

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

+ **WP(C) No.1024/2007**

% **Date of Decision: 23.08.2011**

Govt. of NCT of Delhi & Ors. Petitioners

Through Mr.V.K.Tandon, Advocate.

Versus

Smt. Bitty Khushwaha & Anr. Respondents

Through Mr.Shekhar Kumar, Advocate.

CORAM:

HON'BLE MR. JUSTICE ANIL KUMAR

HON'BLE MR. JUSTICE SUDERSHAN KUMAR MISRA

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| 1. | Whether reporters of Local papers may be allowed to see the judgment? | YES |
| 2. | To be referred to the reporter or not? | NO |
| 3. | Whether the judgment should be reported in the Digest? | NO |

ANIL KUMAR, J.

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1. The petitioners, Government of NCT of Delhi & Ors have challenged the order dated 16th October, 2006 passed by the Central Administrative Tribunal, Principal Bench, New Delhi in O.A No.2094/2005 titled as 'Smt. Bitty Khushwaha & Anr. v. Government of NCT of Delhi & Ors' allowing the original application of the respondent and holding that the order dated 16th July, 2004 passed by the petitioners under Article 311(2)(b) of the Constitution of India, dismissing late Constable Gyanender Singh Kushwaha, represented by

his legal representatives the respondents, without conducting any enquiry, was not sustainable. Consequently the Tribunal set aside the order of dismissal and granted deemed reinstatement to the deceased constable with the respondent being entitled to all the consequential benefits of pay and allowance till the death of the said constable on 1st August, 2005.

2. The brief facts to appreciate the disputes are that the respondents in the present matter are the legal representatives of Constable Gyanender Singh Kushwaha, who died on 1st August, 2005 at Palwal, Haryana. The deceased constable had been enlisted in the Delhi Police as a constable on 30th November, 1995. On 17th April, 2003 an FIR No. 123/2003 was registered under Section 384/34 of IPC, Police Station Kamla Market on the complaint of one Sh. Sachin Bansal wherein it was alleged that on 16th April, 2003 at about 10:30 pm, he was stopped by a man wearing a Delhi Police uniform with two other civilians and was asked about his driving license. In the absence of the driving license they had demanded Rs. 500/- from him, and also took his gold chain and one mobile phone. Thereafter, allegedly the complainant was taken to Connaught place to retrieve Rs.20,000/- from the ATM, however due to some technical problems as amount could not be obtained from the ATM machine, the accused persons had left with the gold chain and mobile phone along with Rs. 500/- already taken from the complainant. During investigation it was further revealed that one

Rashmi, who was allegedly the keep of Const. Gyanender Singh, had been found in room no. 22 which was the accommodations of HC Mahesh Kumar, and which was also the place from where the looted items were recovered. It was further revealed that Ms. Rashmi also had a role in the extortion of the complainant and that the deceased Constable Gyanender was also involved in the organization of the stalking upon and then setting up the extortion to dupe wealthy people in connivance with the girl Ms. Rashmi, who had disclosed herself to be the wife of Const. Gyanender Singh.

3. An explanation on the matter was sought from Const Gyanender Singh through the office memo No. 6097/HAP/III Bn. DAP dated 23rd July, 2003. In response to the memo, the deceased constable submitted that he did not know anything about Constable Dharmender, HC Mahesh, Sachin Bansal the complainant and the girl, Ms. Rashmi and that he wasn't residing in the place in question, from where the looted goods were recovered.

4. Meanwhile, the departmental enquiry which was initiated against the said Constable was kept in abeyance by the petitioners in view of the criminal case pending decision. However, after the trial of the case, all the three accused persons in the FIR No. 123/2003 were acquitted by the Court in the criminal case.

5. It was also revealed that another FIR bearing no. 47/ 2004, Police Station, Shakarpur was registered under Sections 294/34 of the IPC against the deceased constable alleging that he had been arrested as he was found in an indecent manner interacting with a women named Chhaya d/o Satish Kumar at Sunder Park, Shanker Pur, Delhi. For this lapse he was also placed under suspension w.e.f. 21st January, 2004 from the date of his arrest by order No. 2454-95/HAP (P-I)/III Bn. DAP dated 16th March, 2004. A departmental enquiry was ordered against Constable Gyanender Singh by order no. 2809-49/HAP (P-I)/III Bn. DAP dated 31st March, 2004 which was entrusted to Insp. P.N. Malhotra. The decision in the said criminal matter is said to be pending. Another FIR no. 619/2004, Police Station, Kalkaji was registered under Sections 341/366/384/511/376(ii) 34/109/120-B of the IPC. The Court had tried the deceased constable and the other accused persons, and after considering the evidence on record, by order dated 4th April, 2005 the court had acquitted all the accused persons on merits. Meanwhile the deceased constable was placed under suspension with effect from 21st January, 2004 and he had remained suspended till 16th July, 2006, which is when the Deputy Commissioner of Police, 3rd Bn DAP, Delhi passed an order of dismissal from service, without enquiry, against the deceased constable by invoking the power under Article 311(2) (b). The said order took into consideration all the criminal cases initiated against Constable Gyanender Singh and concluded that in

