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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ W.P.(C) 10572/2023 & CM APPL. 41113/2023

GOVT OF NCT OF DELHI AND ORS. .....Petitioners
Through: Ms. Laavanya Kaushik, GP

versus

NEERAJ KUMAR .....Respondent
Through: Mr. Sachin Chauhan, Ms. Ridhi Dua, Mr. Abhimanyu Baliyan, Mr. Himanshu Raghav, Advs.

CORAM:
HON'BLE MR. JUSTICE C. HARI SHANKAR
HON'BLE DR. JUSTICE SUDHIR KUMAR JAIN

JUDGMENT (ORAL)

% 24.10.2024

C. HARI SHANKAR, J.

1. The respondent was working as a Constable with the Delhi Police. *Vide* order dated 8 April 2016, he was dismissed from service, invoking proviso (b) to Article 311 (2)[1] of the Constitution of India.

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[1] **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 an 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.

He appealed. The appeal was dismissed by the Appellate Authority on 26 August 2016. By the impugned judgment dated 27 April 2023, the learned Central Administrative Tribunal, whom the respondent petitioned, has set aside both the orders. Aggrieved thereby, the petitioners, who were the respondents before the learned Tribunal, has approached this Court under Article 226 of the Constitution of India.

2. The facts are brief. While he was working as Constable in the Delhi Police, on 21 April 2013, FIR 115/2013 was registered against the appellant at PS Chhawla under Section 302 read with Section 201 of the Indian Penal Code, 1860. The respondent was charged with having murdered his parents, whose bodies were found in a plot near his residence. It was also alleged, in the FIR, that the respondent had admitted to the crime before the Investigating Officer. The respondent was arrested in connection with the FIR on 21 April 2013. Simultaneously, on the same day, the respondent was placed under suspension. He was, thereafter, remanded to judicial custody by the learned criminal court and was in judicial custody at the time when he instituted OA 1038/2017 before the learned Tribunal.

3. The learned Tribunal notes, in the impugned judgment, that charge-sheet had already been filed against the respondent before the learned Additional Sessions Judge who was in cognizance of the case. A preliminary investigation against the respondent had also been conducted by the Assistance Commissioner of Police, PG Cell on 22 May 2014.

4. In this scenario, the Additional Deputy Commissioner of Police, as the Disciplinary Authority[2], *vide* order dated 8 April 2016, dismissed the respondent from service. The order reads thus:

> "Under these circumstances, I am of the view that Constable (Exe) Neeraj Kumar No.511 /ND has brought had name to the entire police official 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 act 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 (Exe). Neeraj Kumar No. 51 1/ND should not be allowed to continue in police service and needs to be dismissed immediately without following the procedure of regular Departmental Proceedings, although purpose of the fact finding is really not needed as the contents of case FIR No. 115 dated 21.04.13 u/s 302/201 IPC, PS Chhawla, Delhi, his disclosure statement and the Preliminary Enquiry conducted into the matter has proved his involvement in this case."

5. The respondent appealed against the aforesaid order. The appellate authority dismissed the appeal *vide* order dated 26 August 2016.

6. Aggrieved thereby, the respondent approached the learned Tribunal by way of OA 1038/2017. The respondent prayed that the orders dated 8 April 2016 and 26 August 2016 be quashed and set aside and that he be reinstated in service with consequential benefits.

7. By the impugned judgment 27 April 2023, the learned Tribunal has set aside the orders dated 8 April 2016 and 26 August 2016 on the ground that no case for invocation of proviso (b) to Article 311 (2) of the Constitution was made out. Simultaneously, the petitioners have

[2] "DA", hereinafter

been granted liberty to initiate disciplinary proceedings against the respondent in accordance with law.

8. In arriving at this conclusion, the learned Tribunal has placed reliance on the judgment of the Constitution Bench of the Supreme Court in ***UOI v Tulsiram Patel***[3], generally regarded as the *locus classicus* on the issue, as well as the decision in ***Satyavir Singh v UOI***[4]. The reasoning of the learned Tribunal, following these decisions, is as under:

> "13. We have gone through the records of the case thoroughly and heard the arguments by both the counsels carefully. The Apex court in ***UOI v Tulsi Ram Patel*** has clearly held that invoking of Article 311() (b) in a routine manner is bad in law. The apex Court in this case held that:
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> > "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 given 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 other threatens, intimidates and terrorizes the officer who is the disciplinary authority or member 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

[3] **(1985) 3 SCC 398**
[4] **(1985) 4 SCC 252**

> 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."

