

REPORTABLE

* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ WP (C) No. 991 of 2008

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Reserved on : May 11, 2009
Pronounced on : July 03, 2009

Ex. Cont. Pawan Kumar

. . . Petitioner

through :

Mr. Shyam Babu, Advcoate

VERSUS

Govt. of NCT of Delhi & Ors.

. . . Respondents

through :

Ms. Anju Bhattacharya, Advocate

CORAM :-

THE HON'BLE MR. JUSTICE A.K. SIKRI

THE HON'BLE MR. JUSTICE SURESH KAIT

1. Whether Reporters of Local newspapers may be allowed to see the Judgment?
2. To be referred to the Reporter or not?
3. Whether the Judgment should be reported in the Digest?

A.K. SIKRI, J.

1. The short question which falls for consideration in this writ petition is as to whether services of the petitioner herein could be terminated without holding a formal inquiry by invoking the provisions of proviso to Article 311(2)(b) of the Constitution of India. The dismissal of the petitioner vide orders dated 22.12.2005 and appellate order dated 14.3.2006 confirming the aforesaid order of the Disciplinary Authority have been upheld by the learned Central Administrative Tribunal, Principal Bench, New Delhi while dismissing the OA filed by the petitioner herein. Judgment dated 5.2.2007

passed in this behalf is challenged by the petitioner in the form of the present writ petition.

2. It is obvious that though there were certain allegations against the petitioner herein, which amounted to misconduct, according to the Disciplinary Authority, it was not reasonably practicable to conduct the inquiry and that is why provisions of Article 311(2)(b) of the Constitution were invoked. Following details are forthcoming regarding the purported involvement of the petitioner in a criminal case:
3. On 4.3.2005, at about 10.00 p.m., an information was received at PS New Usman Pur, that a person had sustained gun-shot injuries in School Wall Gali, Ambedkar Basti, Ghonda and he had been taken to GTB Hospital by the PCR Staff. On receipt of the information, S.I. Parmod Kumar of P.S. New Usman Pur reached the spot and found HC Surender Kumar No. 204/NE and the petitioner present on the spot. It was also learnt that the said information was given by the petitioner. During investigation at GTB Hospital, the identity of the injured was revealed as Anil Kumar Mahajan, s/o. late Puran Chand, H.No. 125, Gali No.3, Shankar Nagar, who stated that he had a dispute with his brother-in-law Parveen (his wife's brother) and his neighbours Saurabh Gupta and Sanjay @ Sonu, with whom he had a quarrel in School Wall Gali, Ambedkar Basti, Ghonda, on that day and Sanjay @ Sonu fired upon him and he sustained gun-shot injuries in his left thigh. On the statement of Anil Kumar Mahajan, case FIR

No. 74 of 2005 u/s. 307/34 IPC and 27 Arms Act was registered at PS New Usman Pur and investigation was handed over to SI Parmod Kumar. Accused persons were arrested on 5.3.2005 and accused Sanjay @ Sonu was taken on one day police custody remand for the recovery of weapon used in the crime, but no weapon could be recovered. The interrogation of the accused persons revealed that there was a dispute over property between Anil Mahajan, the complainant and his wife Sushma. A civil case and a criminal case u/s 488-A, 308 IPC were got registered against Anil Mahajan by his wife. Anil Mahajan wanted to settle the score with his wife.

4. During the course of investigation of the case, the mobile phone of the complainant Mr. Anil Mahajan was taken into police possession and print out of his mobile phone No. 9811768150 was taken and on further suspicion print out of two other Mobile Phone Nos. 9811556558 and 9350578222 were also taken. On inspection of the print out of these three phones it was revealed that phone No. 20007420, which belongs to the petitioner, was regularly in touch with above-mentioned three phones. Prior to the incident, the petitioner contacted with the complainant, Anil Mahajan on 3.3.2005 at 6.03 p.m. and on 4.3.2005 at 6.46 p.m. He also contacted Phone No. 9350578222 regularly between 2.3.2005 to 4.5.2005. The owner of Mobile No. 9350578222, Gulfam S/o. Irshand R/o F-188, Gali No.8, Subhash Mohalla, Maul Pur, Seetam Pur was interrogated who revealed that on 2.3.2005, one Sanjay Mishra a known criminal of PS New Usman Pur, Aftab @ Tamta,

another known criminal of PS Gandhi Nagar and one other person to whom they introduced as Anil Mahajan approached him. Anil Mahajan told him that he had a dispute with his wife and in-laws and he wanted to implicate them in a false case of attempt to murder and he wanted him (Gulfam) to be an eyewitness in this case. When Sanjay Mishra and Aftab Tamta, would fire upon him, he will implicate his brother-in-law and his friends in the case. Gulfam refused to be an eye-witness in this case. He, however, introduced them to the petitioner on 3.3.2005, who listened to them and agreed to help them. It was decided that episode should be committed in his beat area i.e. Ambedkar Basti during night time and he will reach the spot and handle the situation. He was also paid for the purpose.