view of his dangerous and desperate character it would not be reasonably practicable to conduct a departmental enquiry and, therefore, he was dismissed from service with immediate effect.

6. Aggrieved by the order dated 16th July, 2004 Sh. Gyanender Singh preferred an appeal to the Joint Commissioner of Police, Delhi. The appeal was also rejected by order dated 14th September, 2004.

7. Against the order of dismissal dated 16th July, 2004 and the dismissal of appeal by order dated 14th September, 2004 the legal representatives of the deceased constable filed an original application bearing O.A. No. 2094/2005, in order to claim the monetary benefits to which the late Sh. Gyanender Singh was entitled for, since the date of his suspension till his death i.e. on 1st August, 2005. Assailing the order dated 16th July, 2004 the respondents had contended before the Tribunal that the said order was passed under the powers stipulated in Article 311(2)(b) of the Constitution, which was not justified, and was arbitrary and without any material on record. As per the respondent the allegations divulged in the order dated 16th July, 2004 were unsubstantiated, as no criminal case on the said allegations had been registered against the deceased constable with regard to FIR No. 123/2003 and the Disciplinary Authority had merely based its decision on surmises, conjectures and extraneous materials. It was further

contended that the enquiry conducted by Sh. Sukbir Singh was in the nature of a preliminary enquiry and hence was not admissible under Section 15 (3) of the Delhi Police (Punishment & Appeals) Rules.

8. So far as the FIR no. 47/2004 was concerned, it was contended by the respondents that the same is still pending decision and hence since the deceased constable has not be held guilty of the offence by the Court, therefore, invoking Article 311(2) (b) of the constitution by the petitioners while passing the dismissal order was completely illegal and an abuse of the process of law. With regard to FIR no. 619/2004 it was contended that the criminal courts itself did not conclude on the guilt of the deceased constable and acquitted him on merits. Thus the mere suspicion of the involvement of Sh. Gyanender Singh in the matter could not be sufficient to invoke the powers under Article 311(2) (b), when the same had not been established in the Court of law nor there was any other material or documents for the subjective satisfaction of the petitioners.

9. The respondents further urged that the opinion of the Disciplinary Authority that the late Sh. Gyanender Singh was a dangerous and desperate character and hence it would not be possible for an ordinary citizen to depose against him, and, therefore, it would not be reasonably practicable to hold a Departmental enquiry was

arbitrary, unjustified and without any material on record. It was emphasized that the observations and conclusions of the Disciplinary Authority was merely based on conjectures and surmises, and, therefore, they were entitled to be set aside and quashed.

10. Per contra the petitioners had contended that in view of the allegations made in FIR No. 123/2003, FIR No. 47/2004 and FIR No. 619/2004 it was evident that the defaulter constable had showed desperate character, which proved to be a liability on the Delhi Police. It was further submitted that the involvement of the constable in such shameful and criminal acts has eroded the faith of the common people in the police and caused irreparable loss to the functioning and credibility of the Delhi Police. It was further contended that in view of the defaulter constable being a dangerous and desperate character and having nexus to criminal elements and being accused of heinous crimes of rape and extortion, it would not be reasonably practicable to hold a preliminary and departmental enquiry against the constable. Therefore, by order dated 16th July, 2004 constable Gyanender Singh was dismissed from service with immediate effect by the Disciplinary Authority under Article 311(2)(b) of the Constitution.