14. Based on this judgment, the Delhi Police issued Circulars vide their Vigilance wing cautioning against invoking Article 311(2) (b) indiscriminately. As it is clear from the 2007 circular of Delhi Police only when Disciplinary authority is satisfied on the basis of material available on file that the case is such that it is not practicable to hold a Departmental Enquiry in view of threat, inducement, intimidation, affiliation with criminals etc. and keeping in the special circumstances of the case it is not possible that witnesses will not depose against the delinquent official, then only Article 311(2)(b) may be invoked.

15. Perusal of the records of the instant case does not provide reasonable ground to hold an a priori view that the applicant, accused of murdering his parents may use threat, inducement, and intimidation to the probable witnesses, who belong to the same village. The Preliminary Enquiry conducted by ACP PG Cell was submitted by the respondents after being spoken on 17.4.2023. Perusal of the Preliminary Enquiry by ACP Anand Prakash dated 5.1.2015 does not show any indication that the probable witnesses in any proposed disciplinary case would be intimated by the applicant. The Preliminary Enquiry mentions the heinous nature of offence and the fact that the Judicial Court framed the charges against the applicant. Moreover, the counsel for the applicant has stated the Trial Court proceedings are undergoing smoothly and many witnesses have deposed against the applicant. Though the applicant is out of jail on bail, there is no reported threat or intimidation by the applicant to any of the witnesses in the criminal case. Hence, there was no apparent reason that a proper disciplinary proceedings could not have been held. The other reason that disciplinary proceedings would have taken a longer time does not obviate the need to follow due procedure of law and principles of natural justice. The Preliminary Enquiry dt. 5.1.2015 of ACP Shri Anand Prakash specifically states:

> "For assessing the quantum of default, it goes without saying that Const. Neeraj Kumar 511 /ND is a member of discipline0d force who had been put to all kind of basic training and being a person conversant with law and also required to enforce law, given the reason/ notice in the charge sheet, he was supposed to have recourse to the protection of the Law/ Public Authorities, but the investigations concluded against him leading to the filing of charge sheet and the prima facie appreciation of evidence and material on record by the trail court leading to framing of formal charge against him and his wife leads to the reason to believe that he inflicted more harm than was necessary to inflict for the purpose of defense of his own / self esteem and it was not a situation that he ought not to be master of his mind so it was a malice aforethought and the retaliation had no reasonable relationship and the act was not that of a reasonable man as reasonable man would have been provided to loose his self control and was an act of superlative degree done voluntarily. The submissions in the findings are meant for disciplinary purposes against Constable Neeraj Kumar No. 511/NDD only and none else."

16. From the allegations in the FIR and the subsequent charges framed during judicial proceedings, the DA and the Appellate Authority held the view that the conduct of the applicant was unbecoming of a police official and they wanted to impose exemplary punishment to the applicant so that the rest of the police force would take note. From this it is clear that the DA and the AA have concluded that the allegations against the appellant stood already proved. Grave misconduct is not a contingent condition for invoking Article 311(2) (b). As it has been held by the Apex Court in ***Tulsi Ram case*** and several orders of this Tribunal cited by the counsel for the applicant, what is most important factor in invoking article 311(2) (b) is the reasonable satisfaction based on material facts that it is impracticable to hold Disciplinary Proceedings. In the instant case, there was no material on record to show that it not practicable to hold departmental proceedings. The impugned order just repeated "ad verbatim the phrase "facts and circumstances of the case are such that it would not be reasonably practicable to conduct a regular departmental enquiry against the defaulter constable as there is reasonable belief that the defaulter will influence the statements/ deposition of witnesses during DE proceedings and it will take a considerable long period."

It is mechanical quote from the various judgments /orders of the Apex court and this tribunal. However, this statement is not backed by facts and circumstances of impracticability of holding

departmental enquiry because the applicant was using any threat, inducement, intimidation to the probable witnesses. Because there was an FIR against the applicant for his alleged involvement in a criminal act, it cannot lead to reasonable presumption that the appellant would use threat/ inducement/intimidation/allurement to influence the probable witnesses in case a departmental enquiry is held. The alleged misconduct is not proved as yet and such misconduct is supposed to be proved in a departmental enquiry. Furthermore, misconduct is not a contingent condition for invoking Article 311(2) (b) of the Constitution of India. In view of the this the impugned orders are based in law and hence are liable to set aside."

