CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

O.A No.2592/2014
With
O.A. No.2067/2015
O.A. No.2413/2015

Reserved On:12.03.2018
Pronounced on:13.04.2018

Hon'ble Mr. V. Ajay Kumar, Member (J)
Hon'ble Ms. Nita Chowdhury, Member (A)

OA No.2592/2014

Shri Kaushal Singh
S/o Late Shri Rajpal Singh
R/o Vill. & PO – Thora, P.S. Zever,
Distt. G.B. Nagar, U.P.
Aged 44 years … Applicant

(By Advocate: Shri Ajesh Luthra, Advocate)

Versus

1. Commissioner of Police
Police Headquarters, I.P. Estate
M.S.O. Building, New Delhi

2. Jt. Commissioner of Police
South Eastern Range
Police Headquarters, I.P. Estate
M.S.O. Building, New Delhi

3. Deputy Commissioner of Police
(South-East)
P.S. Sarita Vihar,
New Delhi … Respondents

(By Advocate: Shri K.M. Singh)

OA No.2067/2015

Sh. Nagendra Kumar,
s/o Sh. Nahar Singh,

R/o Vill. Deta Kalan,
P.O. Deta Khurd,
P.S. Pisawa,
Distt. Aligarh, U.P.
Age 33 years,
(Dismissed Sub Inspector/Delhi Police) ... Applicant

(By Advocate: Shri Ajesh Luthra)

Versus

1. Commissioner of Police,
PHQ, MSO Building,
IP Estate, New Delhi.

2. Joint Commissioner of Police,
(Southern Range),
PHQ, MSO Building,
IP Estate, New Delhi.

3. Deputy Commissioner of Police,
South East District
P.S. Sarita Vihar. ... Respondents

(By Advocate: Shri K.M. Singh)

OA No.2413/2015

Amit Tomar,
S/o Shri Shishpal Singh Tomar,
R/o Flat No. 34 C,
Platinum Enclave I-Block,
Sector-18, Rohini,
Delhi-110089
Aged about 33 years,
(Dismissed Head Constable/Delhi Police) ... Applicant

(By Advocate: Shri Ajesh Luthra)

Versus

1. Commissioner of Police,
PHQ, MSO Building,
IP Estate, New Delhi.

2. Additional Commissioner of Police,
(Crime), 10th Floor,
PHQ, MSO Building,

IP Estate, New Delhi.

3. Deputy Commissioner of Police,
Crime (South),
Office at : P.S. Kamla Market. ... Respondents

(By Advocate: Ms. Sumedha Sharma)

ORDER

By Mr. V. Ajay Kumar, Member (J)

Since the facts and law involved in these batch of OAs are identical, the same are being disposed of by this common order. However, facts in each case are considered, in brief, wherever necessary.

2. In all the OAs, the applicants, questioned the respective disciplinary and appellate orders under which they were dismissed from service by invoking Sub-Clause (b) to the second proviso to Article 311(2) of the Constitution of India, i.e., by dispensing with the departmental enquiry proceedings, while dismissing the applicants.

3. In OA No.2592/2014 while the applicant was working as Constable, one Shri Sanjay Kumar Thakur filed a complaint against three police officials, i.e., SI Nagendra Kumar (applicant in OA No.2067/2015), Head Constable Amit Kumar (applicant in OA No.2413/2015) and Constable Kaushal Singh (applicant in OA No.2592/2014) which was registered as FIR No.186/13 dated 06.11.2013 under Sections 384/34/IPC, PS Crime Branch and the

allegations levelled against the applicant in this connection, and as mentioned in the order of the disciplinary authority dated 27.11.2013, as follows:

> "It is found that a case FIR No.186/13 dated 06.11.2013 u/s 384/34 IPC, PS Crime Branch is registered on the complaint of Shri Sanjay Kumar Thakur. As per the complaint he is running a Computer Coaching Institute at I-390, Hari Nagar Market, Jaitpur Road, Badarpur, Delhi. On 04.11.2013 at about 7.30PM, three police officials namely SI Nagendra Kumar, HC Amit Tomar and Const. Kaushal Singh, who disclosed themselves to be from Crime Branch came to his institute and told him that he is running a syndicate of e-ticketing and started checking his computer. Police officials asked him the password of his e-mail and after getting it, they opened his mail and checked all the tickets booked by him in the name of various parties. They checked that on 4.11.2013, complainant issued three Tatkal tickets for Savita Thakur (Bhabhi), Dinesh Kumar uncle of his friend Chander Kumar and one more third ticked whose details are not known to complainant. All the three police officials told the complainant that he is doing some illegal act by booking these Tatkal Tickets and he is to be arrested in the case. In the meantime, father of the complainant, Shri Alik Kant Thakur came to the spot and requested to leave his son. On this the police officials took the complainant and his father to their office at 2nd floor, Police Post Nehru Place, New Delhi. One ticket agent was already found in their custody in the office and by causing the fear of arrest they demanded Rs.5,00,000/- from the complainants' father. After lot of bargaining they have settled for Rs.1,50,000/- and the complainant's father paid them the agreed amount and took the complainant back to house. The police officials also removed the hard disk from their computer and took the register and bill book from their office."

4. The disciplinary authority dismissed the applicant from service without conducting the departmental inquiry, in terms of the relevant disciplinary and appeal rules, by invoking Sub-Clause (b) to the second proviso to Article 311(2) of the Constitution of India and the reasons for invoking the said power were explained, in the order of the disciplinary authority dated 27.11.2013, as under:

> "A fact findings enquiry was got conducted by P.G. Cell/SED. During enquiry documents were collected from Crime Branch. Ct. Kaushal Singh's involvement in the commission of crime and omission from his Govt. Duty (marked absent vide DD No.50, dated 07.11.2003, Distt. Lines/SED) is proved.
>
> A police person involving in an act of extortion shows his desperateness. He helped in the execution of illegal acts of HC Amit Tomar and SI Nagendra Kumar. Such criminal acts of police personnel completely destroy the confidence of the public on the police force. Because of his criminal bent of mind and involvement in extortion case no witness could come forwarded for any enquiry. He is also absconding from the clutches of law. This conduct itself shows his involvement in the crime. As per the fact finding enquiry he is clearly involved in the commission of crime.

> .....I am of the view that Const. Kaushal Singh, No.1265/SE brought bad name to the entire police force. The indulgence of police personnel in such a dastardly act would destroy the faith of the people in the law enforcement system and no witness will come forward for any enquiry. The involvement of the Constable in such criminal activities is not only undesirable, but it also amounts to serious misconduct and indiscipline, totally unbecoming of a police officer. It is under these given set of compelling circumstances the rules under article 311(2)(b) of Constitution of India have been invoked in this case for the sake of justice. Const. Kaushal Singh, No.1265/SE has become a liability to the department and should not be allowed to continue in police service and needs to be dismissed. In my opinion, he is unfit to be retained in the police force anymore. Therefore, I, Dr. P. Karunakaran, Dy. Commissioner of Police, South-East District, New Delhi do hereby DISMISS the defaulter Const. Kaushal Singh, No.1265/SE (PIS No.28911564) from service with immediate effect. ... ..."

5. The appellate authority while rejecting the appeal of the applicant, vide its order dated 22.05.2014, stated as under:

> "2..... Soon after the alleged incident, committed by the appellant and his co-defaulters, a PE was conducted. During PE, it has been revealed that the raiding team headed by Sh. Satish Yadav, ACP, Central Range, Crime Branch conducted a raid at 2nd floor, P.P.Nehru place and HC Amit Tomar succeeded to escape. When the raiding team signalled him to stop, he fired on the police party and fled away. Similarly, SI Nagender Kumar also fired on the police party and ran away from the spot. He fired 03 rounds on the police party. He was chased and ultimately apprehended after a scuffle. The appellant (Ex. Ct. Kaushal Singh), who also remained associated in the commission of crime, escaped from his govt. duties. He, ultimately, surrendered himself in the Ld. Court on 03.12.2013. Under these circumstances, it is evident that the appellant and his co-defaulters would have deterred the witnesses, had they come forward for deposition in the DE proceedings. Hence, the disciplinary authority has rightly dispensed with the DE proceedings and resorted to the provision contained in Article 311(2)(B) of Constitution of India. ....."

6. The allegations, with regard to the misconduct as mentioned in para 3 above, are common against all the applicants, though additional allegations of firing while trying to apprehend, were also levelled against the applicants in OA No.2067/2015 and OA No.2413/2015. All the applicants were dismissed under the identical circumstances and by way of identical disciplinary and appellate orders and questioning the same, they filed the OAs.

