

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Date of Decision:22.3.2016

1.CWP No.19478 of 2014

Kabal Singh

...Petitioner

Versus

State of Punjab and others .

...Respondents

2.CWP No.23706 of 2014

Hakam Singh

...Petitioner

Versus

State of Punjab and others .

...Respondents

CORAM:HON'BLE MR.JUSTICE RAJIV NARAIN RAINA

Present: Mr.A.K.Walia, Advocate for the petitioner(s)

Dr.Puneet Kaur Sekhon, Addl.A.G., Punjab

1. To be referred to the Reporters or not?
2. Whether the judgment should be reported in the Digest?

Rajiv Narain Raina, J.

1. This order will dispose of CWP Nos.19478 & 23706 of 2014 as common questions of law and fact are involved in both the writ petitions which arise out of the same incident which can conveniently be decided by a joint order.

2. The case goes like this. When the Senior Superintendent of Police (Rural), Ludhiana formed prima facie opinion that a departmental enquiry

deserves to be initiated against the petitioners after placing them under suspension, it appears rather unjustified for the disciplinary authority to have suddenly departed there from, and then exercise his authority under Article 311 (2) (b) of the Constitution of India to dismiss the petitioners from service. The petitioners were accused of raiding the farm house of one Jagdeep Singh where they found owner in possession of six bags of poppy husk. They are alleged to have taken away five bags and left one with Jagdeep Singh. It is alleged that both the petitioners accepted bribe of Rs.25,000/- from Jagdeep Singh after three days of the raid on the promise that they would help him in not taking any criminal action against the accused. They are accused of letting him off without handing the man over to the law. It has also come on record that FIR No.105 dated 10th September, 2013 was registered at Police Station Jodhan under Sections 15/27-A/29/61/85 of the NDPS Act and Section 7/13(2) of the PC Act against the petitioners and the co-accused Jagdeep Singh.

3. The learned counsel for the petitioners submits that extreme and excessive action was taken against the petitioners of dismissal from service after conducting a preliminary enquiry in which the confessional statements of Jagdeep Singh etc. were recorded and then to have taken recourse to Article 311 (2) (b). Despite the presence of such material enquiry should have been conducted to enable the petitioners to prove their innocence in disciplinary proceedings, in case they were instituted. Loss of such valuable opportunity was critical to the action of the punishing authority taking recourse to sledgehammer jurisdiction under Article 311 (2) (b) of the Constitution which should be the last resort when it is prima facie established on opinion formed that it would not be reasonably practicable to

hold an enquiry. The present is not an extreme case of the kind where it would not be reasonably practicable to gather evidence in the surrounding circumstances an especially when admittedly the Senior Superintendent of Police (Rural), Ludhiana had taken a decision in the first instance to suspend the officials and institute a regular enquiry. He then should have steadfastly held the ground, ordered an enquiry and take it to its logical end. This makes the impugned decision even more suspect and open to criticism in sufficient degrees to vitiate the orders.

4. The dismissal orders were passed against both the petitioners on 12th September, 2013 (Annex.P-4). They have been upheld in appeals and revisions carried by the aggrieved petitioners in the hierarchy of statutory remedies available to the petitioners, but the same have been dismissed. Against which the petitioners have approached this Court in the present writ petitions.

5. It may be noticed that the petitioners had by then put in over two decades of service. Their livelihood was taken away whimsically and in a most arbitrary, illegal and unconstitutional manner. Though the opinion formed under Article 311 (2) (b) of the Constitution of India is in the subjective satisfaction of the disciplinary authority, but in this case it appears not to be based on objective material and assessment of the total grass root situation whether an enquiry could have been conducted or not. In my considered view the decisions taken were perverse and irrational. The confessional statements of Jagdeep Singh recorded in the preliminary enquiry/investigation were tangible material which could easily have been tested in a regular disciplinary proceeding by confronting the petitioners

with that material and permitting cross-examination so that the truth was revealed about the involvement of the two in the episode and the guilty could be punished. The petitioners have been condemned unheard and for the wrong reasons. Truth must triumph. The disciplinary authority should have before taking drastic action acquainted himself with philosophy of the constitutional provision and the law stated thereon in the classic judgment in Union of India & another v. Tulsiram Patel & others, AIR 1985 SC 1416: 1985) 3 SCC 398, at page 503 [and so many others precedents of the Supreme Court and the various High Courts explaining the law and in which cases resort must be had in public interest and in the security of the State]; wherein it has been held by the constitution bench of the Supreme Court in *Tulsiram*; the scope of disciplinary authority and what he might do in exercise of his authority and then how would the decision be taken, if adverse, face judicial review, which parameters have been elucidated while holding as follows:-

