

IN THE HIGH COURT OF DELHI AT NEW DELHI

+ **W.P.(C) No.10866/2009 & CM No.9987/2009**

% **Date of Decision: 16.09.2011**

Govt. of NCT of Delhi & Ors.

.... Petitioners

Through Mr.Sushil Dutt Salwan, Additional
Standing Counsel and Mr. Paras Anand,
Advocates

Versus

Ex. Constable Ashok Kumar & Anr.

.... Respondents

Through Mr.R.S.Kundu, 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? | YES |
| 3. | Whether the judgment should be reported in the Digest? | YES |

ANIL KUMAR, J.

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1. The petitioners, Govt. of NCT of Delhi & Ors., have challenged the order dated 5th February, 2009 passed by the Central Administrative Tribunal, Principal Bench, New Delhi in OA No.1516/2008 titled as 'Ex. Constable (Executive) Ashok Kumar & Anr. v. Govt. of NCT of Delhi &

Ors.', allowing the original application of the respondent and setting aside the order of dismissal dated 9th August, 2006 dismissing the respondents from the service, after dispensing with the enquiry, by invoking Article 311 (2)(b) of the Constitution of India and also setting aside the order of the Appellate Authority dated 5th June, 2008 upholding the punishment in appeal and dismissing the appeal of the respondent. The Tribunal also directed that the respondents would be deemed as undergoing suspension from 9th August, 2006 to 9th April, 2009. The petitioners were held to be not precluded from proceeding further against the respondent in accordance with law.

2. The brief facts to comprehend the disputes between the parties are that the respondents were appointed as Constables in the Delhi Police on 12th November, 1990. During their service, on 31st July, 2006, a case by FIR No. 359/2006 was registered at PS Timar Pur under sections 186/353/307/34 of the IPC & 27 of the Arms Act, consequent to the firing by the two criminals namely Najakat and Julfikar, over the police team comprising of ASI Pramod Tyagi, HC Yashpal, Ct. Sudesh Rana, Ct. Suraj Pal (respondent), Ct. Pradeep, Ct. Ravinder, Ct. Satish and Ct. (Dvr.) Naresh- a team of Operation Cell, North District. It was alleged that the said Najakat and Julfikar were noticed coming in a Maruti Car bearing No.DL-3C NO2304 from Wajirabad side, and on being signaled to stop, they started firing at the police party who

retaliated in self defence, as a result of which both of them were injured and later on died. However, on clarification, it was revealed that ASI Pramod Tyagi did not inform his supervisory officers, i.e. Inspr. Operation cell or ACP/Operation Cell North Distt, before departing on the said information regarding the alleged movements of the criminals in the area of P.S. Timar Pur.

3. Thereafter, on 10th August, 2006 another FIR was registered bearing no. 383/2006 u/s 302/364 of the IPC, PS Timar Pur, Delhi on the complaint of one Sh. Gulam Nabi. In the said complaint it had been alleged that the complainant had been informed by Irfan and Jamashed Ali that the respondent no.1 along with three other Delhi Police personnel, which included respondent no. 2, had come to the District Court, Gaziabad and started talking to Julfikar and Nazakat. Thereafter they asked them to come to their vehicle for talking further and the next day in the morning it came to the notice of the complainant through the news paper that Delhi Police personnel had killed Julfikar and Nazakat in an encounter.

4. The petitioners, taking into consideration the gravity of the allegations made against the respondents and holding that it was not reasonably practicable to conduct a departmental inquiry as there was a reasonable belief that the witnesses may not come forward to depose

against them, decided to dispense with the same by invoking the power under Article 311(2)(b) of the Constitution of India and straightaway dismissed them from service by order dated 9th August, 2006.