7. Heard Shri Ajesh Luthra, learned counsel for the applicants in all the OAs, Shri K.M. Singh, learned counsel for the respondents in OA Nos. 2592/2014 and 2067/2015 and Ms. Sumedha Sharma,

learned counsel for the respondents in OA No.2413/2015 and perused the pleadings and the judgments on which both sides placed reliance.

8. In view of the rival submissions, the question fell for our consideration was, in the facts of the case, whether the action of the respondents in terminating the services of the applicants, without holding a regular departmental enquiry, by invoking Sub-Clause (b) of the second proviso to Article 311(2) of the Constitution of India, is legal and valid?

9. Article 311 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) No person who is a member of a civil service of the Union or an all India service or a civil service of a State or holds a civil post under the Union or a State shall be dismissed or removed by a authority subordinate to that by which he was appointed
>
> (2) No such person as aforesaid shall be dismissed or removed or reduced in rank except after an inquiry 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) 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 inquiry."

10. In the Constitution Bench decision of the Hon'ble Supreme Court in **Union of India Vs. Tulsi Ram Patel (1985) 3 SCC 398**, the scope of Article 311 was extensively discussed and the same is as under:-

> "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 or direct it to be held**. It would also not be reasonably practicable 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.....".

11. In **Satyavir Singh & Others Vs. Union of India and Others, AIR 1986 SC 555**, the appellants who were employed in the Research and Analysis wing, Cabinet Secretariat, Government of India, were dismissed from service under Article 311(2)(b) read with Rule 19 of CCS (CCA)

Rules, 1965, without serving any charge-sheet and without holding any inquiry. When strict security measures were introduced in the office building where the appellants were working, a number of staff members collected in the galleries protesting against the said security regulations and demanded its immediate withdrawal, and in that process slogans were shouted and employees misbehaved with the senior officers and large scale unrest was prevailed and senior officers could be rescued only after the intervention of the police and 31 agitators were arrested and were suspended and criminal cases were registered against them. Even thereafter, the unrest went on. Ultimately, the appellants were dismissed under Article 311(2)(b) read with Rule 19 of the CCS (CCA) Rules, by stating that due to the practices of coercion, intimidation and such like threats and postures adopted by the appellants the atmosphere is so tense and abnormal that no witness will cooperate with any proceedings and hence, it is not reasonably practicable to hold any inquiry. The Hon'ble Apex Court, after referring the decision of the Constitution Bench in **Tulsi Ram Patel** (supra), upheld the action of the authorities.

12. In **Jaswant Singh v. State of Punjab, (1991) 1 SCC 362**, observed as under:

> "5. .....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."

13. In **Chief Security Officer and Others Vs. Singasan Rabi Das, (1991) 1 SCC 729**, it was alleged that while the respondent was on duty in the Railway Yard, he allowed 22 outsiders to carry the

stolen Railway material after taking Rs.1 each from them. When the respondents removed him from service, invoking powers under Rule 44 to 46 of the Railway Protection Force, 1959, by dispensing with the inquiry, by stating that "it is not considered feasible or desirable to procure the witnesses of the security/other railway employees since this will expose them and make them ineffective for future and these witnesses, if asked to appear at a confronted enquiry are likely to suffer personal humiliation and insults thereafter or even their family members may become targets of acts of violence", the Hon'ble Apex Court while dismissing the appeal held as under:

> 5. ..... 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. ....."

14. In **Union Territory, Chandigarh and Others Vs. Mohinder Singh, (1997) 3 SCC 68**, the respondent, a Sub Inspector of Police, was dismissed from service under Article 311(2)(b), by dispensing with the inquiry, by stating that a report submitted by Superintendent of Police proved the nefarious activities and misdeeds of the respondent and hence, witnesses cannot come forward freely to depose against him in a regular departmental inquiry. It was held as under:

> "5. Clause (3) of Article 311, it may be noticed, declares that where a question arises whether it is reasonably practicable to

