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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A.No.2791/2003

New Delhi, this the 20th day of May, 2004

HON'BLE SHRI JUSTICE V.S. AGGARWAL, CHAIRMAN
HON'BLE SHRI S.A.SINGH, MEMBER (A)

Ex. Constable Ajayvir Gulia
s/o Sh. Hari Singh Gulia
r/o Village and PO - Badli
The-Bahadur Garh
Distt Jhazzar (Haryana). ... Applicant

(By Advocate: Sh. Sachin Chauhan)

Versus

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

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

3. Dy. Commissioner of Police
3rd Battalion DAP
Vikas Puri
New Delhi. ... Respondents

(By Advocate: Sh. George Paracken, proxy of Shri Om Prakash)

O R D E R

Justice V.S. Aggarwal:-

Applicant was a Constable in Delhi Police. He faced disciplinary proceedings. He has been dismissed from service invoking Article 311(2)(b) of the Constitution of India. The facts which prompted the disciplinary authority to pass the above said order are:

> "On 3rd December, 2002 a PCR call was received at 8.45 PM alleging rape in the area of Chander Vihar, PS Nangloi, Delhi. West Distt. Police immediately attended to it, got the complaint of victim Savita Padhee and initiated legal action. One Ms. Savita Padhee d/o Sriman Padhee aged 20 years lodged complaint of rape by one Ajayvir @ Bablu

s/o Hari Singh aged 32 years r/o Village Badli District Jhajhar, Haryana and helped by Mukesh s/o Ram Kumar aged 33 years of the same village. She narrated that she came to Delhi during January 2002 and is staying with her brother in law Mr. Vipul Misra at Hastsal, Uttam Nagar, Delhi. Three months back she noticed a Surendra Security Services job opportunity in a news Paper where a mobile phone number 98118-44420 was given. She contacted the number and kept in touch with the person named Ajayvir and requested for the Job offered through the newspaper. She left her address and telephone number with Ajayvir. On 2nd December, 2002, Ajayvir called up Savitha Padhee and asked her to come for interview near Sunil Dairy, Chnader Vihar, Nangoli, Delhi on 3rd December, 2002 from where she will be picked up. Accordingly, on 3rd December, 2002, Savitha Padhee came to Chander Vihar. She was picked up by Ajayvir in the Maruti Car in which two more persons were there. She was taken to one room "Kuldeep Properties' office situated at Veer Bazar Road, Chander Vihar, Nangloi in a 2000 Sq. yards plot. In the said room she was taken by Ajayvir and raped at dagger point criminally intimidating her. Mukesh latched the door closed from outside and kept standing. Some time later, she managed to come out and the assailants also left the place. She came to her home first and called up the 100 number PCR at 8.45 in the evening. One the complaint of victim Savitha Padhee a case vide FIR No.1065 dated 04.12.2002 u/s 376/342/506/34 IPC PS Nangloi was got registered and investigation was immediately taken up. Investigation revealed that the assailant Ajaybir @ Bablu is a Delhi Police Constable posted with III Bn. DAP bearing belt No.2645/DAP (PIS No.28901405). His associate Mukesh belongs to his village Badli, Distt. Jhajjar only. Mukesh has been arrested by the Police in the case. Ajayvir @ Bablu is absconding. Ajaivir @ Bablu being a Delhi Police Constable and a member of disciplined force has been found involved in the aghast crime of rape proving himself unbecoming of a member of a discipline force."

2. Keeping in view the same, the disciplinary authority dismissed the applicant from service and his appeal has also been dismissed.

3. The applicant assails the said orders. The primary argument raised at the Bar has been that in the facts of the present case, the respondents could not resort to Article 311(2)(b) of the Constitution.

4. Needless to state that in the reply filed, the application has been contested. It has been pointed that to maintain confidence of public in the police force, and in the interest of public at large, the applicant was rightly dismissed under Article 311(2)(b) of the Constitution. The involvement of the applicant in such a criminal act had eroded the faith of the common people in the police.

5. Article 311(2)(b) 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). .....
>
> [(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) ...."

6. The provisions of Article 311(2)(b) of the Constitution can be invoked if the authority empowered to impose the penalty is satisfied and records in writing 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.

7. 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 to 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 out 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."

8. It is on the touch-stone of the aforesaid that the facts of the present case have to be reappreciated. At the outset, we must make it clear that we are not in any way underpaying the gravity of the offence if committed. We are also not expressing ourselves in this regard because that is not the question to be considered before us.

9. The order passed by the disciplinary authority indicates that Article 311(2)(b) of the Constitution has been invoked because it was felt that there was every possibility that applicant may harass

the public and inflict even more serious injuries on weaker section of the society. It has been opined that the applicant indulged in rape with a lady which is not only immoral and reprehensible but also reflects a grave misconduct. It will destroy faith of the public. It has also been opined that it is a common experience that applicant may adopt any tactics of intimidating the witnesses.

10. In the present case, it was pointed that the prosecution side had appeared in the case against the applicant and the applicant has since been acquitted.

11. In addition to that, there is no complaint of harassment by any witness which could prompt the authorities to conclude that it could not be reasonably practicable to hold an inquiry. To come to such a conclusion there has to be some base. The said base has not been shown to us. On presumptions and conjectures such a finding cannot be arrived at.

12. Somewhat similar situation had arisen before this Tribunal in the case of Ex. Constable Radhey Shayam v. Union of India & Others, OA No.1066/2001, decided on 14.12.2001. The impugned order similarly passed was quashed.

13. In fact, the respondents have issued a Circular, Annexure A-5 wherein the Commissioner of Police had decided that when a police official is involved in a case of rape or such a serious offences,

he should not be dismissed straightaway. The disciplinary authority must apply its mind as to whether it is reasonably practicable to hold an inquiry or not. It is one thing to state that it is not reasonably practicable to conduct the inquiry, and it is another thing to state that the offence is serious. Ipsi dixit of the disciplinary authority, keeping in view the gravity of the offence, is not a substitute of an application of Article 311(2)(b) of the Constitution. Once the ingredients are not satisfied as in the present case, keeping in view the gravity of the case it is not reasonably practicable to invoke such provision.

14. With these reasons, we allow the present application and quash the impugned orders. Nothing said herein should restrain the respondents to initiate the disciplinary proceedings if deemed appropriate. We were informed that the applicant was under suspension, if that be so, he will continue to be under suspension till the decision is taken in this regard within one month from the date of receipt of the present order in this regard.

(S.A.Singh)
Member (A)

(V.S. Aggarwal)
Chairman

/NSN/