

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

+ **WP(C) No.732/2007**

% **Date of Decision: 23.08.2011**

Govt. of NCT of Delhi & Ors. Petitioners

Through Mr.V.K.Tandon, Advocate.

Versus

Ex. Constable Yash Pal Singh Respondent

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.2191/2005 titled as 'Ex. Constable Yash Pal Singh 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 the respondent without conducting any enquiry was not sustainable. Consequently the Tribunal set aside the order of dismissal and reinstated the respondent with all the consequential benefits.

2. Brief facts as propounded by the respondent are that the respondent had filed an original application bearing O.A. No.2191/2005 before the Central Administrative Tribunal, challenging the order No.3049-108/HAP-4th Battalion DAP dated 16th July, 2004 and order No.XVI/149/2004/3510-13/P.Sec.(AP) dated 24th December, 2004 dismissing him from service. The respondent had prayed for the said orders to be quashed, that he may be reinstated into service with all the consequential benefits and pay/allowances and also sought declaration that no further enquiry be initiated against the respondent on the basis of the allegation/charges based on FIR No.216/2003 and FIR No.619/2004 in view of his acquittal/discharge in accordance with Rule 12 of Delhi Police (Punishment and Appeal) Rules.

3. The respondent pleaded that during July, 2004 he was posted as constable in 4th Battalion DAP, Delhi. On the basis of an alleged incident dated 14th July, 2004 an FIR No.619/2004 was registered on

15th July, 2004 under Sections 341/366/384/511/376-G/34/109/120-B IPC P.S. Kalkaji, New Delhi. The plea of the respondent was that the criminal case registered against him through FIR No.619/2004 was tried by Additional Sessions Judge, who had subsequently acquitted him of the charges made against him by his judgment dated 4th April, 2005. As per the respondent, no appeal was filed against the said order of the Additional Sessions Judge.

4. The respondent also disclosed that in the year 2003 as well he had been falsely implicated in a criminal case registered through FIR No.216/2003 PS Shahdara, Delhi where he was discharged by the learned Additional Sessions Judge by order dated 8th December, 2003. Regardless, the respondent was dismissed by the petitioners while exercising its powers under Article 311(2)(b) of the Constitution of India by order dated 16th July, 2004 by taking into consideration FIR No. 216/2003 and FIR No. 619/2004. The respondent, aggrieved by the order dated 16th July, 2004, had preferred an appeal before the Joint Commissioner of Police (Armed Police) Police Headquarters, petitioner no. 3, however, the appeal was also dismissed by order dated 24th December, 2004 which was further challenged by the respondent before the Tribunal. The respondent challenged the orders on the ground that there was no material available on record with the petitioners which could warrant the exercise of power under Article 311(2)(b) of the

Constitution of India. The contention of the respondent was that while passing the dismissal order under Article 311(2)(b) of the Constitution of India the petitioners had taken into consideration criminal cases in which the respondent had already been acquitted and discharged. In the circumstances, the opinion formed by the petitioners that the respondent was involved in crimes despite being a policeman was based on assumptions and the opinion formed was without any legal basis and without there being any material on record to support the same. It was also pleaded that the opinion formed by the petitioners that the retention of the respondent in the force would be highly prejudicial to the security of the citizens and would reflect a bad impression on his colleagues, was not substantiated by anything on the record and was merely on account of baseless conjectures and surmises by the petitioners. The respondent further challenged his order of dismissal which was passed by the petitioners without conducting an enquiry by invoking the power under Article 311(2)(b) of the Constitution of India, on the ground that the criminal trial would take more than 4 to 5 years and during this period he may not be enlarged on bail, was without any legal basis and therefore such a ground was not sufficient to apply the drastic powers under Article 311(2)(b) of the Constitution of India.

5. The respondent also challenged the opinion of the petitioners that during the inquiry, if conducted, the witnesses would not dare depose

against the respondent on account of being constantly subjected to fear or threat by the respondent, was also without any subjective satisfaction and there was no material, either placed on record or disclosed in the order passed or otherwise, to show that the subjective satisfaction of the petitioners was based on objective criterion.