9. The law on this issue is now crystallized. They can be found in the following passages from the judgments of the Supreme Court in ***Tulsiram Patel*** and ***Satyavir Singh***:

<u>Tulsiram Patel</u>

"62**.** Before, however, any clause of the second proviso can come into play the condition laid down in it must be satisfied. The condition for the application of each of these clauses is different. In the case of clause (a) a government servant must be guilty of conduct deserving the penalty of dismissal, removal or reduction in rank which conduct has led to him being convicted on a criminal charge. In the case of clause (b) the disciplinary authority must be satisfied that it is not reasonably practicable to hold an inquiry. In the case of clause (c) the President or the Governor of a State, as the case may be, must be, satisfied that in the interest of the security of the State, it is not expedient to hold an inquiry. When these conditions can be said to be fulfilled will be discussed later while dealing separately with each of the three clauses. The paramount thing, however, to bear in mind is that the second proviso will apply only where the conduct of a government servant is such as he deserves the punishment of dismissal, removal or reduction in rank. If the conduct is such as to deserve a punishment different from those mentioned above, the second proviso cannot come into play at all, because Article 311(2) is itself confined only to these three penalties. Therefore, before denying a government servant his constitutional right to an inquiry, the first consideration would be whether the conduct of the concerned government servant is such as justifies the penalty of dismissal, removal or reduction in rank. Once that conclusion is reached and the condition specified in the relevant clause of the second proviso is satisfied, that proviso becomes applicable and the government

servant is not entitled to an inquiry. The extent to which a government servant can be denied his right to an inquiry formed the subject-matter of considerable debate at the Bar and we, therefore, now turn to the question whether under the second proviso to Article 311(2) even though the inquiry is dispensed with, some opportunity at least should not be afforded to the government servant so that he is not left wholly without protection. As most of the arguments on this part of the case were common to all the three clauses of the second proviso, it will be convenient at this stage to deal at one place with all the arguments on this part of the case, leaving aside to be separately dealt with the other arguments pertaining only to a particular clause of the second proviso.

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70**.** The position which emerges from the above discussion is that the keywords of the second proviso govern each and every clause of that proviso and leave no scope for any kind of opportunity to be given to a government servant. The phrase "this clause *shall* not apply" is mandatory and not directory. It is in the nature of a constitutional prohibitory injunction restraining the disciplinary authority from holding an inquiry under Article 311(2) or from giving any kind of opportunity to the concerned government servant. There is thus no scope for introducing into the second proviso some kind of inquiry or opportunity by a process of inference or implication. The maxim "*expressum facit cessare tacitum*" ("when there is express mention of certain things, then anything not mentioned is excluded") applies to the case. As pointed out by this Court in ***B. Shankara Rao Badami v State of Mysore***[5] this well-known maxim is a principle of logic and common sense and not merely a technical rule of construction. The second proviso expressly mentions that clause (2) shall not apply where one of the clauses of that proviso becomes applicable. This express mention excludes everything that clause (2) contains and there can be no scope for once again introducing the opportunities provided by clause (2) or any one of them into the second proviso. In ***Atkinson v. United States of America Government***[6] Lord Reid said (at p. 232):

> "It is now well recognised that the court has power to expand procedure laid down by statute if that is necessary to prevent infringement of natural justice and is not plainly contrary to the intention of Parliament."

[5] **(1969) 1 SCC 1**
[6] **LR 1971 AC 197**

Here, however, the attempt is not merely to do something contrary to the intention of 'Parliament', that is, in our case, the Constituent Assembly, but to do something contrary to an express prohibition contained in the Constitution. The conclusion which flows from the express language of the second proviso is inevitable and there is no escape from it. It may appear harsh but, as mentioned earlier, the second proviso has been inserted in the Constitution as a matter of public policy and in public interest and for public good just as the pleasure doctrine and the safeguards for a government servant provided in clauses (1) and (2) of Article 311 have been. It is in public interest and for public good that a government servant who has been convicted of a grave and serious offence or one rendering him unfit to continue in office should be summarily dismissed or removed from service instead of being allowed to continue in it at public expense and to public detriment. It is equally in public interest and for public good that where his offence is such that he should not be permitted to continue to hold the same rank, that he should be reduced in rank. Equally, where a public servant by himself or in concert with others has brought about a situation in which it is not reasonably practicable to hold an inquiry and his conduct is such as to justify his dismissal, removal or reduction in rank, both public interest and public good demand that such penalty should forthwith and summarily be imposed upon him; and similarly, where in the interest of the security of the State it is not expedient to hold an inquiry, it is in the public interest and for public good that where one of the three punishments of dismissal, removal or reduction in rank is called for, it should be summarily imposed upon the concerned government servant. It was argued that in a case falling under clause (b)or (c), a government servant ought to be placed under suspension until the situation improves or the danger to the security of the State has passed, as the case may be, and it becomes possible to hold an inquiry. This argument overlooks the fact that suspension involves the payment at least of subsistence allowance and such allowance is paid at public expense, and that neither public interest would be benefited nor public good served by placing such government servant under suspension because it may take a considerable time for the situation to improve or the danger to be over. Much as this may seem harsh and oppressive to a government servant, this Court must not forget that the object underlying the second proviso is public policy, public interest and public good and the Court must, therefore, repel the temptation to be carried away by feelings of commiseration and sympathy for those government servants who have been dismissed, removed or reduced in rank by applying the second proviso. Sympathy and commiseration cannot be allowed to outweigh considerations of public policy, concern for public interest, regard for public good and the peremptory dictate of a constitutional prohibition.…