5. While passing the dismissal order dated 9th August, 2006, it was noted that ASI Pramod Tyagi had not informed his supervisory officer, i.e. Inspector Operation Cell or ACP/Operation before departing pursuant to the information regarding the alleged movement of the above noted criminals in the area of PS Timar Pur. The ASI also did not inform about the involvement and criminal background of the said deceased persons when asked by ACP/Operation /North. The order also noted that Sh.Gulam Nabi, the father of the deceased Julfikar, had submitted a complaint to the SSP & DM/Ghaziabad, UP, and in the preliminary enquiry on the complaint of the father of Julfikar, a zero FIR had been registered under Section 364/302 of Indian Penal Code, at PS Kavi Nagar, Ghaziabad (UP) which was transferred to Delhi Police for further action. It was further noted that besides the respondents, ASI Pramod Tyagi No.2538/N and Constables Sudesh Pal Rana had also played key roles in the whole episode and the other police personnel had joined the said team on the directions of ASI Pramod Tyagi

6. According to the petitioners, in their order dated 9th August, 2006, the above noted facts clearly show that in conducting the said encounter without informing about their departure to the supervisory officers and the alleged involvement of Constable Ashok Kumar in the above noted case, the respondents and other police personnel had shown grave misconduct, high handedness and had brought bad name to the entire force of Delhi Police by having acted in a manner highly unbecoming of a police personnel. The relevant observations and inferences of the petitioners in order dated 9th August, 2006 are as under:-

“If the defaulter police personnel are allowed to be continued in police force after this act of serious misconduct, it would be detrimental to public interest. The facts and circumstances of the case are such that it would not be reasonably practicable to conduct a regular departmental enquiry against the defaulter police personnel, as there is a reasonable belief that the witnesses may not come forward to depose against them. It is a common experience that due to terrorizing and intimidating, the witnesses and complainant do not come forward to depose against the delinquents in the investigation/enquiry and this kind of intimidation is a common tactic adopted by the unscrupulous police personnel. It also calls for great courage to depose against the persons where the delinquents are police officials who may use their job to influence the statement/deposition of the witnesses.

In the backdrop of the position explained in the foregoing contents in this order, it is crystal clear that the said police personnel are public servant of indisciplined and there is every possibility of their influencing as well as intimidating the witnesses in the criminal case registered in this regard and also in case of enquiry initiated against them. It is under these given set of compelling circumstances, the rules under article 311 (2) (b) of

Constitution of India have been invoked in this case for the sake of justice. The said police personnel have become a liability to the department and should be dismissed. It would be both in public interest as well as for the establishment of rule of law, which is expected by public at large.”

7. Aggrieved by the said order, the respondents preferred an appeal dated 8th September, 2006. Meanwhile, the respondents also approached the Tribunal with an original application bearing O.A. No. 93/2008, which was disposed of by order dated 22nd May, 2008 with the directions to the petitioners to dispose of the appeal within three months. Thereafter, the appellate authority by order dated 5th June, 2008 rejected the appeal of the respondents and upheld the order of the Disciplinary Authority.

8. The Appellate Authority almost repeated the same language as was used by the Disciplinary Authority in dispensing with the enquiry under Article 311 (2) (b) of the Constitution of India and dismissed the appeal of the respondents and other defaulters. The relevant observations and inferences drawn by the Appellate Authority are as under:-

“ The disciplinary authority in punishment order has observed that if the appellants are allowed to be continued in police force after this act of serious misconduct, it would be detrimental to public interest. The facts and circumstances of the case are such that it would not be reasonable practicable to conduct a regular departmental enquiry against the appellants, as there is a reasonable belief that the witnesses may not come forward to depose

against them. It is a common experience that due to terrorizing and intimidating, the witnesses and complainant do not come forward to depose against the delinquents in the investigation/enquiry and this kind of intimidation is a common tactic adopted by the unscrupulous police personnel. It also calls for great courage to depose against the persons where the delinquents are police officials who may use their job to influence the statement/deposition of the witnesses. Under such circumstances, disciplinary authority was of the considered view that it would not be reasonably practicable to conduct a departmental enquiry against the appellants. Therefore, the appellants were dismissed from the force under article 311(2)(b) of the Constitution of India vide order under appeal.”

9. The order of the Disciplinary Authority and the Appellate Authority dismissing the respondents from service without an enquiry, by invoking the powers under Article 311 (2) (b) of the Constitution of India, was challenged by the respondents by filing an original application being OA No.1516/2008, inter-alia, on the grounds that the petitioners had completely violated the principles of natural justice and the departmental rules by dispensing with the departmental inquiry under the garb of Article 311(2)(b). As per the respondents, by dismissing them without initiating a departmental inquiry and giving them a reasonable opportunity of defending themselves, they have been greatly prejudiced and hence the order of dismissal is liable to be set aside.

