

**CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH: NEW DELHI**

O.A. No.4324 of 2017

Orders reserved on : 26.02.2019

Orders pronounced on : 05.03.2019

**Hon'ble Ms. Nita Chowdhury, Member (A)  
Hon'ble Mr. S.N. Terdal, Member (J)**

Nitesh Kumar, aged – 24 years,  
s/o Sh. Radha Krishan,  
Dismissed Constable from Delhi Police,  
r/o Plot No.37, Ashta Lok Industrial Area,  
Jhunjhuna, Rajasthan-333001.

....Applicant

(By Advocate : Shri Yogesh Sharma)

VERSUS

1. Govt. of NCT of Delhi through  
The Chief Secretary,  
I.P. Estate, New Delhi.
2. The Commissioner of Police,  
Delhi Police Headquarter,  
ITO, New Delhi.
3. The Joint Commissioner of Police (Operations),  
Delhi Police Head Quarter,  
I.P. Estate, New Delhi.
4. The Deputy Commissioner of Police,  
Police Control Room, Delhi,  
Delhi Police HQs, I.P. Estate, New Delhi.

.....Respondents

(By Advocate : Mrs. Pratima Gupta)

**O R D E R**

**Ms. Nita Chowdhury, Member (A):**

By filing this OA, the applicant is seeking the following  
reliefs:-

“(i) That the Hon'ble Tribunal may graciously be pleased to pass an order of quashing the

impugned 26.5.2017 (Annexure.A/1) and Appellate order dated 16.10.2017 (Annexure.A/2), and consequently, pass an order directing the respondents to reinstate the applicant in service with all consequential benefits including the arrears of difference of pay and allowances with interest.

(ii) Any other relief which the Hon'ble Tribunal deem fit and proper may also be granted to the applicant."

2. The applicant, a Constable in the respondent-Delhi Police, filed the instant OA questioning the legality and validity of the Annexure A/1 order dated 26.5.2017, whereunder he was dismissed from service under Article 311(2)(b) of the Constitution of India and also the Annexure A/2 order dated 16.10.2017, whereunder his appeal was rejected.

3. The impugned dismissal order, explained the circumstances, which led to the dismissal of the applicant, in detail, and the same reads as under:-

"On 13.05.17 at 1.35 AM a PCR call was received vide DD No.07-A PS Kamla Market about beating of police personnel in front of Kotha No.64, G.B. Road. The said call was marked to ASI Gajpal No. 5570/C who along with HC Rajeev No.713/C reached the spot. On enquiry, it was revealed that three-four persons have manhandled three police constables (who were on duty) and public persons have to come forward in support of beat staff as they were manhandled by the Under Trainee PSI namely Mohit Kumar Chaudhary, No.D-776 (PIS No. 16160046) PTC Jharoda Kalan, Ct. Sumit Sharma, No. 117/Lic. (PIS No. 28120642) and Ct. Nitesh Kumar, No.11433/PCR (PIS No. 28121771). All the beat staff as well as alleged staff were got medically examined at LNJP, Hospital and the alleged police personnel found under the influence of alcohol.

An enquiry into the incident was conducted by Sh. Anto Alphonse, Addl. Dy. Commissioner of Police-I, Central District, Delhi. A copy of the report was obtained in this office. On perusal of the enquiry report and the relevant documents placed on record, it is revealed that all the alleged persons are friends and initially they had gathered at the residence of Ct. Sumit Sharma, i.e. Quarter No. A-25 Police Colony, Hauz Khas Delhi where they consumed alcohol/beer and subsequently came to India Gate on two motorcycles. After spending some time at India Gate they came to G.B. Road, Kamla Market, Delhi at around 12.30 AM. They reached at Kotha No. 64 and found the Kotha closed. They asked the Kotha staff to open the Gate but the Kotha Staff did not open on which they started quarrel with them. They disclosed their identity as Police Officials and then Kotha persons opened the gate. The Kotha staff tried to convince alleged police officials that the Kotha had been closed and requested them to return their home. But the alleged police officials forcibly entered in Kotha and started abusing and quarrelling with Kotha staff. On receipt of the information, Ct. Deep Ram of PS Kamla Market reached the spot and tried to pacify the quarrel but the alleged persons also misbehaved and abused him. However, he managed to take them down stairs. After that Ct. Sumit and Ct. Jitender also came at the spot and all of them tried to pacify the alleged persons but they did not cool down and continued quarrelling with the Beat Officers (It has been learned that earlier PSI Mohit Chaudhary No. D-776 and Ct. Nitesh Kumar, No. 11433/PCR, had tried to enter in ladies barrack at PTC Jharoda Kalan).

