CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

OA No.1144/2003

New Delhi, this the 13th day of November, 2003

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

1.Ex.Con.Harbir Singh, No.666/E
S/o Shri Rasyiat Singh,
R/o Village and PO Sujeitly, PS Doghat
Distt. Meerut (U.P.)

2. Ex.Con.Devender Kumar, No.1217/E
S/o Shri Kunwar Singh
R/o Village and PO Jalalpur,PS Murad Nagar,
Distt.Ghaziabad(U.P.) ... Applicants

(Shri Sachin Chauhan, Advocate)

versus

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

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

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

(Shri Ajesh Luthra, Advocate)

ORDER(ORAL)

Justice V.S. Aggarwal

Applicants assail the order passed by the disciplinary authority dated 22.2.2002 and of the appellate authority dated 21.1.2003. The disciplinary authority invoking the provisions of Article 311 (2) (b) of the Constitution of India had dismissed the applicants from service and the appeal also failed.

VS Ag

2. It was alleged that on 10.2.2002 at 10.45 PM, Shri Girish Sharma had come to Police Station Preet Vihar. He met Sub Inspector Ajai Kumar and handed over a complaint dated 8.2.2002 addressed to the Commissioner of Delhi Police. He had asserted that certain persons had called him 11.30 PM at Patparganj along with money. The back-drop was stated to be that the complainant was contacted by one of the alleged persons on the internet for a job. He was invited to meet at Mec Donald restaurant, Preet Vihar on 7.2.2002. The complainant had gone to Mec Donald, from where he was taken to a flat where he found four persons. They started demanding money and forced him to put off his clothes. One of them was in police uniform and the other was having a wireless set. One of the alleged persons undressed himself and started holding and catching the complainant forcibly and one person started taking photographs. Thereafter they threatened him that they will send the naked photographs to his family and demanded Rs.1 lakh. The amount was settled at Rs.25,000/-.

3. Sub Inspector Ajai Kumar along with the staff conducted a raid and at the instance of the complainant, applicant No.2 Devender Singh was apprehended. He made a disclosure statement regarding the facts. Applicant No.1 was arrested at the instance of applicant No.2. The disciplinary authority recorded that these facts show that the applicants were involved in corrupt practices. They abused their official authority which is the most

abhorrent act. They had acted in a manner which is totally unbecoming of a police officer rendering them unfit to be retained in the police force. There were the reasons for invoking the provisions of Article 311(2)(b) of the Constitution which were stated to be as under:-

> "The facts and circumstances of the case are such that in my opinion, it would not be reasonably practicable to hold a departmental enquiry against the delinquent officers - Constable Devender No.1217/E and Harbir Singh, No.666/E since it is certain that during the enquiry/enitre process of departmental proceedings, the complainant and other witnesses would be put under constant fear/danger to their person by the delinquent police officers and no body would come forward to give a statement against them. Considering the fact that the complainant is residing in the far-flung area, it would be extremely difficult for the complainant and the witnesses to muster enough courage and time against the delinquent police officers. In case the Departmental Enquiry is initiated against the delinquent officers it is certain that it would not be easy to secure presence of the complainant from time to time and as such keep in view the above mentioned reasons, I feel totally satisfied that it would not be reasonably practicable to hold a D.E. against the delinquents Constable Devender No.1217/E and Harbir Singh, No.666/E whose act has clearly indicated serious criminal propensity on their part."

4. The application has been contested. The respondents plead that the case of the applicants show that they were desperate characters and their continuation in a force like Delhi Police was against public interest and security. The disciplinary authority felt that it would not be reasonably practicable to hold the departmental enquiry. The orders had been passed which are fully justified.

5. The provisions of Article 311(2)(b) of the Constitution can be invoked if the authority empowered to impose the penalty records in writing and is satisfied that it is not reasonably practicable to hold an inquiry. The inquiry contemplated as enshrined under Article 311 of the Constitution refers to giving a reasonable opportunity to defend to the person alleged to have committed the misconduct.

6. The decision of the Supreme Court in the case of **Union of India and others** v. **Tulsiram Patel and others**, AIR 1985 SC 1416 had gone into the controversy as what would be the meaning of the expression "reasonably practicable to hold an enquiry" and after screening through innumerable precedents, the Supreme Court held:-

> "130. The condition precedent for the application of clause (b) is the satisfaction of the disciplinary authority that "it is not reasonably practicable to hold" the inquiry contemplated by clause (2) of Article 311. What is pertinent to note is that the words used are "not reasonably practicable" and not "impracticable". According to the Oxford English Dictionary "practicable" means "Capable of being put into practice, carried out in action, effected, accomplished, or done; feasible". Webster's Third New International Dictionary defines the word "practicable" inter alia as meaning "possible to practice or perform : capable of being put into practice, done or accomplished : feasible". Further, the words used are not "not practicable" but "not reasonably practicable". Webster's Third New International Dictionary defines the word "reasonably" as "in a reasonable manner : to a fairly sufficient extent". Thus, whether it was practicable to hold the inquiry or not must be judged in the context of whether it was reasonably practicable to do so. It is not a total or absolute impracticability which is required by clause (b). What is