> hold an inquiry as contemplated by clause (2), the decision of the authority empowered to dismiss such person shall be final on that question. The Tribunal has not referred to clause (3) at all in its order. We are not suggesting that because of clause (3), the Court or the Tribunal should completely shut its eyes. Nor are we suggesting that in every case the Court should blindly accept the recital in terms of the said proviso contained in the order of dismissal. Be that as it may, without going into the question of extent and scope of judicial review in such a matter, we may look to the facts of this case. The Superintendent of Police, Intelligence, has reported that the respondent "is a terror in the area" and, more important, in his very presence, the respondent "intimidated the complainant Shri Ranjit Singh who appeared to be visibly terrified of this Sub-Inspector". It is also reported that the other persons who were arrested with Ranjit Singh, and who were present there, immediately left his office terrified by the threats held out by the respondent. In such a situation - and keeping in view that all this was happening in the year 1991, in the State of Punjab - the Senior Superintendent of Police cannot be said to be not justified in holding that it is not reasonably practicable to hold an inquiry against the respondent."

15. In **Ex. Constable Chhote Lal Vs. Union of India (2000) 10 SCC 196**, the appellant, a Constable, was dismissed from service under Article 311(2)(b) of the Constitution of India and the Hon'ble Apex Court while allowing the appeal, observed as under:-

> "3. Mr. Yadav, learned counsel appearing for the appellant contends that though the employer has the power to dispense with an inquiry under Article 311(2), second proviso, clause (b) of the Constitution but the conditions precedent for exercising that power have now been indicated in several decisions of this Court and in the present case, those conditions precedent cannot be said to have been satisfied. Mr. Choudhary, the learned Senior Counsel appearing for the respondents, on the other hand, contended that the appellant himself being a Police Constable could have influenced the witnesses who would have come in the departmental inquiry and if on that ground the departmental authorities apprehended that the inquiry would not be reasonable and fair, the conclusion cannot be interfered with.
>
> 4. Having examined the rival contentions of the parties and bearing in mind the law laid down by this Court indicating the circumstances under which the inquiry under Article 311(2), second proviso, clause (b) of the Constitution can be dispensed with and applying the same to the facts and circumstances and the reasons advanced by the authorities in arriving at the decision, we have no hesitation to come to the conclusion that the order dispensing with the departmental inquiry is not in accordance with law and necessarily the order of dismissal cannot be sustained. We accordingly set aside the order of dismissal passed against the appellant and permit the departmental authority to hold an inquiry if so desired, in accordance with law and come to the conclusion in the said proceeding.

16. In **Tarsem Singh Vs. State of Punjab and Others** (2006) 13 SCC 581, the appellant, a police constable was dismissed from

service under Article 311(2)(b) of the Constitution of India and the Hon'ble Apex Court, while allowing the appeal observed as under:-

> "10. It is now a well-settled principle of law that a constitutional right conferred upon a delinquent cannot be dispensed with lightly or arbitrarily or out of ulterior motive or merely in order to avoid the holding of an enquiry.....
>
> 11. We have noticed hereinbefore that the formal enquiry was dispensed with only on the ground that the appellant could win over aggrieved people as well as witnesses from giving evidence by threatening and other means. No material has been placed or disclosed either in the said order or before us to show that subjective satisfaction arrived at by the statutory authority was based upon objective criteria. The purported reason for dispensing with the departmental proceedings is not supported by any document. It is further evident that the said order of dismissal was passed, inter alia, on the ground that there was no need for a regular departmental enquiry relying on or on the basis of a preliminary enquiry. However, if a preliminary enquiry could be conducted, we fail to see any reason as to why a formal departmental enquiry could not have been initiated against the appellant. Reliance placed upon such a preliminary enquiry without complying with the minimal requirements of the principle of natural justice is against all canons of fair play and justice. The appellate authority, as noticed hereinbefore, in its order dated 24-6-1998 jumped to the conclusion that he was guilty of grave acts of misconduct proving complete unfitness for police service and the punishment awarded to him is commensurate with the misconduct although no material therefor was available on record. It is further evident that the appellate authority also misdirected himself in passing the said order insofar as he failed to take into consideration the relevant facts and based his decision on irrelevant factors".