10. It was also urged that the disciplinary authority had arbitrarily dispensed with the departmental inquiry without recording sufficient

reasons and the rationale behind the decision, that conducting the departmental inquiry would not be reasonably practicable as against the respondents, was unsupported by any material on record. Instead it was merely based on surmises and conjectures on the part of the Disciplinary Authority. It was also submitted that the reasons recorded by the Disciplinary Authority for dispensing with the departmental inquiry were vague and flimsy as no summons or notices to the complainant had been sent despite being in possession of his permanent address and there was absolutely no material on record that any of the witnesses or the complainant had been terrorized by the respondents. The observation of the Disciplinary Authority that due to terrorizing and intimidating, the witnesses and the complainant do not come forward to depose against the unscrupulous police personnel and that there was every possibility to influence as well as intimidate the statements in the criminal case registered in this regard, were unsupported by anything on the record and was merely based on the surmises and conjectures of the Disciplinary Authority. In any case, it was contended that the above noted reasons cannot be the grounds for dispensing with the departmental inquiry. Reliance was also placed on the Delhi Police (Punishment & Appeals) Rules, 1980 in Rules, 15(3) & 16(3) contemplating that in case the witnesses are no longer available, then their previously recorded statements during preliminary enquiry can be taken on record during the departmental enquiry. The order of dismissal was further assailed on the ground that no prior approval of

the Additional Commissioner of Police was taken as per Rule 15(2) of the Delhi Police (P&A) Rules, 1980 before passing the order of dismissal of the respondents.

11. According to the respondents, even the order of the Appellate Authority rejecting the appeal of the respondents clearly show that the Appellate Authority neither applied its mind to the facts and the legal points raised in the appeal nor did it take into consideration the representation of the respondents. Instead it only mechanically endorsed the illegal and perverse findings of the Disciplinary Authority. Reliance was placed on AIR 1985 SC 1416, Union of India v. Tulsi Ram Patel & Satyavir Singh & Ors. v. Union of India & Ors. AIR1986SC555. The respondents categorically asserted that holding of departmental enquiry is a rule and dispensation with the enquiry is an exception and no facts and documents were available with the Disciplinary Authority to justify the dispensation of the regular enquiry. Reliance was also placed on the Circular of the petitioners dated 21st December, 1993 stipulating that a civil servant is not to be dismissed or removed without enquiry by invoking the powers Article 311 (2)(b) of the Constitution of India, but only after holding the regular departmental enquiry against him. It was also stipulated in the circular that the power under Article 311 (2)(b) of the Constitution of India is not to be used as a shortcut. The said circular further stipulated that the police

officers involved in cases of Rape and Dacoity or any such heinous offence have been dismissed straightway under Article 311 (2)(b) of the Constitution of India despite the fact that the criminal case has been registered against them. It was also stated that such dismissal without conducting departmental enquiry is illegal because in such cases departmental enquiry can be conveniently held. The relevant portion of the Circular dated 21st December, 1993 superseding earlier Circular No.25551-163-/CR-I dated 8th November, 1993 is as under:-

“ The Police Officers involved in the case of rape or dacoity or any such heinous offence have been dismissed straightway under Article 311(2)(b) despite the fact that criminal cases have been registered. Such dismissals without holding D.Es are illegal because in such cases D.E can be conveniently held.

It is, once again emphasized that the Disciplinary Authority should not take resort to Article 311(2)(b) lightly but **only in those cases where it is not reasonably practicable to hold the enquiry.** Whenever the disciplinary authority comes to the conclusion that it is not reasonably practicable to hold an enquiry he **must record at length cogent and legally tenable reasons for coming to such conclusion.** In the absence of valid reasons, duly reduced in writing, no such order of dismissal etc with resort to Article 311(2)(b) can be sustained in law.”

12. The original application of the respondents was contested by the petitioners contending, inter alia, that none of the grounds urged by the respondents before the Tribunal are tenable in the eyes of the law. It was also contended that the respondents are public servants of undisciplined nature and that there was every possibility of their

influencing as well as intimidating the witnesses if the departmental inquiry was initiated against them. Thus, under these circumstances, the provisions of Article 311 (2)(b) of the Constitution of India was invoked to do justice and that they have been dismissed from the force due to the gravity of the misconduct committed by them and also since they had become a liability on the department.