6. The petitioners had contested the original application contending, inter alia, that on 14th July, 2004 at 7 PM Sh.Shahil, son of Sh.Dharampal, was standing on the road side at Paras Cinema with his wife, Smt.Lovely, and his friend Mr.Kamal. At about 7.15 PM a Santro car No.DL 4CR 5262 stopped near them and Mr.Kamal asked Sh.Shahil and his wife to sit in the car. Sh.Shahil and his wife sat on the rear seat of the car, whereas another person was already sitting on the front seat with the driver. When the car reached near Nehru Place Flyover another car bearing No.DL 2CM 1379 overtook car No.DL 4CR 5262, and from it two persons came out and represented themselves as staff of Crime Branch, Delhi Police and sat in the car. Thereafter, they kept roaming on the road in the car from Moolchand to Appu Ghar and demanded Rs.15,000/- to let off Sh.Shahil and his wife. Sh.Shahil was released near Kalkaji round-about at 9 PM and was asked to come to Paras Cinema with the money.

7. Sh.Shahil had informed the police control room about the incident and thereafter when he went to Paras Cinema accompanied with the police, Car No.DL 2CM 1379 was found parked there and he identified the two men seated in the car who had kidnapped him and his wife. The two men seated in the car were over powered and their identity was disclosed as respondent and Sh.Deepak, son of Sant Ram Diwan. On interrogation, they disclosed that certain persons namely Gyanender, Surender and Manish had taken Smt.Lovely with them with the assurance that she would be left immediately after the money is received. At the instance of the police, Deepak, son of Sant Ram Diwan, informed Gyanender, Manish and Surender that the money had been received pursuant to which they came at about 4.30 AM in the Santro Car No.DL 4CR 5262 along with Smt.Lovely, and, thereafter, they were over powered by the police. Smt.Lovely also disclosed that Gyanender and Manish had raped her at Ghaziabad and Kamal was also a friend of theirs and thus FIR No.619 dated 15th July, 2004 was registered against the respondent and the other co accused. It was also alleged that the respondent was detained for Dak Runner Duty on 15th July, 2004 at 7 AM but he did not report for his duty and was marked absent by DD No.19/4th Battalion DAP dated 15th July, 2004.

8. The petitioner thus contended that the involvement of the respondent in such type of anti social and illegal activities was most

abominable, reprehensible and totally unexpected from a member of the disciplined uniformed force. According to the petitioner, the respondent had tarnished the image of the whole police department by indulging in such a crime and his involvement in such type of anti social and illegal activities were not only undesirable but also amounted to serious misconduct and indiscipline. It was also observed that his previous record indicated that he had been involved in a case, FIR No.216/2003 under Section 452/307/120-B/34 IPC and 21/54/59 Arms Act P.S. Shahdara, Delhi. It was further contended that it would not be reasonable, or practicable to hold a departmental enquiry against the respondent as during the enquiry/departmental proceeding, the witnesses would be put under constant fear or threat by the respondent and his other associates, thus conducting the departmental proceeding would become virtually non practicable. 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 is purely based on presumption, surmises and conjectures. In any case, no departmental enquiry had even been ordered. It was also held that there had been no complaint from 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 is as under:-

“14. In the above backdrop, in so far as, heinous offence of rape is concerned, competent 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 applicant of his either being involved in criminal case or having nexus with the criminals is obliterated. 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 departmental enquiry. When a public functionary acts as an administrative or quasi-judicial authority, he is legally obligated to act judiciously. 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 ipsi 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 Patel's case. Even at that stage, orders passed clearly show non-application of mind."

9. The tribunal thus set aside the order of dismissal dated 16th July, 2004 and the dismissal of the appeal by order dated 24th December, 2004, by allowing the original application of the respondent and directing his reinstatement with all the consequential benefits.

10. The order is challenged by the petitioners on the ground 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 respondent, and it is not reasonably practicable to hold a regular

departmental enquiry against the respondent due to 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 turned hostile leading to the acquittal of the respondent. It was emphasized that involvement of the respondent in anti social and illegal activities is most abominable and reprehensible and the Tribunal failed to appreciate that the acquittal of the respondent in criminal case was not on merit but instead it was on account of prosecution witnesses turning hostile during the trial.

11. The learned counsel for the petitioners also very emphatically contended that while setting aside the order of dismissal dated 16th July, 2004 and dismissal of appeal by order dated 24th December, 2004 by the Tribunal by order dated 16th October, 2006 no liberty was given to the petitioner to hold the regular departmental enquiry against the respondent.