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114. So far as ***Challappan***[7] is concerned, it is not possible to find any fault either with the view that neither clause (a) of the second proviso to Article 311(2) nor clause (i) of Rule 14 of the Railway Servants Rules is mandatory or with the considerations which have been set out in the judgment as being the considerations to be taken into account by the disciplinary authority before imposing a penalty upon a delinquent government servant. Where a situation envisaged in one of the three clauses of the second proviso to Article 311(2) or of an analogous service rule arises, it is not mandatory that the major penalty of dismissal, removal or reduction in rank should be imposed upon the concerned government servant. The penalty which can be imposed may be some other major penalty or even a minor penalty depending upon the facts and circumstances of the case.

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124. In the course of the arguments certain executive instructions issued by the Government of India were referred to and relied upon on behalf of the government servants. It is unnecessary to deal with these instructions in detail. At the highest they contain the opinion of the Government of India on the scope and effect of the second proviso to Article 311(2) and cannot be binding upon the Court with respect to the interpretation it should place upon that proviso. To the extent that they may liberalize the exclusionary effect of the second proviso they can only be taken as directory. Executive instructions stand on a lower footing than a statutory rule for they do not have the force of a statutory rule. If an Act or a rule cannot alter or liberalize the exclusionary effect of the second proviso, executive instructions can do so even much less.

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129. The next contention was that even if it is not reasonably practicable to hold an inquiry, a government servant can be placed under suspension until the situation improves and it becomes possible to hold the inquiry. This contention also cannot be accepted. Very often a situation which makes it not reasonably practicable to hold an inquiry is of the creation of the concerned government servant himself or of himself acting in concert with others or of his associates. It can even be that he himself is not a party to bringing about that situation. In all such cases neither public interest nor public good requires that salary or subsistence

[7] **Divisional Personnel Officer, Southern Railway v T.R. Chellappan, (1976) 3 SCC 190**

allowance should be continued to be paid out of the public exchequer to the concerned government servant. It should also be borne in mind that in the case of a serious situation which renders the holding of an inquiry not reasonably practicable, it would be difficult to foresee how long the situation will last and when normalcy would return or be restored. It is impossible to draw the line as to the period of time for which the suspension should continue and on the expiry of that period action should be taken under clause (b) of the second proviso. Further, the exigencies of a situation may require that prompt action should be taken and suspending the government servant cannot serve the purpose. Sometimes not taking prompt action may result in the trouble spreading and the situation worsening and at times becoming uncontrollable. Not taking prompt action may also be construed by the trouble-makers and agitators as a sign of weakness on the part of the authorities and thus encourage them to step up the tempo of their activities or agitation. It is true that when prompt action is taken in order to prevent this happening, there is an element of deterrence in it but that is an unavoidable and necessary concomitance of such an action resulting from a situation which is not of the creation of the authorities. After all, clause (b) is not meant to be applied in ordinary, normal situations but in such situations where it is not reasonably practicable to hold an inquiry.

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 intimidates 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. The case of ***Arjun Chaubey v Union of India***[8] is an instance in point. In that case, the appellant was working as a senior clerk in the office of the Chief Commercial Superintendent, Northern Railway, Varanasi. The Senior Commercial Officer wrote a letter to the appellant calling upon him to submit his explanation with regard to twelve charges of gross indiscipline mostly relating to the Deputy Chief Commercial Superintendent. The appellant submitted his explanation and on the very next day the Deputy Chief Commercial Superintendent served a second notice on the appellant saying that his explanation was not convincing and that another chance was being given to him to offer his explanation with respect to those charges. The appellant submitted his further explanation but on the very next day the Deputy Chief Commercial Superintendent passed an order dismissing him on the ground that he was not fit to be retained in service. This Court struck down the order holding that seven out of twelve charges related to the conduct of the appellant with the Deputy Chief Commercial Superintendent who was the disciplinary authority and that if an inquiry were to be held, the principal witness for the Department

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[8] (1984) 2 SCC 578

would have been the Deputy Chief Commercial Superintendent himself, resulting in the same person being the main accuser, the chief witness and also the judge of the matter.