5. Further, the investigation revealed that as per their conspiracy on 4.3.2005 at about 9.50 p.m. Sanjay Mishra and Aftab Tama, fired upon Anil Mahajan on his left thigh, in Khajoor Wall Gali, Ambedkar Basti, Ghonda and after the incident Anil Mahajan intimated Gulfam on his mobile No. 9350578222, about the incident who instantly informed the petitioner on his mobile No. 20007420. The petitioner reached the spot and intimated the Police Station about this incident. Later on, Sanjay Mishra was arrested in another case FIR No. 150 of 2005 dated 8.5.2005 u/s. 25 of the Arms Act, PS New Usman Pur and during investigation he admitted his involvement in the said conspiracy and also confessed about the role played by him and the petitioner. Mr. Gulfam vide his statement

recorded under Section 164 Cr.P.C. disclosed about the whole conspiracy. The Metropolitan Magistrate, Karkardooma Courts, vide his order dated 5.9.2005 discharged Praveen, Sanjay Rawat @ Sonu and Sourab Gupta, who were falsely implicated in case FIR No. 74 of 2005 u/s 307/34 IPC PS New Usmanpur and granted permission to initiate action u/s 182 IPC against Anil Mahajan, the complainant. For his above said criminal conspiracy, the petitioner had been arrested in the case u/s. 211/120-B/34 IPC and was sent to judicial custody.

6. According to the respondent what persuaded the Disciplinary Authority to invoke the provisions of Article 311(2)(b) of the Constitution and dismiss the petitioner without inquiry are the following :-

(a) The incident shows the criminal propensity and disparate character of the petitioner. As a member of disciplined forces, the petitioner was supposed to protect the citizens. Instead, he himself indulged in a well planned criminal conspiracy against innocent citizens in connivance with the criminal elements. Rather than saving the rights of the common person, he staged this episode in his bid and became instrumental in false implication of innocent citizens in a case of murderous attempt of his monetary lust.

(b) Allegations against the petitioner were not without any substance and presumptuous, but based on solid material. It was pointed out that Gulfam, who introduced Anil Kumar Mahajan with

the petitioner and at first helped him, gave a written statement in the Court u/s. 164 Cr.P.C. that how the petitioner had helped Anil Kumar Mahajan to settle his scores with his relatives, the petitioner was well aware that what he was doing and he had also been paid by Mr. Mahajan for the same. The petitioner was, thus, dismissed from force only after scrutinizing/considering all these circumstances, facts and written statement of Gulfam before Court.

(c) The aforesaid act attributed to the petitioner shows that it was an act of moral turpitude, misuse of his official power and unbecoming of a member of a disciplined force.

(d) This act proved/established the relations of the petitioner with the criminal elements and, therefore, the possibility of the victim being unduly pressurized and threatened during the departmental proceedings could not be ruled out. Fear was expressed that if the departmental proceedings are held, the complainant and witnesses would be put under constant fear of threat to their person from the delinquent police official like the petitioner and they may not depose against him.

7. The Tribunal accepted the aforesaid justification provided by the respondent in support of the dismissal orders and, thus, dismissed the OA.
8. Perusal of the impugned judgment of the Tribunal would show that it thoroughly discussed the facts of the case in the light of provisions

contained in Article 311 of the Constitution of India as well as various judgments on the issue.