13. The Tribunal had carefully considered the pleas and contentions of both the parties and came to the conclusion that the exercise of the powers under Article 311(2)(b) of the Constitution could not be supported. It was observed that a civil servant is entitled to have an opportunity to defend himself and that it is only in exceptional circumstances that law permits the department to dispense with the enquiry and other formalities. It was further held that the dismissal order of the petitioners' appears to be arbitrary in nature. The relevant portion of the Tribunal's judgment is as under:

“3. On an anxious consideration of the rival contentions, we have come to the conclusion that the exercise of powers under Article 311(2)(b) of the Constitution cannot be supported. A civil servant is entitled to have an opportunity to defend himself when there are allegations against him and only in exceptional circumstances law permits the department to dispense with the enquiry and other formalities. The impugned order to which reference is made earlier does not disclose any sufficient or satisfactory reason, and practically a short cut method is seen to have been adopted which in its turn has made inroads to the substantive rights of the applicants. This appears to be arbitrary.”

14. The order passed by the Tribunal is assailed, inter alia, on the grounds that a preliminary enquiry was conducted by the SSP and DM of Ghaziabad (UP) in which it was allegedly primarily found that the deceased persons were talking to their lawyer on 31st July, 2006, in the District Court at Ghaziabad and suddenly the respondents along with three or four other police officials had come and asked the deceased to sit in their vehicles, which fact had also been endorsed by the eyewitnesses. The father of the deceased had also stated in his complaint that his deceased son was facing a false and frivolous criminal case regarding the murder of the brother of Ct. Ashok Kumar. Therefore, it is urged that the respondents had planned the entire encounter along with Ct. Ashok Kumar to eliminate the deceased. It is also contended that in the criminal case against the respondents they have been convicted and are serving their sentence at present. According to the petitioners, there is enough material available on the record and also on the basis of the criminal case registered against the respondents as well as the fact that they have been in judicial custody, the petitioners were justified to dispense with the enquiry and thus they were entitled to exercise the power contemplated under Article 311(2)(b) of the Constitution of India, by dismissing the respondents without enquiry. The petitioners also asserted that since the respondents were in the police force, it becomes very difficult to initiate departmental proceedings as it is generally believed that a policeman will favor the

other policeman. It has also been contended that private witnesses might depose before the Court or Judicial forum without any fear, however, the same is not true for these witnesses to depose before the administrative bodies without being influenced and intimidated. The petitioners contended that prima facie they were only duty-bound to look into the matter and to see whether some material is available to proceed against the respondent. The order of the Tribunal is also impugned on the ground that the respondents could not be deemed to be under suspension from 9.8.2006 till 9.4.2009 as they had not provided any services to the petitioners during the said period.

15. Reliance is also placed by the learned counsel for the petitioner on Union Territory, Chandigarh & Ors v. Mohinder Singh, (1997) 3 SCC 68; Tarsem Singh v. State of Punjab & Ors, (2006) 13 SCC 581; Chandigarh Administration & Ors v. Ex.S.I.Gurdit Singh, (1997) 10 SCC 430 and Parveen Kumar v. Commissioner of Police & Ors, MANU/DE/8251/2007 in support of pleas and contentions of the petitioners, that the order of dismissal passed against the respondents without conducting an enquiry under Article 311(2)(b) of the Constitution of India is not liable to be set aside in the facts and circumstances of the case.

16. The writ petition is contested by the respondents contending, inter-alia, that the disciplinary authority has not given any cogent

reasons in the facts and circumstances for holding that it was not reasonably practicable to hold the enquiry as contemplated under Article 311(2)(b) of the Constitution of India. Relying on *Jaswant Singh v. State of Punjab*, AIR 1991 SC 3 it was contended that mere presumption or surmises cannot be the basis for the Disciplinary Authority for not complying with Article 311(2) of the Constitution of India. If the subjective satisfaction of the Disciplinary Authority is not supported by independent material, then in the circumstances the dismissal of the respondents without holding the enquiry would be illegal. It was further asserted that the purported reasons for dispensing with the departmental proceedings are not supported by any documents on the record nor any other material has been relied except making bald allegation that it is not reasonably practicable to hold the enquiry.