131. *It was submitted that where a delinquent government servant so terrorizes the disciplinary authority that neither that officer nor any other officer stationed at that place is willing to hold the inquiry, some senior officer can be sent from outside to hold the inquiry. This submission itself shows that in such a case the holding of an inquiry is not reasonably practicable. It would be illogical to hold that the administrative work carried out by senior officers should be paralysed because a delinquent government servant either by himself or along with or through others makes the holding of an inquiry not reasonably practicable.*

132. It is not necessary that a situation which makes the holding of an inquiry not reasonably practicable should exist before the disciplinary inquiry is initiated against a government servant. Such a situation can also come into existence subsequently during the course of an inquiry, for instance, after the service of a charge-sheet upon the government servant or after he has filed his written statement thereto or even after evidence has been led in part. In such a case also the disciplinary authority would be entitled to apply clause (b) of the second proviso because the word "inquiry" in that clause includes part of an inquiry. *It would also not be reasonably practicable to afford to the government servant an opportunity of hearing or further hearing, as the case may be, when at the commencement of the inquiry or pending it the government servant absconds and cannot be served or will not participate in the inquiry.* In such cases, the matter must proceed ex parte and on the materials before the disciplinary authority. Therefore, even where a part of an inquiry has been held and the rest is dispensed with under clause (b) or a provision in the service rules analogous thereto, the exclusionary words of the second proviso operate in their full vigour and the government servant cannot complain that he has been dismissed, removed or reduced in rank in violation of the safeguards provided by Article 311(2).

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134. It is obvious that the recording in writing of the reason for dispensing with the inquiry must precede the order imposing the penalty. The reason for dispensing with the inquiry need not, therefore, find a place in the final order. It would be usual to record the reason separately and then consider the question of the penalty to be imposed and pass the order imposing the penalty. It would, however, be better to record the reason in the final order in order to avoid the allegation that the reason was not recorded in writing

before passing the final order but was subsequently fabricated. *The reason for dispensing with the inquiry need not contain detailed particulars, but the reason must not be vague or just a repetition of the language of clause (b) of the second proviso. For instance, it would be no compliance with the requirement of clause (b) for the disciplinary authority simply to state that he was satisfied that it was not reasonably practicable to hold any inquiry. Sometimes a situation may be such that it is not reasonably practicable to give detailed reasons for dispensing with the inquiry. This would not, however, per se invalidate the order. Each case must be judged on its own merits and in the light of its own facts and circumstances*."

(Emphasis supplied)

<u>Satyavir Singh</u>

(29) If legislation and the necessities of a situation can exclude the principles of natural justice including the audi alteram partem rule, a fortiori so can a provision of the Constitution such as the second proviso to Article 311(2).

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(50) *The three clauses of the second proviso to Article 311 are not intended to be applied in normal and ordinary situations. The second proviso is an exception to the normal rule and before any of the three clauses of that proviso is applied to the case of a civil servant, the conditions laid down in that clause must be satisfied.*

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(55) *There are two conditions precedent which must be satisfied before clause (b) of the second proviso to Article 311(2) can be applied. These conditions are:*

> *(i) there must exist a situation which makes the holding of an inquiry contemplated by Article 311(2) not reasonably practicable, and*
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> *(ii) the disciplinary authority should record in writing its reason for its satisfaction that it is not reasonably practicable to hold such inquiry.*

(56) 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.

(57) It is not a total or absolute impracticability which is required by clause (b) of the second proviso. *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.

(58) The reasonable practicability of holding an inquiry is a matter of assessment to be made by the disciplinary authority and must be judged in the light of the circumstances then prevailing. The disciplinary authority is generally on the spot and knows what is happening. It is because the disciplinary authority is the best judge of the prevailing situation that clause (3) of Article 311 makes the decision of the disciplinary authority on this question final.

(59) *It is not possible to enumerate the cases in which it would not be reasonably practicable to hold the inquiry. Illustrative cases would be—*

> *(a) where a civil servant, particularly through or together with his associates, so terrorizes, threatens or intimidates witnesses who are going to give evidence against him with fear of reprisal as to prevent them from doing so, or*
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> *(b) where the civil 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, or*
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> *(c) where an atmosphere of violence or of general indiscipline and insubordination prevails, it being immaterial whether the concerned civil servant is or is not a party to bringing about such a situation.*

In all these cases, it must be remembered that numbers coerce and terrify while an individual may not.

(60) *The 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 civil servant is weak and must fail.*

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(64) *The reason for dispensing with the inquiry need not contain detailed particulars but it cannot be vague or just a repetition of the language of clause (b) of the second proviso.*

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(68) The submission that where a delinquent government servant so terrorizes the disciplinary authority that neither that officer nor any other officer stationed at that place is willing to hold the inquiry, some senior officer can be sent from outside to

hold the inquiry cannot be accepted. This submission itself shows that in such a case the holding of an inquiry is not reasonably practicable. It would be illogical to hold that administrative work carried out by senior officers should be paralysed just because a delinquent civil servant either by himself or along with or through others makes the holding of an inquiry by the designated disciplinary authority or inquiry officer not reasonably practicable."