“130. The condition precedent for the application of clause (b) is the satisfaction of the disciplinary authority that “it is not reasonably practicable to hold” the inquiry contemplated by clause (2) of Article 311. What is pertinent to note is that the words used are “not reasonably practicable” and not “impracticable”. According to the Oxford English Dictionary “practicable” means “Capable of being put into practice, carried out in action, effected, accomplished, or done; feasible”. Webster’s Third New International Dictionary defines the word

“practicable” inter alia as meaning “possible to practice or perform:capable of being put into practice, done or accomplished: feasible”. Further, the words used are not “not practicable” but “not reasonably practicable”. Webster’s Third New International Dictionary defines the word “reasonably” as “in a reasonable manner: to a fairly sufficient extent”. Thus, whether it was practicable to hold the inquiry or not must be judged in the context of whether it was reasonably practicable to do so. It is not a total or absolute impracticability which is required by clause (b). What is requisite is that the holding of the inquiry is not practicable in the opinion of a reasonable man taking a reasonable view of the prevailing situation. It is not possible to enumerate the cases in which it would not be reasonably practicable to hold the inquiry, but some instances by way of illustration may, however, be given. It would not be reasonably practicable to hold an inquiry where the government servant, particularly through or together with his associates, so terrorizes, threatens or intimidates witnesses who are going to give evidence against him with fear of reprisal as to prevent them from doing so or where the government servant by himself or together with or through others threatens, intimidates and terrorizes the officer who is

the disciplinary authority or members of his family so that he is afraid to hold the inquiry or direct it to be held. It would also not be reasonably practicable to hold the inquiry where an atmosphere of violence or of general indiscipline and insubordination prevails, and it is immaterial whether the concerned government servant is or is not a party to bringing about such an atmosphere. In this connection, we must bear in mind that numbers coerce and terrify while an individual may not. The reasonable practicability of holding an inquiry is a matter of assessment to be made by the disciplinary authority. Such authority is generally on the spot and knows what is happening. It is because the disciplinary authority is the best judge of this that clause (3) of Article 311 makes the decision of the disciplinary authority on this question final. A disciplinary authority is not expected to dispense with a disciplinary inquiry lightly or arbitrarily or out of ulterior motives or merely in order to avoid the holding of an inquiry or because the Department's case against the government servant is weak and must fail. The finality given to the decision of the disciplinary authority by Article 311(3) is not binding upon the court so far as its power of judicial review is concerned and in such a case the court will strike

down the order dispensing with the inquiry as also the order imposing penalty.

137. A government servant who has been dismissed, removed or reduced in rank by applying to his case clause (b) or an analogous provision of a service rule is not wholly without a remedy. As pointed out earlier  507 while dealing with the various service rules, he can claim in a departmental appeal or revision that an inquiry be held with respect to the charges on which the penalty of dismissal, removal or reduction in rank has been imposed upon him unless the same or a similar situation prevails at the time of hearing of the appeal or revision application. If the same situation is continuing or a similar situation arises, it would not then be reasonably practicable to hold an inquiry at the time of the hearing of the appeal or revision. Though in such a case as the government servant if dismissed or removed from service, is not continuing in service and if reduced in rank, is continuing in service with such reduced rank, no prejudice could be caused to the Government or the Department if the hearing of an appeal or revision application, as the case may be, is postponed for a reasonable time.

138. Where a government servant is dismissed, removed or reduced in rank by applying clause (b) or

an analogous provision of the service rules and he approaches either the High Court under Article 226 or this Court under Article 32, the court will interfere on grounds well established in law for the exercise of power of judicial review in matters where administrative discretion is exercised. It will consider whether clause (b) or an analogous provision in the service rules was properly applied or not. The finality given by clause (3) of Article 311 to the disciplinary authority's decision that it was not reasonably practicable to hold the inquiry is not binding upon the court. The court will also examine the charge of mala fides, if any, made in the writ petition. In examining the relevancy of the reasons, the court will consider the situation which according to the disciplinary authority made it come to the conclusion that it was not reasonably practicable to hold the inquiry. If the court finds that the reasons are irrelevant, then the recording of its satisfaction by the disciplinary authority would be an abuse of power conferred upon it by clause (b) and would take the case out of the purview of that clause and the impugned order of penalty would stand invalidated. In considering the relevancy of the reasons given by the disciplinary authority the court will not, however, sit in judgment over them like a court of first appeal. In order to

decide whether the reasons are germane to clause (b), the court must put itself in the place of the disciplinary authority and consider what in the then prevailing situation a reasonable man acting in a reasonable way would have done. The matter will have to be judged in the light of the then prevailing situation and not as if the disciplinary authority was deciding the question whether the inquiry should be dispensed with or not in the cool and detached atmosphere of a court-room, removed in time from the situation in question. Where two views are possible, the court will decline to interfere.”