requisite is that the holding of the inquiry is not practicable in the opinion of a reasonable man taking a reasonable view of the prevailing situation. It is not possible to enumerate the cases in which it would not be reasonably practicable to hold the inquiry, but some instances by way of illustration may, however, be given. It would not be reasonably practicable to hold an inquiry where the government servant, particularly through or together with his associates, so terrorizes, threatens or intimidate witnesses who are going to give evidence against him with fear of reprisal as to prevent them from doing so or where the government servant by himself or together with or through others threatens, intimidates and terrorizes the officer who is the disciplinary authority or members of his family so that he is afraid to hold the inquiry where an atmosphere of violence or of general indiscipline and insubordination prevails, and it is immaterial whether the concerned government servant is or is not a party to bringing about such an atmosphere. In this connection, we must bear in mind that numbers coerce and terrify while an individual may not. The reasonable practicability of holding an inquiry is a matter of assessment to be made by the disciplinary authority. Such authority is generally on the spot and knows what is happening. It is because the disciplinary authority is the best judge of this that clause (3) of Article 311 makes the decision of the disciplinary authority on this question final. A disciplinary authority is not expected to dispense with a disciplinary inquiry lightly or arbitrarily or out of ulterior motives or merely in order to avoid the holding of an inquiry or because the Department's case against the government servant is weak and must fail. The finality given to the decision of the disciplinary authority by Article 311 (3) is not binding upon the court so far as its power of judicial review is concerned and in such a case the court will strike down the order dispensing with the inquiry as also the order imposing penalty."

With respect to the second condition about the satisfaction of the disciplinary authority, the Supreme Court further provided the following guide-lines:-

"133. The second condition necessary for the valid application of clause (b) of the second

proviso is that the disciplinary authority should record in writing its reason for its satisfaction that it was not reasonably practicable to hold the inquiry contemplated by Article 311 (2). This is a Constitutional obligation and if such reason is not recorded in writing, the order dispensing with the inquiry and the order of penalty following thereupon would both be void and unconstitutional."

The said decision of the Supreme Court was again considered by another Bench of the same Court in the case of **Satyavir Singh and others vs. Union of India and others,** 1986 SCC (L&S) 1. The Supreme Court in different paragraphs analysed the decision in the case of Tulsi Ram Patel (supra) and thereupon held that judicial review would be permissible in matters where administrative discretion is exercised and the court can put itself in the place of the disciplinary authority and consider what in the then prevailing situation, a reasonable man acting in a reasonable manner would have done. Paragraphs 106 and 108 in this regard read:-

"106. In the case of a civil servant who has been dismissed or removed from service or reduced in rank by applying clause (b) of the second proviso to Article 311 (2) or an analogous service rule, the High Court under Article 226 or this Court under Article 32 will interfere on grounds well-established in law for the exercise of its power of judicial review in matters where administrative discretion is exercised."

"108. In examining the relevancy of the reasons given for dispensing with the inquiry, the court will consider the circumstances which, according to the disciplinary authority, made it come to the conclusion that it was not reasonably practicable to hold the inquiry. If the court finds that the reasons are irrelevant, the order dispensing with the inquiry and the order of penalty following upon it would be void and the court will strike them down. In considering the

> relevancy of the reasons given by the disciplinary authority, the court will not, however, sit in judgment over the reasons like a court of first appeal in order to decide whether or not the reasons are germane to clause (b) of the second proviso or an analogous service rule. The court must put itself in the place of the disciplinary authority and consider what in the then prevailing situation a reasonable man acting in a reasonable manner would have done. It will judge the matter in the light of the then prevailing situation and not as if the disciplinary authority was deciding the question whether the inquiry should be dispensed with or not in the cool and detached atmosphere of a court room, removed in time from the situation in question. Where two views are possible, the court will decline to interfere."

With this back-drop, one can revert back to the facts of the present case. It is obvious from the provisions of the Constitution that seriousness of the offence is not the criteria to be adopted, but whether it is reasonably practicable to hold the inquiry is the sole consideration. Therefore, the reputation of the police force referred to also is irrelevant.

7. Perusal of the order shows that the disciplinary authority was impressed by the fact that the complainant was residing in the far-flung area and it was difficult for him and other witnesses to muster courage and time to depose against the delinquents. The address of the complainant is at Sahadara, Delhi which at no stretch of imagination can be described to be a far-flung area.

8. In addition to that simply because the applicants are police officials by itself may not be a good ground to conclude that it is not reasonably practicable to hold the inquiry. There is nothing on the record to show that

the applicants had threatened the witnesses to prompt the disciplinary authority to invoke the provisions of Article 311 (2) (b) of the Constitution of India. It is mere apprehension that witness may not support the prosecution witnesses which conclusion is pre-judging the issue at the threshold. Heinous nature of the offence as already referred to above at best could be a factor, but not the sole factor. In the peculiar facts, therefore, it cannot be termed that in the present case before us, it was not reasonably practicable to hold the inquiry. Therefore, the impugned order will not stand scrutiny.

9. For these reasons, the present application is allowed and the impugned orders are quashed. It is directed:-

(a) that the respondents may if deemed appropriate hold a departmental enquiry in accordance with law and the procedure; and

(b) that the applicants would be under suspension and the disciplinary authority can pass appropriate order for continuing the suspension order in accordance with law or any such order in the facts and circumstances of

the case. No costs.

Announced.

(S.K. Naik)
Member(A)

(V.S.Aggarwal)
Chairman

/sns/