10. In ***Tarsem Singh v State of Punjab***[9], the charge against the appellant Tarsem Singh in this case was of outraging the modesty of the wife of a resident of the locality, forcible extraction of money from the resident and, later, of sodomizing him. Paras 4 to 6 of the report set out relevant facts:

> "4. On the basis of the said allegations alone and without any further material, PPS, Commandant, 4th Commando Battalion, Bahadurgarh, Patiala, on arriving at a purported satisfaction that the appellant could win over aggrieved people as well as witnesses from giving evidence by threatening and other means, a formal departmental proceeding need not be initiated. The said authority further took into consideration report of a preliminary enquiry conducted through Mr Gurbachan Singh, DSP/Adjutant, 4th Commando Battalion, Bahadurgarh, Patiala and, on that basis opined, "There seems no need of a regular departmental enquiry against Tarsem Singh No. 4C/371".
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> 5. The appellant was dismissed from service. An appeal thereagainst was preferred by the appellant. The appellate authority held:
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>> "I have carefully examined the pleas of the representation along with relevant record and find the same without any substance. Case FIR No. 228 dated 13-10-1997 under Sections 377/34 IPC, Police Station Kotwali Barnala stands registered against the appellant and his companions which is under investigation and will be sent to the court for judicial verdict in due course. The appellant is guilty of gravest acts of misconduct proving complete unfitness for police service and the punishment awarded to him is commensurate with the misconduct. I find no reasons to

[9] **(2006) 13 SCC 581**

interfere with the orders already passed by the punishing authority and the appeal is rejected."

6. The appellant thereafter moved the Inspector General of Police, Commando Battalion, Bahadurgarh, Patiala, but he was not favoured with any response thereto. The appellant thereafter filed a writ petition being Civil Writ Petition No. 14467 of 1999 in the Punjab and Haryana High Court. By an order dated 12-10-1999, the High Court directed the said authority to pass an appropriate order and preferably a speaking order within one month from the production of the certified copy thereof. Pursuant to or in furtherance of the said direction, the Inspector General of Police, upon hearing the appellant in person, passed an order dated 26-11-1999 dismissing the said representation stating that:

> "From a perusal of the record of the case, I am satisfied that the nature of the misconducts committed by the petitioner which are proved from the statements of various persons recorded by Shri Gurbachan Singh DSP/Adjutant during the preliminary enquiry conducted by him under the orders of the Commandant are of a very grave and heinous nature and bring a bad name to the police force of the State on the whole, and there is every likelihood that none of the said witnesses may come forward to depose against the petitioner in a regular enquiry due to the fear of injury to their lives. Thus, I am of the considered view that in view of the abovesaid facts, it was not reasonably practical to hold a regular enquiry before passing the dismissal order by the Commandant and that the dismissal order dated 6-11-1997 passed by the Commandant, 4th Commando Battalion, Bahadurgarh, Patiala is perfectly in order and has been passed on the basis of the record available on the file and also by keeping in view that image of whole of the police force of the State shall be tarnished in a regular enquiry and also that the witnesses may not come forward to depose against the petitioner for fear of any injury or danger to their lives. The said order has been correctly passed under Exception (*b*) to second proviso to Article 311(2) of the Constitution of India. Vide order dated 24-6-1998, the appellate authority has rightly dismissed the appeal. Hence, finding no force in the revision petition, I dismiss the same being without merit."

The reasons adduced for dispensing with any disciplinary inquiry against Tarsem Singh before dismissing him from service are, therefore, clearly similar in flavour and, in fact, more detailed, than

the reasons adduced in the order dated 8 April 2016, passed against the respondent in the present case. Nonetheless, when the dispute travelled upwards, the Supreme Court held that there was no legitimate ground to dispense with the inquiry, reasoning thus:

> "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.* The learned counsel appearing on behalf of the appellant has taken us through certain documents for the purpose of showing that ultimately the police on investigation did not find any case against the appellant in respect of the purported FIR lodged against him under Section 377 IPC. However, it may not be necessary for us to go into the said question.
>
> 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.*
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> 12. Even the Inspector General of Police in passing his order dated 26-11-1999, despite having been asked by the High Court to pass a speaking order, *did not assign sufficient or cogent reason.*

He, like the appellate authority, also proceeded on the basis that the appellant was guilty of commission of offences which are grave and heinous in nature and bring a bad name to the police force of the State on the whole. None of the authorities mentioned hereinbefore proceeded on the relevant material for the purpose of arriving at the conclusion that in the facts and circumstances of the case sufficient cause existed for dispensing with the formal enquiry. This aspect of the matter has been considered by this Court in ***Jaswant Singh v. State of Punjab***[10] wherein relying upon the judgment of the Constitution Bench of this Court, *inter alia*, in ***Union of India v. Tulsiram Patel***, it was held:

> "Although Clause (3) of that article makes the decision of the disciplinary authority in this behalf final such finality can certainly be tested in a court of law and interfered with if the action is found to be arbitrary or mala fide or motivated by extraneous considerations or merely a ruse to dispense with the inquiry."