11. The Tribunal after considering the pleas and contentions of the parties and relying on UOI & Ors. v. Tulsi Ram Patel AIR 1985 SC 1416

and Ex. Constable Chotte Lal v. UOI & Ors. (2000) 10 SCC 196, held that resorting to Article 311(2)(b) on the ground that the witnesses would be influenced and would not depose in the departmental enquiry was neither reasonable nor fair. Referring to the acquittal of the respondent by judgment dated 4th April, 2005 it was held that the acquittal of the respondent was on merits, as the prosecution had miserably failed to prove its case. The Tribunal also held that the entire ground to dispense with the enquiry was the involvement of the respondent in a criminal case and that the witness would not come forward which was based on presumption, surmises and conjectures. It was also held that there had been no complaints from any of the witnesses of any threat or fear extended by the concerned persons including the respondent and in the absence of any subjective satisfaction, the constitutional right of the respondent could not be dispensed with in such an arbitrary manner. **The reasoning of the Tribunal in the impugned order as under:-**

“14. In the above backdrop, in the first case of extortion in FIR no. 123/2003 under section 384/34 – IPC applicant was not even named and this case has culminated into acquittal. In so far as, heinous offence of rape is concerned, competing Court of criminal jurisdiction in SC No.93/2004 by a judgment dated 4.4.2005 acquitted not only the applicant but others as the prosecution has miserably failed to prove its case. In such view of the matter being acquitted from the criminal case, the allegations against the applicant of his either being involved in criminal case or having nexus with the criminals is obliterated. Moreover, mere pendency of a criminal case registered under section 294 – 34 – IPC which is a petty offence of making lewd remarks against the Lady would not be sufficient to hold the applicant of being desperate

character. However, we are not sitting as an appellate authority over the implication of law. Moreover, ipsi dixit of the disciplinary is apparent as well as non application of mind that while exercising jurisdiction under Article 311(2)(b) of the Constitution of India, it is recorded that it is not practicable to hold a preliminary as well as departmental enquiry. It appears that whatever has been recorded on page 1 of the order by the authority is in contradiction and variance of writing on page 2 of the order. On page 1 not only an explanation is called from the applicant but an enquiry was also conducted by Inspector Sukbir Singh. When such a thing has happened, it would be a mockery of the administration that to record that P.E is not practicable. Moreover, public functionary when acts as an administrative or quasi judicial authority, is legally obligated to act judicially. A judicious exercise on discretion would not be apparent if the reasoning is not in accordance with law. The only ground to dispense with the enquiry is involvement in the criminal case and that witnesses would not come forward is only on presumptions, surmises and conjectures. Firstly no departmental enquiry has been ordered. Had there been a complaint from the witnesses of threat or fear extended by concerned, then the action of the disciplinary authority to record such findings would be justifiable, otherwise it is trite that such findings when supported with no material is on the ipse dixit of the authorities. To such a thing, law not only deprecates on the principle of fairness but deprivation of reasonable opportunity would also be deemed.

15. Of late it has been seen that in Delhi police if an official is involved either in a criminal case or in any misconduct when reported by the media, only exercise undertaken from the side of authorities is to justify by dismissing the official under Article 311 (2) (b) of the Constitution of India not with a view that the enquiry is not reasonably practicable but to save their own dignity and to uphold the reputation of Delhi Police. If such a latent reason is behind in justifying their action, we are sorry to state that such a finding and reasoning would not stand scrutiny of law, held in the case of Tulsi Ram Patel (supra). Nobody can take the Constitution for granted by misusing it without any justification or reasonable conclusion arrived at.

16. In such view of the matter, when the matter has reached the appellate authority, the authority has not only

reiterated the disciplinary authority's order but failed to apply its own mind as to holding of an enquiry as per the dicta laid down in Tulsi Ram Patels case. Even at that stage, orders passed clearly show non-application of mind."

12. The Tribunal thus set aside the order of dismissal dated 16th July, 2004 and the dismissal of the appeal by order dated 14th September, 2004, by allowing the original application of the respondents and directing the deemed reinstatement of the deceased official and the legal representatives being entitled to all the consequential benefits of pay and allowance till the death of the deceased constable.

13. The order is challenged by the petitioners on the ground that the Tribunal failed to appreciate the fact that the acquittal of the respondent in the criminal case was not on merit but it was on account of the prosecution witnesses turning hostile during the trial. It has been asserted that terrorizing PWs during the trial of the case are the common tactics being adopted by the policemen including the late respondent and it is not reasonable or practicable to hold a regular departmental enquiry against the respondent due to the fear of reprisal. The petitioners also contended that not only during trial in criminal proceedings but also in departmental proceedings, terrorizing and threatening the witnesses is the common tactic which is adopted by the accused/criminals. Justifying their inferences that it would not be

possible to conduct the departmental enquiry, it was contended that during the criminal trial material witnesses had turned hostile, leading to the acquittal of the respondent. It was emphasized that the involvement of the respondent in anti social and illegal activities is most abominable and reprehensible.