The facts of the incident registered vide FIR No. 120/17, dt 25.05.17, 186/353/332/34 IPC PC Kamla Market, Central District, Delhi makes the sequence of events and the poor mentality of the Constable crystal clear. The constable not only misbehave with Kotha staff but also assaulted the members of the force he himself is part of. He even did not bother about the impact of his act on the image of Police while assaulting the Beat Constable on duty in front of public. The above act on the part of Constable amounts to unbecoming of a police officer. Prime facie the act and conduct of the Constable warrants his dismissal from the service as in my opinion there is no place of such type of person in the organization whose primary task is to provide safety and security to the citizens. Ordinarily, a departmental enquiry is ordered against the delinquent but it is a case where initiation of departmental enquiry would not

be a wise act keeping in view the sequence of events committed by Ct. Nitesh Kumar, No. 11433/PCR with his associates. In my considered opinion Ct. Nitesh Kumar, No. 11433/PCR deserves exemplary punishment at least to minimize such kind of incidents in future. In the light of given circumstances further retention of Ct. Nitesh Kumar, No. 11433/PCR is prejudicial for the police force and I am of the view that immediate debar of such kind of police personnel would be appropriate in the interest of department.

On perusal of above sequence of events it can be inferred that Ct. Nitesh Kumar, No. 11433/PCR alongwith above associates has committed most disgusting and contemnable act and lowered the sacred image of organization in the eyes of public. Ct. Nitesh Kumar, No. 11433/PCR has put the entire police force to shame, especially when such a force is responsible for the safety and security of the citizens. What will be the fate of the society, if the custodian of law becomes law breaker? Being a policeman, his conduct has also violently shaken the faith of the citizens from the police force. This illegal and criminal act of Ct. Nitesh Kumar. No. 11433/PCR is not only reprehensible, but has also tarnished the image of the entire police force in the eyes of the law abiding citizens of Delhi and of the country. The act committed by the Constable clearly shows that he has abdicated the solemn vow that he took at the time of passing out ceremony. The act of the Constable is a shameful, abominable, disgusting and the most deplorable act of moral turpitude & unbecoming of a public servant.

Hence, considering the above facts and totality of the case further retention of Constable Nitsh Kumar, No.11433/PCR in police force is totally undesirable and absolutely unwarranted. Therefore, I, Monika Bhardwaj, Deputy Commissioner of Police, Police Control Room, Delhi, being competent authority hereby dismiss Ct. Nitesh Kumar, No. 11433/PCR (PIS No.28121771) from Delhi Police force under Article-311 (2) (b) of Constitution of India with immediate effect.”

4. The appeal preferred by the applicant against the aforesaid dismissal order was rejected by the Appellate

Authority, vide Annexure A/2 order dated 16.10.2017 and the relevant paragraphs of the same read as under:-

“I have carefully gone through the appeal submitted by Ex. Const. Nitesh Kumar No.11433/PCR. He was also heard in O.R. on 29.09.2017. During O.R., he said nothing new except already reiterated in his appeal. On perusal of record available on file it has been found that the enquiry of Addl. DCP-I/Central Distt., has clearly established that the appellant and his associates PSI Mohit, No.D/776, const. Sumit Sharma, No.117/Lic. And Dr. Nitesh Chauhan (reportedly working in RML Hospital) were initially gathered at the residence of Ct. Sumit Sharma, i.e. Quarter No.A-25, Police Colony, Hauz Khas, Delhi, where there consumed alcohol/beer and subsequently came to India Gate on two motorcycles. After spending some time at India Gate they came to G.B. Road, Kamla Market, Delhi at around 12.30 AM. They reached at Kotha No.64 and found the Kotha was closed. They asked the Kotha staff to open the gate but the Kotha staff did not open, on which they started quarrel with them. They disclosed their identity as Police Officials and then Kotha persons opened the gate. The Kotha staff tried to convince the appellant and his associates that the Kotha had been closed and requested them to return their home. But the appellant and his associates forcibly entered in Kotha and started abusing and quarrelling with Kotha staff. On receipt of the information, Ct. Deep Ram of P.S. Kamla Market reached the spot and tried to pacify the quarrel but the appellant and his associates also misbehaved and abused him. After that Ct. Sumit and Ct. Jitender also came at the spot and all of them tried to pacify the appellant and his associates but they did not cool down and continued quarrelling with the Beat officers.