12. Mr. Shekhar Kumar, learned counsel for the respondent has very emphatically contended that the order dated 16th July, 2004 of the petitioner does not disclose that the subjective satisfaction arrived at by

the petitioner authority was based on any objective criterion. According to him, the observation by the petitioners in the order 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 or any other cogent material. The learned counsel very emphatically contended that a constitutional right conferred upon the delinquent cannot be dispensed with lightly or arbitrarily or on account of some ulterior motive 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 respondent 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 respondent by judgment dated 4th April, 2005 in Sessions Case No.93/2004 arising out of FIR No.619/2004, there is nothing that shows in any manner that the prosecution witnesses had turned hostile on account of any threat or terrorizing by the respondent. Rather, Smt.Lovely, the prosecutrix, had not deposed anything against the accused persons, including the respondent, and 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 the respondent and other accused persons, therefore,

the respondent 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 the respondent. The learned counsel for the respondent 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 him, that the respondent 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.

13. 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 appellate order dated 24th December, 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, except on the exception as enumerated there.

14. 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 the respondent 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 another case bearing FIR No.216/2003 under Section 452/307/120-B/34 IPC and 21/54/59

Arms Act P.S. Shahdara, Delhi. It was also held that the criminal trial would normally take more than 4 to 5 years and during this period the respondent may not be released on bail and in case a regular departmental enquiry is initiated it would be in violation of S.O No.125 of the Delhi Police and it would also be very difficult to examine the respondent in a departmental enquiry during his trial/judicial custody in the criminal case and the respondent would become a liability upon the state exchequer and would have to be paid by way of subsistence allowance. The order dated 16th July, 2004 incorporating the reasons for dispensing with the departmental enquiry are as under:-

“ The involvement of Constable Yashpal No.3364/DAP in such crime despite being a policemen, has shown his desperate character and his continuation in a disciplined force like police is against public interest. The constable has tarnished the image of whole police department by indulging in such a crime. The involvement of the said Constable in such type of anti-social and illegal activities is manner totally unbecoming of a police officer. The said act has rendered him totally unfit to be in the police force and his retention in the force would be highly prejudicial to the security of the citizens and reflect bad impression on his colleagues. His previous record indicates that he had also been involved in case FIR No.216/03 U/S 452/307/120-B/34 IPC and 21/54/59 Arms Act P.S. Shahdara, Delhi. The criminal trial in this case against the constable will normally take time more than 4/5 years and during this period his bail may not be possible. In case a regular D.E is initiated against the delinquent Constable, it will be a violation of S.O No.125 of Delhi Police and also very difficult to examine the delinquent in D.E. during trial/judicial custody in the criminal case and the constable will become a liability upon the state exchequer and will have to paid by way of subsistence allowance.

The facts and circumstances of the case are such that it would not be reasonable or practical to hold a departmental enquiry against the delinquent constable.

Since it is certain that during the enquiry/entire process of departmental proceedings the witnesses would be put under constant fear or threat by the delinquent constable as well as his other associates and in such a situation, the conducting of departmental proceedings would become virtually non-practicable. Instances are not uncommon where people have not dared to depose even against ordinary criminals, whereas in the instant case, the deposition of the witnesses would be against the police/officer, who has greater capability of terrorizing these witnesses. In this case the action against the delinquent constable is absolutely necessary under Article 311(2) of the Constitution of India by the disciplinary authority to bring down the moral of the delinquent constable and encourage the witnesses to depose against him during criminal trial. The delinquent constable's misconduct is blatantly criminal in nature and indicates his utter contempt of discipline of the force to which he belongs on the one hand and the law of the land on the other."

15. This cannot be disputed that the competent Court of criminal jurisdiction has acquitted the respondent 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 the respondent 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 the respondent has not been appealed. This is not the case of the petitioners that the witnesses had been won over by the respondent and they did not turn up during the criminal case or had turned hostile leading to acquittal of the respondent. Even though the petitioners have alleged that the acquittal

of the respondent 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 the respondent.

16. 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 the opposing party. The evidence of a witness who has turned hostile cannot be discarded in its entirety merely on the ground that the witness has turned 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.

17. The order dated 16th July, 2004 is based on the assumption that the respondent was involved in the heinous crime and has tarnished the image of the whole police department. If the respondent has been acquitted in the criminal case, then it cannot be held that the respondent 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.

18. 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.”

19. 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.

20. 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 the respondent, 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 the respondent 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 them 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 the respondent on account of any threat or any undue influence exerted by the respondent or on behalf of the respondent and even from their cross examination in the criminal case no such facts have been established or reasonably can be inferred.

21. In the totality of facts and circumstances, therefore, the order of the Tribunal holding that, the order of the petitioners dismissing the respondent 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.

22. 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, without prejudice to the rights and contentions of the respondent.

23. 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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