13. In that case also like the present one, *the attention of the Court was not drawn to any material existing on the date of passing of the impugned order in support of the allegations contained in the order dispensing with the departmental enquiry.*

14. *In view of the fact that no material had been placed by the respondents herein to satisfy the Court that it was necessary to dispense with a formal enquiry in terms of proviso (b) appended to Clause (2) of Article 311 of the Constitution of India, we are of the opinion that the impugned orders cannot be sustained and they are set aside accordingly. The appellant is directed to be reinstated in service.* However, in view of our aforementioned findings, it would be open to the respondents to initiate a departmental enquiry against the appellant if they so desire. Payment of back wages shall abide by the result of such enquiry. Such an enquiry, if any, must be initiated as expeditiously as possible and not later than two months from the date of communication of this order."

(Emphasis supplied)

The decision in ***Tarsem Singh***, *ex facie*, covers the present case.

11. In ***UOI v Ram Bahadur Yadav***[11], the allegation against the

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[10] **(1991) 1 SCC 362**
[11] **(2022) 1 SCC 389**

respondent Ram Bahadur Yadav[12] was that he had stolen non-judicial stamp papers worth over ₹ 1 crore, in collusion with others. The case arose under Rule 161 of the Railway Protection Force Rules, 1987 which, like proviso (b) to Article 311 (2), allow dispensing with the holding of a disciplinary inquiry where the competent authority is of the view that it is not reasonably practicable to do so. Significantly, in that case, it was pointed out, by the Counsel for the State, before the Supreme Court, that Yadav had actually threatened witnesses who were not willing to participate in the inquiry. Despite this, the Supreme Court held the decision to dispense with the disciplinary inquiry to be unsustainable in law, reasoning thus:

> "14. It is a settled legal position that when Rules contemplate method and manner to adopt special procedure, it is mandatory on the part of the authorities to exercise such power by adhering to the Rule strictly. *Dismissal of a regular member of Force, is a drastic measure. Rule 161, which prescribes dispensing with an inquiry and to pass order against a member of Force, cannot be invoked in a routine and mechanical manner, unless there are compelling and valid reasons. The dismissal order dated 22-10-1998 does not indicate any reason for dispensing with inquiry except stating that the respondent had colluded with the other Head Constable for theft of non-judicial stamp papers. By merely repeating the language of the Rule in the order of dismissal, will not make the order valid one, unless valid and sufficient reasons are recorded to dispense with the inquiry. When the Rule mandates recording of reasons, the very order should disclose the reasons for dispensing with the inquiry.*
>
> *****
>
> 16. *The respondent was only a Head Constable during the relevant point of time and he was not in powerful position, so as to say that he would have influenced or threatened the witnesses, had the inquiry been conducted. The very fact that they have conducted confidential inquiry, falsifies the stand of the appellants that it was not reasonably practicable to hold an inquiry. The words "not*

[12] "Yadav", hereinafter

reasonably practicable" as used in the Rule, are to be understood in a manner that in a given situation, ordinary and prudent man should come to conclusion that in such circumstances, it is not practicable. In the present case, there appears no valid reason to dispense with inquiry and to invoke Rule 161 of the Rules. We are in agreement with the view taken by the High Court. In ***Sahadeo Singh v. Union of India***[13], this Court has held that in the facts and circumstances of the said case, it was not reasonably practicable to hold a fair inquiry, as such, it was held to be justifiable on the facts of the case. Whether it is practicable or not to hold an inquiry, is a matter to be considered with reference to the facts of each case and nature of charge, etc.

17. In the judgment in ***Tarsem Singh v. State of Punjab***, this Court has categorically held that when the Authority is of the opinion that it is not reasonably practicable to hold inquiry, such finding shall be recorded on the subjective satisfaction by the authority, and same must be based on the objective criteria. In the aforesaid case, it is further held that reasons for dispensing with the inquiry must be supported by material."