This is a serious act of misconduct, immoral act, obstruction in the work of state. How can such man provide protection to the citizens and society. Moreover, he was attached with senior officer. How can he indulged in such illegal and immoral act. Apart from that he has interfered in the work of govt. servant, State and brought bad name to profession. How can such person be given relief. He deserves to be treated objectively and dealt accordingly. I have seen the papers including report from DCP/Central. If we start going relief to such man in the force, this will embolden him to indulge further in illegal and immoral acts and it will also the interfering in the principle of natural justice. I,

therefore, do not find any reason to interfere with the order of disciplinary authority. Hence, the appeal is rejected.”

5. Heard Shri Yogesh Sharma, learned counsel for the applicant and Ms. Pratima Gupta, learned counsel for the respondents and perused the pleadings available on record.

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

7. 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."

8. 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.....”.

(Emphasis supplied)

9. 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.

10. 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.”

11. In **Chief Security Officer and Others Vs. Singasan Rabi Das**, (1991) 1 SCC729, 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.  
.....”

12. 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.”

13. 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.”

14. 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”.

15. 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.

16. 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.

17. 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.”

18. 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 involved 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.

19. 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.

20. 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 make 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).

21. 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.

22. 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.

23. It is the case of the respondents that on 13.5.2017 at 1.35 AM a PCR call was received vide DD No.07-A PS Kamla Market about beating of police personnel in front of Kotha No.64, G.B. Road. The said call was marked to ASI Gajpal No. 5570/C who along with HC Rajeev No.713/C reached the spot. On enquiry, it was revealed that three-four persons have manhandled three police constables (who were on duty) and public persons have to come forward in support of beat staff as they were manhandled by the Under Trainee PSI namely Mohit Kumar Chaudhary, No.D-776 (PIS No. 16160046) PTC Jharoda Kalan, Ct. Sumit Sharma, No. 117/Lic. (PIS No. 28120642) and Ct. Nitesh Kumar, No.11433/PCR (PIS No. 28121771). All the beat staff as well as alleged staff were got medically examined at LNJP, Hospital and the alleged police personnel found under the influence of alcohol. An enquiry into the incident was conducted by Sh. Anto Alphonse, Addl. Dy. Commissioner of Police-I, Central District, Delhi. From the said enquiry report, it is revealed that all the alleged persons are friends and initially they had gathered at the residence of Ct. Sumit Sharma, i.e. Quarter No.A-25 Police Colony, Hauz Khas Delhi where they consumed alcohol/beer and subsequently came to India Gate on two motorcycles and after spending some time at India Gate, they came to G.B. Road, Kamla Market, Delhi at around 12.30 AM. They reached at Kotha No. 64 and found the Kotha

closed. They asked the Kotha staff to open the Gate but the Kotha Staff did not open on which they started quarrel with them. They disclosed their identity as Police Officials and then Kotha persons opened the gate. The Kotha staff tried to convince alleged police officials that the Kotha had been closed and requested them to return their home. But the alleged police officials forcibly entered in Kotha and started abusing and quarrelling with Kotha staff. On receipt of the information, Ct. Deep Ram of PS Kamla Market reached the spot and tried to pacify the quarrel but the alleged persons also misbehaved and abused him. However, he managed to take them down stairs. After that Ct. Sumit and Ct. Jitender also came at the spot and all of them tried to pacify the alleged persons but they did not cool down and continued quarrelling with the Beat Officers and the facts of the incident registered vide FIR No. 120/17, dt 25.05.17, 186/353/332/34 IPC PC Kamla Market, Central District, Delhi makes the sequence of events and the poor mentality of the Constable crystal clear. The constable not only misbehaved with Kotha staff but also assaulted the members of the force to which he himself is part of. He even did not bother about the impact of his act on the image of Police while assaulting the Beat Constable on duty in front of public. The above act on the part of Constable amounts to unbecoming of a police officer. Prime facie the act and

conduct of the Constable warrants his dismissal from the service as in the opinion of the competent authority there is no place of such type of person in the organization whose primary task is to provide safety and security to the citizens.

