIR 1978 SC 597) and in the case of **Liberty Oil Mills (AIR 1984 SC 1271).** The same principle was reiterated by Constitution Bench of the Supreme Court in the case of **Satyavir Singh and others (1985 (4) SCC 252).**

6. Thus, Tulsi Ram Patel (supra) after laying down the law, clearly creates appellate avenue to a delinquent whose services have been terminated by the disciplinary authority under Article 311(2) proviso 2(b) of the Constitution of India and we need not refer

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to any other judgement cited by the counsel for the applicant. When the appeallate avenue is opened to the delinquent by the judgement of the apex court in Tulsi Ram Patel, [redacted] this remedy is available to the delinquent and he can avail this remedy under this mandate given in **Tulsi Ram Patel.** Section 20 of the Administrative Tribunals Act, provides that if the statutory remedy is available, then it should be availed and only then the OA under Section 19 of the Act, shall be maintainable. This statutory remedy, though is not available under rules, yet it has been provided by this judgement of the Supreme Court. Thus, [redacted] the remedy of appeal is still available to the applicant. He can file the appeal before the next higher authority than the Additional Commissioner of Police South Range, New Delhi, i.e. before the Commissioner of Police, New Delhi, on the strength of the law laid down by the Constitution Bench in **Tulsi Ram Patel (supra).** We therefore, make the following directions:

(1) This OA is dismissed as premature;

(2) The applicant shall avail the remedy of filing an appeal against the impugned order (Annexure 3) before the Commissioner of Police, New Delhi within a period of 15 days from the receipt of the copy of this judgement.

(3) The delay in filing this appeal shall stand condoned by this judgement.

(4) The Commissioner of Police, New Delhi shall dispose of the said appeal of the applicant by a speaking order within a period of three months from the date of filing of the appeal. The applicant shall file the appeal along with the copy of this judgement.

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(5) If the applicant is aggrieved by that appellate order, then he may invoke the jurisdiction of this Tribunal under Section 19 of the Administrative Tribunal Act of 1985 and all the points raised in this OA shall remain open to him.

(6) The parties shall bear their own costs.

Shri G.D. Gupta has prayed in the end that the applicant should not be evicted from his accommodation. He can make this prayer either to the appe-llate authority or to the respondents.

(I.P. Gupta) 23/11/92
Member (A)

(Ram Pal Singh) 23.11.92
Vice-Chairman (J)