6. In CWP No. 26911 of 2013 (O&M) titled ‘Manjit Singh Vs. The State of Punjab & others’ decided on 12th December, 2014 I considered the issue in a jail break case involving under-trials which led to dismissal of jail warders under Article 311 (2) (b). It was observed while borrowing from Supreme Court precedents as follows:-

“14. In Indian Railway Construction Company Limited v. Ajay Kumar; (2003) 4 SCC 579, the Supreme Court held that the power to dismiss an employee by dispensing with an inquiry is not to be so exercised as to circumvent the prescribed rules. The satisfaction as to whether the facts exist to justify dispensing with an inquiry has to be of the disciplinary authority. Where two views are possible as to whether

holding of an inquiry would have been proper or not, it would not be within the domain of the Court to substitute its view for that of the disciplinary authority as if the Court is sitting as an appellate authority over the disciplinary authority.

15. *The question then rests on the principle; if two views are possible. The examination of this question is for the Court, where two views are possible. The cases which could fall within the meaning of “two views are possible” are those where there is a serious doubt in the mind of the Court, looking to the gravity of the case, where witnesses will never come forward to depose, where there is a sufficient prima facie evidence that it would not be reasonably practicable or possible to hold an inquiry; where past conduct is res gestae or where one incident is such which shakes the conscience of the society and the community; where in one voice all reasonable men might say: this man should not continue in service as he poses a danger to the administration of jail justice, then the Court will be shy of interfering while going by the principles of; “two views are possible”. The Court exercises secondary review over the orders of the punishing authority and of the appellate authority and secondary review is on Wednesbury principles which come into play where the action has to be measured in*

terms of arbitrariness and proportionality. When these tests are applied, then the State's case appears to fade away and the case of the petitioner becomes clearer and stronger to support a conclusion that he was wronged and dismissed without giving him a fair and reasonable opportunity to prove his innocence or plead mitigating circumstances for a reduced punishment. It is well embodied principle of criminal law that a man is innocent till he is proved guilty. Even in its most diluted form, this principle applies to domestic inquiries and when the sledgehammer of article 311(2)(b) is used, it must be used with the best intentions, with the best public interest in view, in the best interest of jail administration by a decision resting on the cornerstone of an opinion recorded in writing that it is not reasonably practicable to hold an inquiry and justify it on a practical and prudent principle based on non-availability of true facts which will be hard to obtain in the circumstances. In Tulsi Ram Patel case, the Supreme Court observed that the decision of the President or Governor formed under article 311(2)(c) in cases where they are satisfied that in the interest of the security of the State, it is not expedient to hold such an inquiry, have in the scope of the most aggravated form in clause (c) of article 311 opined that although the administrator's decision is

final, such finality can certainly be tested in a Court of law and interfered with if the action is found to be arbitrary or malafide or motivated by extraneous considerations or merely a ruse to dispense with inquiry.

16. In Jaswant Singh v. State of Punjab; AIR 1991 SC 385, the Supreme Court observed:

“The decision to dispense with the departmental inquiry cannot be rested solely on the ipse dixit of the concerned authorities. When the satisfaction of the concerned authority is questioned in a Court of law, it is incumbent on those who support the order to show that the satisfaction is based on certain objective facts and is not the outcome of the whim and caprice of the concerned officer.”

Then again:-

“...Article 311(2)(b) of the Constitution...casts a burden on the authority empowered to dismiss or remove a person to be satisfied for the reasons to be recorded in writing that it is not reasonably practicable to hold a departmental inquiry. Therefore, it is for the competent authority to apply its mind and then take a view in dispensing with the departmental inquiry by recording reasons to justify skipping it.”

7. For the foregoing reasons, I find substance in the prayer made that the action taken under Article 311 (2) (b) of the Constitution of India was wholly excessive, oppressive, unreasonable, unfair, unconstitutional and far short of the standards required in exercise of powers to dismiss an employee from service under the constitutional provision. Since the similar orders Annex P-4, P-6 and P-7 impugned in both the writ petitions are found not legally sustainable, they are set aside. The writ petitions are allowed. The petitioners would be reinstated to service. However, this order will not preclude the Government from conducting a regular departmental enquiry against the petitioners. It will be open to the respondents to consider passing orders suspending the petitioners as per rules, pending enquiry, but those orders will be made only when the petitioners are reinstated as a natural corollary to setting aside of the orders. The monetary benefits which may accrue will depend on the outcome of the disciplinary proceedings, if initiated. In the event, the petitioners are found innocent in the contemplated enquiry, if any instituted, and then needless to say they would be entitled to all consequential benefits. If an enquiry is held it should be concluded within six months, if not earlier.

8. With the above directions, both the writ petitions are disposed of.

(RAJIV NARAIN RAINA)

JUDGE

22.3.2016

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