17. On behalf of the respondents it was emphasized that reliance has been placed by the Disciplinary Authority on the preliminary enquiry conducted by the SSP & DM, Ghaziabad. Thus, it is contended that if a preliminary enquiry could be conducted, then there was no reason why a formal departmental enquiry could not be conducted against the respondents. Relying only on the preliminary enquiry without complying with the minimal requirements of principles of natural justice is against the canons of fair play and justice. Merely on the basis of preliminary enquiry, in which no opportunity was given to the respondents, the inference that the respondents were guilty of the acts complained

against them could not be drawn nor could it be held that the respondents are unfit for police service. The learned counsel for the respondents also relied on Tarsem Singh (Supra).

18. This Court has heard the learned counsel for the parties in detail and perused the copies of record placed before the Tribunal which has been filed along with the writ petition. This is not disputed by the learned counsel for the petitioners that the order of dismissal of the respondents had been passed on the complaint of Sh.Gulam Nabi, father of deceased Julfikar, who had submitted a complaint to the SSP and DM, Ghaziabad (U.P). Thereafter, the SSP and DM had conducted a preliminary enquiry on the basis of which a zero FIR had been registered under Section 364/302 of IPC at Police Station Kavi Nagar, Ghaziabad (U.P). The said case was subsequently transferred to Delhi Police for further action and the respondents with three other constables were named. During the preliminary enquiry, the respondents were not involved nor were their explanations, if any, called for or considered and in the absence of this it was held that it had been clearly established that while conducting the encounter no information had been given to the supervisory officer and that the case showed grave misconduct and highhandedness on the part of respondents and the other delinquent officers, who have brought a bad name to the entire force of Delhi Police. Though it has been contended that the facts and circumstances of the case are such that it would not

be reasonably practicable to conduct a regular departmental enquiry, as there is reasonable apprehension that the witnesses may not come forward to depose against the charged officers, however, no documents or any other material has been shown on the basis of which such an inference could be drawn. Neither before the Tribunal nor before this Court has any such material been placed on record or disclosed on the basis of which it would be evident that subjective satisfaction of the Disciplinary Authority had been arrived at, to lead to the inference that it would not be reasonably practicable to conduct a regular departmental enquiry as the witnesses may not come forward to depose against the charged officers. This cannot be disputed that in the criminal case the witnesses had deposed against the respondents, and it had ultimately culminated in their conviction by the Sessions Court, and the appeals of the respondents in the matter are still pending adjudication.

19. The Appellate Authority while dismissing the appeal against the dismissal order has also relied on the investigation conducted by the crime branch and held that the allegations leveled by the father of the deceased, Julfikar, were proved, as the eye witnesses had confirmed that Julfikar and his friends were lifted by the respondents along with ex Constable Sudesh Pal Rana in their vehicle and the respondents and the other police personnel did not inform their supervisory officer regarding their departure before the encounter had taken place nor had

they told about the involvement and criminal background of the deceased. If the preliminary investigation could be conducted by the SSP and DM, Ghaziabad on the complaint of the father of the deceased and even the Crime Branch in Delhi had investigated the matter after the case was transferred to Delhi and eye witnesses were examined, then it is difficult to infer that it was not reasonably practicable to conduct a regular departmental enquiry. If there are any other reasons for assuming the same, then they must have been spelt out, and merely stating that it is not reasonably practicable to conduct a regular departmental enquiry is not sufficient. It is also evident that the conclusion of the Disciplinary Authority that it is not reasonably practicable to hold a departmental enquiry is not supported by any material or documents on the record. If the witnesses against the respondents could appear in the criminal trial, then why they could not appear in the regular departmental enquiry has not been explained. The plea of the learned counsel for the petitioners that it is generally believed that a police man will favor the other police man is also based on an assumption and a surmise and in any case this was not the reason given by either the Disciplinary Authority or the Appellate Authority in their respective orders. The contention that private witnesses depose before the Court or judicial forum without any fear, however, private witnesses do not depose freely before the administrative bodies also cannot be accepted in the facts and circumstances and in law. In any case, this contention has not been