9. Challenging the judgment of the Tribunal, submission of Mr. Shyam Babu was that it was not a case where provisions of Article 311(2)(b) could be invoked. He referred to the guidelines issued by the Commissioner of Police, Delhi mentioning that wherever there is a specific misconduct or any stigma attached, departmental action shall be taken under the Delhi Police (Punishment & Appeal) Rules and a proper inquiry held giving opportunity to the delinquent employee to defend himself. He further submitted that apprehension of the Disciplinary Authority was totally unfounded inasmuch as the petitioner was only a Constable in rank and could not have influenced or terrorized the witnesses. The reasons given were neither good nor valid for invoking such a drastic provision as contained in Article 311(2)(b) of the Constitution. It was submitted that the respondents had acted merely on the basis of suspicion of possibility of victim being unduly pressurized and threatened during the departmental proceedings without even making an effort to initiate the departmental action. It is more so when none of the complainant/witnesses had ever made a complaint to the authorities that the petitioner was threatening and putting pressure upon them. He also referred to the following two judgments in his support :-

- (i) *Jaswant Singh v. State of Punjab & Ors.*
AIR 1991 SC 385
- (ii) *Chief Security Officer & Ors. v. Singasan Rabi Das*
AIR 1991 SC 1043

10. Learned counsel for the respondent, on the other hand, referred to the detailed discussion in the impugned judgment itself in support of the action taken by the respondents. Her submission was that it was not only a case of mere suspicion, but a reasonable and possible inference drawn from the manner in which the incident took place implicating the petitioner and sufficient material on record to show in nexus of the petitioner with the criminal elements.
11. We have given our due consideration to the respective submissions and have also gone through the records.
12. Article 311(2) of the Constitution provides that no civil servant 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. However, there are certain exceptions provided therein to this said Article. Clause (b) of the second proviso to Article 311, which is material for us, stipulates that this provision shall not apply 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. We may also take note of clause (3) of Article 311, which reads as under :-

“(3) If, in respect of any such person as aforesaid, a question arises whether it is reasonably practicable to hold such inquiry as is referred to in clause (2), the decision thereon of the authority empowered to dismiss or remove such person or to reduce him in rank shall be final.”

13. This provision has come up for consideration and interpretation at the hands of the Apex Court on numerous occasions. In *Jaswant Singh* (supra), while taking note of its earlier judgment in the case of *Union of India v. Tulsi Ram Patel*, AIR 1985 SC 1416, the legal position was summed up in the following manner :-

“4. Article 310 of our Constitution which engrafts the pleasure doctrine of the English common law is, however, qualified by the opening words 'except as expressly provided by this Constitution'. Article 311 is one such express provision. According to Clause (1) thereof, a person who is a member of a civil service cannot be dismissed or removed from service by an authority subordinate to that by which he was appointed. Clause (2) next provides that no such person 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. Then comes the first proviso with which we are not concerned. The second proviso has three clauses but we are concerned with Clause (b) only. Clause (b) of that second proviso reads as under:

“Provided further that this clause shall not apply-

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(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.”

Thus the English doctrine incorporated in Article 310 which is qualified by the opening words "except as expressly provided by this Constitution" is subject to Article 311(1) and (2) which contains safeguards against termination from service. However, the second proviso to Article 311(2) is again in the nature of an exception and lays down that in cases catalogued in Clauses (a), (b) and (c) thereof the requirement of an inquiry can be dispensed with. The scope of Articles 310 and 311 of the Constitution was examined by this Court in *Union of India and Anr. v. Tulsi Ram Patel and Ors.* [1985] Su. 2 SCR 131 wherein by majority this Court held that once the requirements of the relevant clause of the second proviso are satisfied, the services of a civil servant can be terminated without following the audi alteram partem rule. It was held that since the requirement of Article 311(2) was expressly excluded by the second proviso, there was no question of introducing the same by the back door. On this line of reasoning, the majority held that *Challapan's case*, (1976) 1 SCR 783 : (AIR 1975 SC 2216) was not correctly decided. It, therefore, took the view that it is not necessary to offer a hearing to the civil servant even on the

limited question of punishment. Insofar as Clause (b) is concerned this Court pointed out that two conditions must be satisfied to sustain any action taken thereunder. These are (i) there must exist a situation which renders holding of any inquiry "not reasonably practicable" and (ii) the disciplinary authority must record in writing its reasons in support of its satisfaction. Of course the question of practicability would depend on the existing fact-situation and other surrounding circumstances, that is to say, that the question of reasonable practicability must be judged in the light of the circumstances prevailing at the date of the passing of the order. 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. Also see: *Satyavir Singh and Ors. v. Union of India and Ors.* (1985) 4 SCC 252 : (AIR 1986 SC 555); *Shivaji Atmaji SawantM. State of Maharashtra and Ors.* (1986) 2 SCC 112 : (AIR 1986 SC 617) and *Ikramud-din Ahmed Borah v. Superintendent of Police, Darrang and Ors.* 1988 (Supp 1) SCC 663 : (AIR 1988 SC 2245)."