17. In **Southern Railway Officers Association & Another.** v. **Union of India and Others,** (2009) 9 SCC 24, one Shri S.M.Krishnan, who was a Deputy Chief Mechanical Engineer and was the disciplinary authority of the workmen in the case, and as a disciplinary authority, imposed a punishment of dismissal on one L. Arputharaj, and on his superannuation, in order to go to his native place, went to the Railway Station. The delinquent employees also went to the said Railway Station and started abusing the said S.M.Krishnan with filthy language and assaulted him. He and his family members were threatened to be killed in the presence of other Railway Officers who were present at the same time and at

the same place. The delinquent employees allegedly created ugly seen in the plat-form which was witnessed by Railway Officers/Staff and Passengers and accordingly created an atmosphere of violence, general indiscipline and insubordination, and they have also threatened, intimidated and terrorized other officers. In those circumstances, the Hon'ble Apex Court, after considering a long list of cases on the subject, upheld the order of dismissal of the said delinquent employees, passed by invoking the second proviso to Article 311(2) and Rule 14(ii) of the Railway Servants (Discipline and Appeal) Rules, 1968.

18. In **Reena Rani** v. **State of Haryana, (2012) 10 SCC 215**, the appellant, a Constable was dismissed from service by invoking Article 311(2)(b), by stating that while she remained posted as Prisoner Escort Guard, developed close relation with one Mustak, despite the fact that he was involved in seven criminal cases and hence, she did not deserve to be retained in service and it was not practicable to hold a regular departmental inquiry because no independent witness would be available. Applying the law enunciated in **Tulsi Ram Patel** (supra), and other decisions to the facts of the said case, the Hon'ble Apex Court by holding that the appellant's dismissal from service was ultra vires under the provisions of the Article 311, allowed the appeal.

19. In **Risal Singh** v. **State of Haryana & Ors., (2014) 13 SCC 244**, the appellant, an Assistant Sub-Inspector, as alleged, was involved in a corruption sting operation in a television channel, and thereafter he was dismissed from service under Article 311(2)(b) and the relevant Paragraphs of the said order reads as under:

> "2. ..... 3. Being aggrieved by the aforesaid order, the appellant preferred a civil writ petition and the High Court without adverting to the essential contention that no reason had been ascribed for dispensing with the inquiry under Article 311(2)(b) opined that prompt action was required to be taken to avoid spreading of trouble and, therefore, the order passed by the authority was justified."

The Hon'ble Apex Court , after considering **Tulsi Ram Patel** (supra) and other decisions, under Article 311(2)(b), while allowing the appeal held as under:

> "10. Tested on the touchstone of the aforesaid authorities, the irresistible conclusion is that the order passed by the Superintendent of Police dispensing with the inquiry is totally unsustainable and is hereby annulled. As the foundation founders, the order of the High Court giving the stamp of approval to the ultimate order without addressing the lis from a proper perspective is also indefensible and resultantly, the order of dismissal passed by the disciplinary authority has to pave the path of extinction."

20. In **Ved Mitter Gill** v. **Union Territory Administration, Chandigarh & Others**, **(2015) 8 SCC 86**, while the appellant was holding the charge of the post of Deputy Superintendent of Police, Model Jail, Burial, Chandigarh, four Under Trials, three of whom were facing trial for the assassination of a former Chief Minister of Punjab Shri Beant Singh and one was being tried for the charge of murder, escaped from the jail, by digging an underground tunnel. The Adviser to the Administrator, Union Territory, Chandigarh by an order dated 01.03.2004 having invoked Article 311(2)(b)

dismissed the appellant. The relevant paragraph of the said order reads as under:

> 7. ..... And whereas the above conduct of the said Shri Gill establishes that he was directly involved in the conspiracy to help the above-mentioned under trials to escape from the Model Jail, Chandigarh. It has also come to light during investigation that three of the escaped under trials had linkage with the Babbar Khalsa International, a known and a dreaded terrorist organization, which is involve in anti-national and anti-State activities. The said Shri V.M. Gill is a senior, permanent and non- transferable official of the Model Jail, Chandigarh and junior jail officials, who are witnesses in the above case are not likely to come forward to depose against him if disciplinary proceedings are initiated so long as he remains in service, for fear of earning his wrath in future. Further, due to the involvement of the escaped under trials, with the Babbar Khalsa International, a known and dreaded terrorist organization, no witness is likely to come forward to depose against him in the disciplinary proceedings, if initiated, due to fear of life. Independence assessment also is that three of the escaped under trials are likely, inter alia, to pose a danger to the lives of the people. In these circumstances I am satisfied that the holding of an inquiry as contemplated by Article 311 (2) (b) of the Constitution of India and the Punjab Civil Services (Punishment and Appeal) Rules, 1970 as made applicable to the employees of Union Territory, Chandigarh, is not reasonably practicable; "

