CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A.NO.3193/2003

New Delhi, this the 15th day of July, 2004

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

Ishwarjan Rai
s/o Bhola Ram
r/o M-8, New Police Lines
Kingsway Camp
New Delhi. .. Applicant

(By Advocate: Sh. Arun Bhardwaj)

Versus

1. Union of India through
Commissioner of Police
Police Headquarters, I.P.Estate
New Delhi.

2. Additional Commissioner of Police
PCR And Communications
Police Headquarters IP Estate
New Delhi.

3. Deputy Commissioner of Police
Police Control Room
I.P. Estate
New Delhi. ... Respondents

(By Advocate: Sh. S.Q.Kazim with Sh. Mumtaz Hussain and Shri Falak Mohd.)

O R D E R (Oral)

Justice V.S. Aggarwal:-

By virtue of the present application, applicant (Ishwarjan Rai) seeks to assail the order passed by the disciplinary authority dated 5.9.2003 and by the appellate authority dated 15.12.2003 invoking Article 311(2)(b) of the Constitution. The applicant was dismissed from service and the said order has been upheld by the appellate authority. The relevant facts are that on 26.8.03, FIR No.311 with respect to an offence punishable under Section 384 of the Indian Penal Code, Police Station I.P. Estate was registered on the statement of Sh. Suraj Gupta. He had stated that he was working with M/s Badri Vishal

Trading Co. Pvt. Ltd. He along with one Mr. Madan Lal was going from his office to CGO Complex, via ITO in a hired TSR. When the TSR stopped at Red Light, ITO, one person approached him and told that he was a policeman and at the same time he shared the seat along with TSR driver. After the light turned green the above said person stopped the TSR on the roadside and asked him to get his s~uff checked by saying that he was having objectionable goods. When the complainant objected, the person slapped him by saying that he was a policeman and now the complainant would go to lockup. He put the complainant under fear and took away Rs.7000/- from the bag of the complainant. Thereafter, he alongwith his companion Madan Lal went back to his employer in Darya Ganj who advised them to report the matter to police and look for the culprit. At around 4.30 P.M. when they were at ITO Red light, the complainant noticed the same person who had taken away Rs.7,000/- from his bag was present near bus stand in front of Hans Bhawan. He immediately informed HC Jagdish who was on duty at ITO Chowk and also informed PS I.P. Estate telephonically. In the meanwhile, the above said person boarded bus route No.740 and on noticing this, he with the help of Madan Lal and HC Jagdish caught him in the bus. Local police also reached in the meantime. After interrogation, the identity of the applicant was established and he was taken into custody.

2. Taking note of the said facts, the disciplinary authority recorded the following reasons while dismissing the applicant:

"It is evident from the above facts that HC Ishwarjan Rai No.1193/PCR has committed a heinous crime, which is a highly abhorrent act on his part being member of the police force. Instead of discharging his sacred responsibility of upholding the rule of law, he himself indulges in an act of heinous crime and lawlessness, which has not only tarnished the image of Delhi Police but also badly shattered the faith of common man in the government authority. Such misconduct erodes the very basis of police functioning i.e. "public trust" without which the police as a service would become rather irrelevant.

The aforesaid misconduct of the defaulter police official clearly shows that he is a desperate character and his retention in Delhi Police is hazardous to the public at large. The society expects a policeman to protect the life and property of its citizens but on the contrary this Head Constable himself is found including in such a gruesome act of extortion. The level of his desperation can also be understood from the fact that he committed this gruesome act right in front of the Police Headquarters. After such a shameful and criminal act, which has eroded the faith of common people in police, his continuance in police force is likely to cause an irreparable loss to the functioning and credibility of Delhi Police.

The manner in which he committed this act strongly indicates that this was not his first such act. The above act and circumstances clearly shows that he is highly desperate and dangerous person who may be having several associates with similar dangerous criminal propensity. While he himself was in judicial custody, the complainant was being intimidated, presumably by one of his associates for not pursuing the matter further. It is thus certain that the complainant and witnesses would not be in a position to muster enough courage to depose against the said police officer due to fear of severe reprisal from him.

Extension of threat to the complainant in fact now makes it abundantly clear that during the entire process of departmental proceedings the complainant and witness would be put under constant fear of threat to their person and property from the delinquent police office. Under such circumstances it is not practicable to conduct a departmental enquiry against the said delinquent police officer."

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3. An appeal was filed and the same, as already referred to above, also failed.

4. Learned counsel for the applicant contended that in the facts of the present case, Article 311(2)(b) of the Constitution could not be attracted. Respondents contest the plea and urged that the applicant is a desperate character and he is a dangerous person and normally witnesses will not be in a position to muster courage to depose against such a person and, therefore, it was not reasonably practicable to hold the inquiry.

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 otherwise contemplated as enshrined under Article 311 of the Constitution refers to giving a reasonable opportunity to the delinquent who is 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 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 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

CS Agree

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."

7. It is obvious from the aforesaid and facts that the disciplinary authority is swayed by the fact that the applicant is a desperate character and a normal public person will find difficulty to depose against him. We had put to the learned counsel for the respondents to inform us as to what was the material available to conclude that the witnesses would not come and depose against the applicant. In the impugned order, a reference has been made that there is a threat made to

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the complainant but our attention has not been drawn to any such fact from the record to prompt us to probe further in this regard.

8. The learned counsel opposed the application, but could not produce any material that witnesses had been threatened. No such written complaint even has been brought to our notice. Mere suspicion cannot take place of the proof. Necessarily, there should be some material to prompt us to conclude that it was not reasonably practicable to hold the inquiry. Simply because the applicant was a police official will not by itself be a good ground to presume that it is not reasonably practicable to hold the inquiry. The nature of the offence was serious but it is not a tilting factor. We are of the considered opinion that, therefore, in the facts of the present case, it could not be termed that it was not reasonably practicable to hold the inquiry. We hasten to add that nothing said herein is an expression of opinion pertaining to the facts and assertions made above.

9. For these reasons, we dispose of the present application holding:

a) the impugned order is quashed

b) if deemed appropriate, the respondents may initiate disciplinary proceedings against the applicant.

c) we were informed that after the incident the applicant had not been placed under suspension. It is for the disciplinary authority to pass another appropriate order in this regard: and

d) the applicant would be entitled to all consequential benefits.

(S.K. Naik)
Member (A)

(V.S. Aggarwal)
Chairman

/NSN/