14. The learned counsel for the petitioner also very emphatically contended that while setting aside the order of dismissal dated 16th July, 2004 and dismissal of appeal by order dated 14th September, 2004, by the Tribunal by order dated 16th October, 2006 no liberty was given to the petitioners to hold the regular departmental enquiry against the respondents or late Gyandender Singh.

15. Mr. Shekhar Kumar, learned counsel for the respondents, has very emphatically contended that the order dated 16th July, 2004 of the petitioners does not disclose that subjective satisfaction arrived at by the petitioners was based on any objective criterion. According to him, the observation by the petitioners in the order of dismissal that during the enquiry/entire process of departmental proceedings the witnesses would be put under constant fear or threat by the delinquent constable/respondent as well as his other associates, is based on mere assumptions as the purported reason for dispensing with the departmental proceedings is not supported by any document. The learned counsel very emphatically contended that a constitutional right

conferred upon the delinquent cannot be dispensed with arbitrarily or merely in order to avoid the holding of an enquiry. It was contended on behalf of the respondent that no specific instance in the case of the late Gyanender Singh had been relied on or cited which was reflective of the fact that the witnesses were threatened. Instead, the observations made in the order were mere generalizations. He has also contended that even in the order of acquittal of the late Gyanender Singh by the judgment dated 4th April, 2005 in Sessions Case No.93/2004 arising out of FIR No.619/2004, there is nothing that stipulates in any manner that the prosecution witnesses had turned hostile on account of any threat or terrorizing by the late Gyanender Singh. Rather, the prosecutrix, had not deposed anything against the accused persons, including late Gyanender Singh, and also had not even identified him to be the kidnapper or the rapist. It was contended that since all the material witnesses examined did not implicate late Gyanender Singh and other accused persons, therefore, late Gyanender Singh was acquitted on merit and not on account of technicalities. It is further contended that when the order dated 16th July, 2004 dispensing with the enquiry and dismissing the respondent by invoking Article 311(2)(b) was passed, the judgment dated 4th April, 2005 had not been delivered by the Sessions Court acquitting late Gyanender Singh. The learned counsel for the respondents also relied on *UOI & Ors. v. Tulsi Ram Patel*, 1985 (3) SCC 389, *Prithpal Singh v. State of Punjab*, (2006) 13 SCC 314 and *Tarsem Singh v. State of Punjab*, (2006) 13 SCC 581 in

support of his pleas and contentions and to contend that the only ground argued against late Gyanender Singh, that he could win over the aggrieved people, as well as, the witnesses from giving evidence by threatening them or by other means, when no material had been placed or disclosed either in the said order or before this Court, would show that there was no subjective satisfaction and the purported reason for dispensing with the departmental proceeding was not supported by any material or document on record and in the circumstances the order of the Tribunal is sustainable and on the pleas and contentions raised by the petitioners, the order of dismissal without conducting an enquiry and invoking Article 311(2)(b) of Constitution of India cannot be sustained.

16. Regarding the plea of the petitioners that while allowing the application of the respondent and setting aside the order of dismissal dated 16th July, 2004 and the appellate order dated 14th September, 2004 it had not been permitted that the petitioners could conduct regular departmental enquiry, it is asserted that since the respondent had been acquitted in the criminal case the regular departmental enquiry cannot be conducted under Rule 12 of Delhi Police (Punishment and Appeal) Rules, 1980, which contemplates that when a police officer has been tried and acquitted by a criminal Court then he shall not be punished departmentally on the same charge or on a different charge upon the evidence cited in the criminal case whether actually led or not.

It is also contended that, since delinquent late Gyanender Singh has already died, the departmental enquiry also cannot be conducted against him.

17. This Court has heard the learned counsel for the parties in detail and has also perused the record pertaining to the original application filed before the Tribunal, the copies of which have been produced along with the writ petition. It cannot be disputed that while passing the order of dismissal dated 16th July, 2004, the reason recorded are that it is certain that during the process of departmental proceedings the witness would be put under constant fear or threat by late Gyanender Singh as well as his other associates and in such a situation, conducting the departmental proceedings would become virtually non practicable. The other reason given in the order of dismissal is that the record of the respondent revealed that he had been involved in other cases bearing FIR No 47/2004 and FIR No. 619/2004. It was also held that in view of all these facts it was clear that Constable Gyanender Singh is a dangerous and desperate character and, therefore, it would not be possible for the ordinary citizen to depose against him, if he is continued in the uniform police organization. It was further held that it was also clearly depicted in view of all the facts that Const. Gyanender is having nexus with criminal elements and, therefore, it was not practicably possible to hold a preliminary and departmental enquiry

against the defaulter. The order dated 16th July, 2004 incorporating the reasons for dispensing with the departmental enquiry are as under:-