considered by either the Disciplinary Authority or the Appellate Authority in their respective orders and hence such a reason cannot be canvassed by the petitioners as well. It is no more res integra that when a statutory functionary makes an order based on certain grounds, its validity must be adjudicated by the reasons so mentioned therein and it cannot be supplemented by fresh reasons. The Supreme Court in AIR 1978 SC 851, Mohinder Singh Gill v. Chief Election Commissioner had held that the orders passed cannot be supplemented by fresh reasons as otherwise an order bad in the beginning may, by the time it comes to the Court on account of a challenge, get validated by additional grounds brought out later on.

20. 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. The plea on behalf of the petitioners that it is common experience that due to terrorizing and intimidation, the witnesses and complainants do not come forward to depose against the delinquents in the investigation/enquiry and that such intimidation are common tactics adopted by unscrupulous police personnel is also based on the petitioners' assumptions and surmises. Since the eye witnesses and the complainants had deposed against the respondents in the preliminary enquiry conducted by SSP and DM, Ghaziabad and by the Crime Branch at Delhi, no cogent reason or material has been disclosed as to why the eye witnesses and complainants would not have deposed during the Departmental Enquiry. Though the Disciplinary Authority and Appellate Authority had held that it is common experience that due to terrorizing and intimidation the witnesses and complainants do not depose against the delinquent, however not even a single such instance has been referred to and relied on by the Disciplinary Authority or the Appellate Authority. In the circumstances the petitioners have failed to establish any subjective satisfaction arrived at by them based on any

objective criterion. Relying upon such preliminary enquiries without complying with the minimal requirements of the principles of natural justice in the facts and circumstances would be against all canons of fair play and justice, as was also held by the Supreme Court in Tarsem Singh (Supra).

22. The precedents relied on by the petitioners' counsel are also distinguishable. In Mohinder Singh (Supra) the order of dismissal was based on the report of the Superintendent of Police made after an enquiry into the allegations against the Charged officer of gross misuse of power and extortion of money by illegally detaining and torturing an innocent person. The report unequivocally had established that the delinquent was a terror in the area and that he had intimidated the complainant-victim and the two other persons arrested with the complainant-victim, and that they had immediately left the office of the Superintendent of Police terrified by the threats given by the delinquent. Apparently, the case relied on by the petitioners is distinguishable.

23. It is no more *res integra* that the Court should not place reliance on decisions without discussing as to how the factual situation in the matter under adjudication co-relates to the factual situation of the decision on which reliance is placed. It was held that observations of the Court are neither to be read as Euclid's theorem nor as provisions of the Statute, that too taken out of their context, by the Supreme Court

in Bharat Petroleum Corporation Ltd & Ors v. N.R.Vairamaini & Anr, AIR 2004 SC 778. The observations made by the Court are to be read in the context in which they appear to have been stated. In P.S.Roy v. State, JT 2002 (3) SC 1, the Supreme Court had held as under:-

“ There is always a peril in treating the words of a judgment as though they are words in a legislative enactment and it is to be remembered that judicial utterances are made in setting of the facts of a particular case. Circumstantial flexibility, one additional or different fact may make a world of difference between the conclusions in two cases.”

24. Similarly in Rafiq v. State (1980) 4 SCC 262 it was observed as under:-

“The ratio of one case cannot be mechanically applied to another case without having regard to the factual situation and circumstances prevailing in the two cases.”

25. In Ex.S.I.Gurdit Singh (Supra) relied on by the petitioners' counsel having regard to the facts and circumstances of that case it was held that the Disciplinary Authority was justified in holding that it was not reasonably practicable to hold an enquiry as the enquiry report had showed that the delinquent police official was a terror in the area and was a very influential person and no person would come forward to give any statement regarding the incident in question against him and hence, a regular enquiry against him would serve no purpose. In the case of the respondents there is no such report that the respondents