24. The respondents after detailing the circumstances leading to the disciplinary action against the applicant, explained the reasons for dismissing the applicant, by dispensing with the regular enquiry, by stating that a departmental enquiry is ordered against the delinquent but it is a case where initiation of departmental enquiry would not be a wise act keeping in view the sequence of events committed by the applicant/delinquent along with his associates, as stated above.

25. From the above, it is established that the respondents have conducted a preliminary enquiry and based on the same, formed the opinion that the applicant was guilty of the charges levelled against him. It is further clear that the respondents have collected sufficient evidence in the form of FIR and witnesses to prove the charges against the applicant. However, by observing that, a departmental enquiry is to be ordered against the delinquent but it is a case where initiation of departmental enquiry would not be a wise act keeping in view the sequence of events committed by applicant along with his associates, the respondents dismissed the applicant, by dispensing with the departmental

enquiry, by invoking the second proviso to Article 311(2). The contention of the respondents is unsustainable as it is evident that they were able to conduct the preliminary enquiry and were able to collect certain evidence against the applicant. Further, it is seen that the main allegation is that on 13.5.2017 at 1.35 AM a PCR call was received vide DD No.07-A PS Kamla Market about beating of police personnel in front of Kotha No.64, G.B. Road. The said call was marked to ASI Gajpal No. 5570/C who along with HC Rajeev No.713/C reached the spot. On enquiry, it was revealed that three-four persons have manhandled three police constables (who were on duty) and public persons have to come forward in support of beat staff as they were manhandled by the Under Trainee PSI namely Mohit Kumar Chaudhary, No.D-776 (PIS No. 16160046) PTC Jharoda Kalan, Ct. Sumit Sharma, No. 117/Lic. (PIS No. 28120642) and Ct. Nitesh Kumar, No.11433/PCR (PIS No. 28121771). All the beat staff as well as alleged staff were got medically examined at LNJP, Hospital and the alleged police personnel found under the influence of alcohol and if on the basis of sufficient evidence came during the course of preliminary inquiry and on the basis of which, the disciplinary authority without giving a sufficient reasons for not holding a formal departmental enquiry into the matter, by invoking the provisions of Article 311 (2) (b) in this case, dismissed the applicant from service,

the same is not sustainable in the eyes of law, as the said evidence can very well be used by holding a formal departmental enquiry. A careful examination of the facts in the instant OA shows that the decision of the Hon'ble Apex Court in **Tarsem Singh**(supra) is squarely applicable in this case. In **Tarsem Singh**(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”.

26. Further, in the facts of the present case, we are of the view that the reasons and justification given by the respondents for dispensing with the enquiry, are not in consonance with the principles laid down by the Hon'ble Apex Court, as detailed, in the above referred decisions.

27. While holding the said issue in favour of the applicant, we have not lost sight of the gravamen of the charges and there should be zero tolerance for corruption and misconduct in public services, a fortiori, in the disciplined force, like police. However, before a person is thrown away, the orders should be passed only after following the due procedure.

28. In the above circumstances and for the aforesaid reasons, the issue is decided by setting aside the impugned orders and respondents are directed to proceed against the applicant departmentally as per rules and conclude the departmental action as expeditiously as possible or in accordance with the rules on the subject and the applicant shall cooperate in early completion of the said departmental proceedings. Since we quash the impugned orders on technical ground only, the respondents are at liberty to initiate major penalty proceedings against the applicant having regard to gravamen of the charges levelled against him and till the conclusion of the said departmentally proceedings, the respondents are at liberty to take a decision on placing the applicant under suspension, if they deem it fit and proper in the facts and circumstances of this case and if the proposed action is of a major penalty.

29. In the result, the present OA is disposed of in above terms. No costs.

**(S.N. Terdal)**  
**Member (J)**

**(Nita Chowdhury)**  
**Member (A)**

/ravi/