The Hon'ble Apex Court, after observing the following,

> "17. Before delving into the pointed issues canvassed at the hands of the learned counsel representing appellant/petitioners, it is necessary for us to notice the parameters laid down by this Court for invoking clause (b) of the second proviso to Article 311(2) of the Constitution of India. Insofar as the instant aspect of the matter is concerned, the norms stipulated by this Court for the above purpose, require the satisfaction of three ingredients. Firstly, that the conduct of the delinquent employee should be such as would justify one of the three punishments, namely, dismissal, removal or reduction in rank. Secondly, the satisfaction of the competent authority, that it is not reasonably practicable to hold an inquiry, as contemplated under Article 311(2) of the Constitution of India. And thirdly, the competent authority must record the reasons of the above satisfaction in writing."

and after examining the facts of the case in detail, held as under:

> "29. For the reasons recorded above, we are satisfied, that all the parameters laid down by this Court, for a valid/legal application of clause (b) to the second proviso under Article 311(2) of the Constitution of India, were duly complied with."

and accordingly, by upholding the order under Article 311(2)(b), dismissed the appeal.

21. Various other cases decided by the Hon'ble High Court and of this Tribunal and cited by both the sides, are not discussed, since

the principle of law, on invocation of Article 311(2)(b) of the Constitution of India was sufficiently dealt with by the Hon'ble Apex Court in the cases already discussed above.

22. A conspectus of the aforesaid decisions discloses that an order passed invoking Article 311(2)(b), just by reciting the language of the same, verbatim, cannot made it valid, unless sufficient/cogent reasons and circumstances satisfying the requirements of the said Article were prevailing at the relevant time. Similarly, every order passed by invoking Article 311(2)(b), cannot become invalid on the ground of violation of principles of natural justice. What is required is the existence of valid reasons and circumstances for dispensing with the inquiry before invoking Article 311(2)(b).

23. In one line of cases, after satisfying, in the facts of the said cases, it is not reasonably practicable to hold an inquiry, the orders under Article 311(2)(b) were upheld. Similarly, in another line of cases, noticing that the requirements of Article 311(2)(b) for dispensing with the inquiry, in the circumstances of the said cases were not satisfied, the orders were set aside.

24. In this view of the matter, it is necessary to examine the circumstances prevailing in the present case at the time of passing of the orders under Article 311(2)(b) and whether the reasoning given by the respondents, is justified.

25. In OA No. 2592/2014 (Kaushal Singh), the Disciplinary Authority while invoking Sub-Clause (b) of the second proviso to Article 311 (2) of the Constitution of India, observed that "Kaushal Singh brought bad name to the entire police force and the indulgence of police personnel in such a dastardly act could destroy the faith of the people in the law enforcement system and no witness will come forward for any enquiry and the involvement of the Constable in such criminal activities is not only undesirable, but it also amounts to serious misconduct and indiscipline, totally unbecoming of a police officer and it is under these given set of compelling circumstances, the rules under Article 311(2)(b) of Constitution of India have been invoked in this case for the sake of justice and Const. Kaushal Singh has become a liability to the department and should not be allowed to continue in police service and needs to be dismissed". The Appellate Authority while rejecting the statutory appeal of the applicant while holding that the Disciplinary Authority has rightly dispensed with the DE proceedings and resorted to the provisions contained in Article 311(2)(b) of the Constitution of India observed that, "soon after the alleged incident, committed by the appellant and his co-defaulters, a PE was conducted and during PE, it has been revealed that the raiding team headed by Sh. Satish Yadav, ACP and HC Amit Tomar (applicant in OA No.2413/2015) succeeded to escape and when the raiding team signalled him to stop, he fired on the police party and