are a terror in the area or they are very influential persons and therefore no person would dare to come and depose against them in a regular enquiry. Rather, the complainant and the witnesses had deposed against the respondents in the preliminary enquiry and the investigation done by the Crime Branch and they had also deposed before the Criminal Court which had ultimately lead to the conviction of the respondents by the Sessions Court, though appeals against the judgment of the Sessions Court are pending. If the complainant and the witnesses could depose in a preliminary enquiry then why they could not depose in a formal enquiry has not been satisfactorily explained by the petitioners' counsel. The learned counsel for the petitioners has also relied on Tarsem Singh (Supra) which is relied on by the learned counsel for the respondents as well. In this case, the Supreme Court had rather held that if a preliminary enquiry could be conducted, there was no reason as to why a formal departmental enquiry could not be initiated against the delinquent and in the circumstances the ratio is rather against the proposition canvassed by the learned counsel for the petitioners and on the basis of the ratio of the said judgment it cannot be held that the orders of dismissal by the Disciplinary Authority and the Appellate Authority dispensing with regular enquiry are not liable to be set aside. Reliance has also been placed by the petitioners on a judgment of the Division Bench of this Court in the case of Parveen Kumar (Supra). In the said case also, there was material before the Disciplinary Authority for dispensing with the enquiry, namely

interrogation in the dacoity revealing the involvement of the delinquent and the fact that he had been involved in five other criminal cases and the attendant circumstances. The fact pertaining to his association with other criminals and his discharge in one case due to non identification by the witnesses and the lack of availability of other evidence and the prospect of witnesses shying away from the proceedings and not deposing due to fear of severe reprisal at his hands was considered to be a genuine apprehension and not a mere possibility. Therefore, the cases relied on by the petitioner are distinguishable.

26. Thus, in light of the pleas and contentions made, it is clear that 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 respondents could influence or terrorize the aggrieved people as well as the witnesses from giving any evidence by threatening them or by other means. Since it is also clear that the witnesses as well as the complainant had deposed against the respondents in the preliminary inquiry conducted by the SSP and DM, Ghaziabad, and in the investigation conducted by the Crime Branch as well as in the criminal trial which also culminated in a conviction and against which even appeals are pending, there is no reason to infer that they would not have deposed during a formal enquiry. Therefore, the justification of the petitioners for dispensing

with the enquiry is unfounded and therefore the Tribunal has rightly set aside the order of dismissal passed by the petitioners.

27. The learned counsel for the petitioners is also unable to explain satisfactorily for not complying with the intent of the Circular dated 21st December, 1993 stipulating that the Police Officers involved in the case of rape or dacoity or any such heinous offence are not to be dismissed straightway under Article 311(2)(b) as criminal cases are registered against them. The circular directs that such dismissals without holding departmental enquiries are illegal as in such cases departmental enquiries can be conveniently held. The circular thus emphasizes that the Disciplinary Authority should not take recourse to Article 311(2)(b) lightly but only in those cases where it is not reasonably practicable to hold the enquiry. Whenever the disciplinary authority comes to the conclusion that it is not reasonably practicable to hold an enquiry, he must record at length cogent and legally tenable reasons for coming to such conclusion. It cannot be disputed by the petitioners that in the absence of valid reasons, duly reduced in writing, order of dismissal resorting to Article 311(2)(b) of the Constitution of India cannot be sustained in law. From the orders of the Disciplinary and Appellate Authority it is apparent that no cogent and valid reasons have been given as to why the departmental enquiry could not be conducted. In the circumstances, the order of dismissal of the respondents without conducting departmental enquiry cannot be sustained in the facts and

circumstances of the case. Therefore, for the foregoing reasons the petitioners have failed to show any such grounds against the order of the Tribunal which would show that it is illegal or irregular or suffers from such perversity which would require interference by this Court in exercise of its jurisdiction under Article 226 of the Constitution of India.

28. 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 requiring any interference by this Court. The writ petition is without any merit and it is, therefore, dismissed. Interim order dated 11th November, 2009 is vacated and all the pending applications are also disposed of.

29. It is, however, clarified that the petitioners are not precluded from taking any departmental action 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 respondents. It is further clarified that on setting aside the order of dismissal of the respondents, they have to be reinstated, however, since they are in judicial custody, therefore, they would be under deemed suspension and they would be entitled for only such benefits which are available to an employee who is under suspension.

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

ANIL KUMAR, J.

SUDERSHAN KUMAR MISRA, J.

September 16, 2011
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