(Emphasis supplied)

12. Significantly, following the decision in ***Tulsiram Patel***, the Delhi Police itself issued Circulars dated 11 September 2007 and 18 April 2018 which clearly set out the relevant circumstances which have to be borne in mind while invoking proviso (b) to Article 311 (2) of the Constitution. The learned Tribunal has, in para 8 of the judgment under challenge, reproduced the relevant paragraphs from the said circulars and we deem it appropriate to do so likewise:

"8. Henceforth, it has been decided that whenever any Disciplinary Authority intends to invoke Article 311 (2)(b) of the Constitution of India, he must keep in mind the judgment in the case of UOI v. Tulsi Ram Patel, AIR 1985 SC 1416. Only in cases where Disciplinary Authority is personally satisfied on the basis of material available on file that the case is of such a nature that it is not practicable to hold an enquiry in view of threat, inducement, intimidation, affiliation with Criminals etc. and keeping in view the specific circumstances of the case it is not possible that PWs will

[13] (2003) 9 SCC 75

> depose against the defaulter and disciplinary authority has no Option but to resort to Article 311 (2) (b) should such an action be taken. Prior to such an order, a PE has to be conducted and it is 'essential to bring on record all such facts. It has also been decided that before passing an order under. Article 311 (2) (b) of the Constitution, Disciplinary Authority has to take prior conclusion of Spl. /Admn."

13. Clearly, even as per the circular issued by the Delhi Police, before invoking proviso (b) to Article 311 (2) (b) of the Constitution, the DA has to be satisfied on the basis of the material available on the file that the case was of such a nature that "it is not practicable to hold an inquiry in view of a threat, inducement, intimidation, affiliation with criminals etc. and keeping in view the specific circumstances of the case it is not possible that PWs will deposit against the defaulter…". It is further ordained**,** in the said instructions, that, before dispensing with the services of a police official by invoking Article 311 (2) (b) of the Constitution, a preliminary inquiry has to be conducted and it is essential to bring on record all such facts. The instructions also require that before taking such a decision, prior approval of the Special Commissioner of Police has to be taken. Incidentally, one of the contentions of the respondent before the learned Tribunal was that no such prior approval of the Special Commissioner had been obtained.

14. It is well settled that the Government is bound by the circulars issued by it.

15. Applying the principles contained in the decisions cited *supra*, and in the circulars issued by the Delhi Police, there is no ground

whatsoever for us to express an opinion in any way different from that expressed by the learned Tribunal in the impugned judgment. The order dated 8 April 2016, whereby the respondent's services were dispensed with, does not contain a single recital worth the name to indicate that it was not reasonably practicable to hold an inquiry. All that is said is that the offence of which the respondent was charged was a dastardly act, which would destroy the faith of the people in law enforcement system and amounted to serious misconduct and indiscipline, totally unbecoming of a police officer. Apart from this, there is a mere presumptive statement that "no witness will come forward for any inquiry". The basis for this assumption was not forthcoming before the learned Tribunal, and is not forthcoming before us.

16. If such reasoning is allowed, it would be permissible for the requirement of an inquiry to be dispensed with, and invoke proviso (b) to Article 311 (2) of the Constitution, in the case of every police official who is charged with a serious crime.

17. Ms. Laavanya Kaushik, learned Counsel for the petitioner, while striving at her best to defend the impugned order, emphasized the seriousness of the offence with which the respondent was discharged. The decisions cited *supra* make it clear that the gravity of the offence with which the officer is charged is extraneous to the issue of whether the holding of an inquiry was legitimately dispensed with. Besides, it has to be remembered that the respondent is still facing trial. He has not been convicted. The petitioner is not a trial court and

cannot presume that the respondent would ultimately be convicted. It is for this reason, that the Supreme Court has advisably held that the gravity of the offence with which the respondent is charged is not a relevant consideration while examining whether circumstances exist which justify dispensation with the requirement of holding a formal inquiry.

18. It is also well settled, following ***Mohinder Singh Gill v Election Commissioner of India***[14] that an order has to be sustained on the basis of what is stated therein. It cannot be improved by way of affidavits in Court or arguments at the Bar. The order dated 8 April 2016, whereby the respondent's services were dispensed with has, therefore, to sink or swim on the basis of what is contained therein. The recitals in the said order, needless to say, do not satisfy the requisite indicia which could justify invocation of proviso (b) to Article 311 (2) of the Constitution of India.

19. Incidentally, Mr. Sachin Chauhan, learned Counsel who appears on behalf of the respondent, also informs us that ultimately the respondent was acquitted in the criminal case.

20. We are in entire agreement with the reasoning of the learned Tribunal which is in accordance with law laid down by the Supreme Court in the authorities already cited *supra*.

21. No cause for the interference with the impugned judgment is

[14] **(1978) 1 SCC 405**

made out.

22. The petition is accordingly dismissed. No orders as to costs.

C. HARI SHANKAR, J.

DR. SUDHIR KUMAR JAIN, J.

OCTOBER 24, 2024/j

Click here to check corrigendum, if any