“ The aforesaid misconduct of the defaulter Const. only shows his desperate character which will prove liability on the Delhi Police and if he is allowed to continue in the Delhi Police, there is every possibility that he may harass the public and inflict even more serious crime on weaker section of society. The society expects a policeman to protect citizens from criminals and crime, but instead this constable himself indulged into rape with a lady, which is not only immoral and reprehensible, but also reflects a grave misconduct of criminal nature by a police officer and a public servant entrusted with responsibility of protecting the society. Such a gross criminal misconduct by a police officer is bound to destroy the faith of people in a disciplined force like Delhi Police. The involvement of Constable Gyanender Singh, No. 2853/DAP is such a shameful and criminal act that has eroded the faith of common people in police and his continuance in the police force is likely to cause further irreparable loss to the functioning and credibility of Delhi Police. The defaulter Const. has acted in a manner highly unbecoming of police official and highly prejudicial to the safety and security of the citizen.

In view of the above facts it is clear that he is a dangerous & desperate character and it will not be possible to the ordinary citizens to depose against him if he is continued in the uniform police organization. The facts mentioned above clearly depict that he is having nexus with criminal elements and involved in Heinous Crime of rape & extortion. In my view it is not practicably possible to hold a preliminary & departmental enquiry against the defaulter. Keeping in view the overall circumstances, of the case, I P. Dass, Dy. Commissioner of Police, III Bn. DAP, Delhi do hereby dismiss Const. Gyanender Singh, No.2853/DAP under article 311 (2) (b) of the Constitution of India with immediate effect.

The departmental enquiry pending against him vide order No.2809/HAP (P-I)/III Bn. DAP dated 31.3.04 is

hereby held-in-abeyance on administrative ground and will be reopened if the defaulter is reinstated in service and he will be continue to be under suspension from the date of such reinstatement.”

18. This cannot be disputed that the competent Court of criminal jurisdiction has acquitted late Gyanender Singh and others by its judgment dated 4th April, 2005 as the prosecution had failed to prove its case on account of lack of sufficient evidence. In fact it was held that neither had it been established that late Gyanender Singh was involved in the criminal case, nor had it been proved that he had any nexus with the criminals. This is also not disputed that the judgment dated 4th April, 2005 passed by the Criminal Court acquitting Gyanender Singh has not been appealed. This is not the case of the petitioners that the witnesses had been won over by late Gyanender Singh and others on his behalf and they did not turn up during the criminal case or had turned hostile leading to his acquittal. Even though the petitioners have alleged that his acquittal by the criminal Court has not been on merits but on account of witnesses turning hostile, it cannot be inferred that they had been won over or were terrorized by late Gyanender Singh.

19. In *Khurshid Ahmad v. State of Haryana & Ors*, W.P(C) No.1689/2009 decided by Punjab & Haryana High Court on 16th July, 2009, on perusal of the copy of the judgment of acquittal by the criminal Court it had transpired that even the prosecutrix had turned

hostile and refused to identify the charged officer and the other persons who had allegedly sexually assaulted her. The prosecutrix who had turned hostile was cross examined by the public prosecutor and even the father of the prosecutrix had not stated much against the charged officer. The Court had held that normally the witnesses which are won over are given up by the prosecution and not produced in the Court; and a witness who is produced in the Court but does not support its case, is termed as a 'hostile witness'. The law permits such witness to be asked questions by the party producing him which are generally put by opposing party. The evidence of a witness who has turned hostile cannot be discarded in its entirety merely on the ground that the witness turning hostile. The evidence of a hostile witness can still be relied upon if otherwise found trustworthy. Therefore, it was held that it would be difficult to brand a witness who turns hostile to be a witness who has been won over. It was further held that such a witness is a witness who suppresses the truth and to elicit the truth, an opportunity is given to the opposing party to address questions in the nature of cross examination. It was, therefore, held that merely because a witness has turned hostile does not lead to an inference that he had been won over by the opposing party unless there is finding to that effect by the competent Court. There has been no complaint from any of the witnesses, directly or indirectly, of any threat or fear extended to them by the respondent and/or on behalf of the respondent. It is also not disputed by the learned counsel for the petitioner that no departmental

enquiry has been ordered against the respondent up till now. The order dated 16th July, 2004 is based on the assumption that late Gyanender Singh was involved in the heinous crime and had tarnished the image of the whole police department. If he had been acquitted in the criminal case, then it cannot be held that he was involved in tarnishing the image of the police department unless there is some evidence or some other material which would justify such an inference.