fled away and similarly, SI Nagender Kumar (applicant in OA No.2067/2015) also fired on the police party and ran away from the spot and he fired three rounds on the police party and was chased and was apprehended after a scuffle and Constable Kaushal Singh escaped from his Government duties and ultimately surrendered in the Court on 03.12.2013 and under these circumstances, it is evident that Constable Kaushal Singh and his co-defaulters could have deterred the witnesses, had they come forward for deposition in the DE proceedings". All the applicants in all the three OAs were dismissed from service under the aforesaid circumstances only. The Disciplinary and Appellate Authorities justified invocation of sub-clause (b) of the second proviso to Article 311(2) of the Constitution of India, i.e., dismissing the applicants by dispensing with the regular departmental enquiry by stating that all the three applicants were part of the same charge and out of them, HC Amit Tomar (applicant in OA No.2413/2015) and SI Nagendra (applicant in OA No.2067/2015) fired on their own colleagues and in those circumstances, no witnesses will come forward to participate in the enquiry against the applicants. The respondents invoked the power of dispensing with the enquiry keeping in view of the alleged firing by the applicants in OA No.2067/2015 and OA No.2413/2015 and accordingly came to the conclusion that no witnesses would come forward even if anybody come forward, the applicants would have deterred the witnesses.

26. In **Tarsem Singh** (supra), the appellant, a Constable was initially issued with a charge-sheet levelling very serious charges, however, thereafter the respondents by invoking sub-clause (b) of the second proviso to Article 311(2) of the Constitution of India dismissed him from service. The relevant paragraphs as held by the Apex Court have been quoted in paragraph 14 above.

27. It is manifest from the record that the respondents have conducted a PE and basing on the same, formed an opinion that he was guilty of the charges levelled against him. The relevant part of the appellate order dated 22.05.2014 reads as under:-

> "A fact finding enquiry (PE) was got conducted from P.G. Cell/SED. During enquiry, the appellant's involvement in the commission of crime and omission from his govt. duty (absence marked vide DD No.50 dated 07.11.2013, Distt. Lines/SED) has been revealed.
>
> The Disciplinary Authority, after perusal of the enquiry report, took the view that the appellant brought bad name to the entire police force. The indulgence of police personnel in such a dastardly act would destroy the faith of the common people in the law enforcement system and no witness will come forward for an enquiry. The involvement of the appellant in such criminal activities is not only undesirable, but also amounts to serious misconduct, indiscipline and totally unbecoming of a police officer. It is under these compelling circumstances, Rule under article 311(2)(b) of Constitution of India has been invoked in this case for the sake of justice. The appellant has become a liability to the department and should not be allowed to continue in police service and needs to be dismissed. The Disciplinary Authority found him unfit to be retained in the police force anymore and **dismissed** the appellant from service vide order No.11042-11142/HAP/SED(P-I) dated 27.11.2013".

28. Similarly, the respondents conducted PE proceedings against the applicants in all the OAs and basing on the said report, came to the conclusion that the applicants does not deserve to be continued in service. Except the allegation that the applicants in OA Nos.2067/2015 and 2413/2015 fired on their colleagues while trying to apprehend them, there was no other material before the respondents to form an opinion that no witnesses will come forward

to depose against the applicants in the event of conducting a regular departmental enquiry. In view of the fact that the respondents were able to conduct PE against the applicants and without there being any sufficient material, jumped to the conclusion that it is not practicable to hold a regular departmental enquiry, we are of the view, that the facts in **Tarsem Singh's case** (supra) are squarely applicable to these OAs.

29. In **Tarsem Singh's case** (supra), the Hon'ble Apex Court while allowing the appeals categorically observed "if a preliminary enquiry could be conducted, we fail to see any reason as to why a formal departmental enquiry could not have been initiated against the appellant. Reliance placed upon such a preliminary enquiry without complying with the minimal requirements of the principle of natural justice is against all canons of fair play and justice". Accordingly, in the facts of the present OAs, we hold the issue in favour of the applicants.

30. In the circumstances and for the aforesaid reasons, all the OAs are allowed and the impugned orders are set aside with all consequential benefits. Since the applicants were under suspension as on the date of passing of the impugned orders, they would thus remain under suspension and the respondents shall take an appropriate decision regarding revocation or continuation of the same. The respondents shall proceed against the applicants

departmentally, as per rules and the treatment of suspension period shall be dependent on the same. No costs.

Let a copy of this order be placed in all the files.

(NITA CHOWDHURY)
MEMBER (A)

(V. AJAY KUMAR)
MEMBER (J)

RKS