14. When we scan through the facts of this case that have emerged on record in the backdrop that the petitioner, though a police officer, is stated to have been part of a conspiracy to implicate innocent persons, that too when co-conspirators who are known criminals, the irresistible conclusion is that opinion of the Disciplinary Authority that inquiry was not reasonably practicable is well founded. The opinion formed by the Disciplinary Authority was not based on mere suspicion. Following facts appear on record :-

(a) Proximity of the petitioner with known criminals in the area is indicated by the print of mobile phones conversations owned by him as well as other persons who entered into this conspiracy.

(b) The conspiracy was revealed by Mr. Sanjay Mishra, another known criminal, while he was being interrogated in another case bearing FIR No. 150/2005 dated 8.5.2005.

(c) Another person, namely Gulfam, made a statement before the Metropolitan Magistrate under Section 164 of the Cr.P.C. about this conspiracy. In this statement, he categorically stated that it was because of terror that he did not inform the police about this conspiracy earlier. Such a statement under Section 164 Cr.P.C., on oath, before the Metropolitan Magistrate, which is recorded after following proper procedure to rule out any voluntariness, could not be ignored, at least in a department action. This was not a statement before a police officer and, therefore, argument that it was taken under pressure is normally not available.

15. On the basis of the aforesaid, the Tribunal analysed the position in the following manner :-

“21. These facts clearly show the criminal propensity and desperate character of Constable Pawan Kumar. It also shows that applicant is capable of misusing his official power for implicating innocent persons in criminal cases simply for making a fast buck. His relations with criminals are also established, therefore, the reasoning given by disciplinary authority that it is not safe to continue such a person in Delhi Police any longer is justifiable. If he could conspire to implicate innocent persons in criminal case, he could very well implicate the witnesses also in order to turn them hostile if he is allowed to continue in Delhi Police.”

16. In *Union of India v. Tulsi Ram Patel & Ors.*, AIR 1985 SC 1416, the Supreme Court has held that 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 of the Constitution makes the decision of the Disciplinary Authority final.

Applying the aforesaid principle to the facts of the present case, we are of the firm opinion that the view taken by the Disciplinary Authority assessing the entire position on the basis of available records is plausible and cannot be treated as either whimsical or arbitrary.

17. In almost similar circumstances, the Supreme Court upheld the action against a police officer in the case of *Union Territory, Chandigarh & Ors. v. Mohinder Singh*, (1997) 3 SCC 68. That was also a case where apprehension was nurtured by the Disciplinary Authority that witnesses would not come forward to depose against the delinquent police officer freely and dispensing the inquiry provisions of Article 311(2)(b) of the Constitution were invoked. The Supreme Court concluded that the reasoning given by the Disciplinary Authority was based on a report of the Superintendent of Police regarding gross misuse of power and extortion of money by illegally detaining and torturing innocent persons.
18. In view of our aforesaid analysis in the present case, the judgment of the Supreme Court in *Jaswant Singh* (supra) would not be of any avail to the petitioner. In that case the Court opined that subjective satisfaction of the concerned authority must be fructified by independent material. That requirement is satisfied in the present case.
19. Insofar as the judgment in the case of *Singasan Rabi Das* (supra) relied upon by learned counsel for the petitioner is concerned, in that case

the Court was of the opinion that merely because the witnesses would suffer personal humiliation and insults and their family members might become targets of acts of violence, would not form sufficient reason for dispensation of inquiry.

In the present case, however, while forming the opinion that inquiry was not reasonably practicable, we find that this subjective opinion is based upon relevant considerations, as highlighted in para 13 of the judgment above.

20. The petitioner herein belongs to the Disciplined Force. When material has surfaced on record showing links of the petitioner with criminal elements and also that conspiring with such hardened criminals, the petitioner allegedly implicated innocent persons in a false criminal case, forming an opinion that those victims would be reluctant to depose against the petitioner in a departmental inquiry is well founded.

21. We, therefore, do not find any merit in this writ petition and consequently dismiss the same.

No costs.

(A.K. SIKRI)
JUDGE

(SURESH KAIT)
JUDGE

July 03, 2009
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