20. Merely because a criminal case was registered against the respondent, in which he was ultimately acquitted, on the sole ground that it would be very difficult to examine the respondent during trial/judicial custody in the criminal case and that meanwhile the respondent would become a liability upon the state exchequer and would have to be paid by way of subsistence allowance, in our opinion is not a justifiable ground to dispense with the enquiry. It is 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 motives or merely in order to avoid the holding of enquiry. The Supreme Court in *Tarsem Singh v. State of Punjab*, (2006) 13 SCC 581 at page 586, after noting clause 2 of Article 311 of the Constitution of India in para 10, had held that a constitutional right of a delinquent cannot be dispensed with lightly. It was held in the said judgment as under:-

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.

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* wherein relying upon the judgment of the Constitution Bench of this Court, inter alia, in *Union of India v. Tulsiram Patel*, it was held: (*Jaswant Singh case*, SCC p. 368, para 4)

“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.”

21. In *Tarsem Singh* (supra) it was also held that a formal enquiry cannot be dispensed with only on the ground that the delinquent police official could win over the aggrieved people as well as the witnesses, and prevent them from giving evidence by threatening them or by other means, unless any material indicative of such fact is placed or is available with the concerned authorities or is before any Court in any manner. It was held that there has to be subjective satisfaction of the statutory authority based upon objective criterion. Perusal of the order dated 16th July, 2004 amply shows that it was not based on any material nor was there any subjective satisfaction based on objective criterion arrived at by the petitioner. Instead it was held that in such cases witnesses would be put under constant fear or threat by the delinquent constable as well as other associates and, therefore, conducting departmental proceedings would become virtually non practicable. Though it was stipulated that the instances are not

unknown where people have not dared to depose even against ordinary criminals, however, no such instances were noticed or referred to especially in the case of the respondent and/or his associates allegedly involved in the heinous crime. Even after the Criminal Court has acquitted the respondent, there was no material showing subjective satisfaction of the petitioner from which it could be inferred that the delinquent constable/respondent's misconduct was blatantly criminal in nature indicating his utter contempt of the discipline of the force.

22. The Tribunal in its order dated 16th October, 2006 had also held that the petitioners are exercising their powers under Article 311(2)(b) of the Constitution of India by dismissing the officials whenever an official is involved either in a criminal case or in any misconduct as reported by the media. However, in case of late Gyanender Singh, the petitioners have failed to show any material or disclose any such fact on the basis of which a subjective satisfaction had been arrived at, based upon the objective criterion that he could win over the aggrieved people as well as witnesses from giving any evidence, by threatening them or by other means. Though the witnesses have not deposed against him in the criminal trial, however, it is apparent that there is no such observation or finding by the criminal Court that the witnesses did not depose against him on account of any threat or any undue influence exerted by late Gyanender Singh or on his behalf. Even from the cross examination

of such witnesses who had deposed against the prosecution in the criminal case any such facts have not been established or reasonably can be inferred. In first FIR No. 123/2003 late Gyanender Singh was not even named and that criminal case culminated in his acquittal. Offense of rape was also not made out against him and the case was dismissed on merit and appeal against his acquittal was not filed. Pendency of criminal case on account of making alleged lewd remark against a woman could not be ground to dismiss the delinquent invoking powers under Article 311 (2) (b) of the Constitution of India.

23. In the totality of facts and circumstances, therefore, the order of the Tribunal holding that, the order of the petitioners dismissing late Gyanender Singh by invoking Article 311(2)(b) of the Constitution of India is not sustainable, does not suffer from any illegality, irregularity or any such perversity so as to be interfered with by this Court in exercise of its jurisdiction under Article 226 of the Constitution of India. The writ petition is, therefore, dismissed. All the pending applications are also disposed of.

24. It is, however, clarified that the order of the Tribunal dated 16th October, 2006 shall not be construed in any manner so as to preclude any departmental action by the petitioners in accordance with the rules and regulations, if permissible in the facts and circumstances of the

case, against late Gyanender Singh without prejudice to any of the pleas and the rights and contentions of the respondent's legal heirs.

25. Considering the facts and circumstances the parties are, however, left to bear their own costs.

ANIL KUMAR, J.

SUDERSHAN KUMAR MISRA, J.

August 23, 2011
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