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

+ **Date of Decision: 20.09.2017**

% **W.P.(C) 6005/2017 and C.M. No.24898/2017**

CT MUKESH KUMAR YADAV

..... Petitioner

Through: Ms. Jyoti Singh, Senior Advocate
along with Mr. Sourabh Ahuja &
Ms.Tinu Bajwa, Advocates.

versus

GNCT OF DELHI AND ORS

..... Respondents

Through: Mr. Satyakam, ASC along with ASI
Tarun & ASI Balwinder Singh, Crime
Branch, for the respondent/ GNCTD.

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

HON'BLE MS. JUSTICE REKHA PALLI

VIPIN SANGHI, J. (ORAL)

1. The petitioner has preferred the present writ petition to assail the order dated 31.05.2016 passed by the Central Administrative Tribunal (CAT/ Tribunal) in O.A. No.3548/2015. The Tribunal has dismissed the said OA preferred by the petitioner. The petitioner had assailed the order dated 05.09.2012 passed by the respondents dismissing him from service by resort to clause (b) of the 2nd proviso to Article 311 (2) of the Constitution of India, as well as the appellate order dated 26.08.2015, and the order dated 08.09.2015 directing the petitioner to vacate the government

accommodation. The petitioner sought a direction to the respondents to reinstate him back in service from the date of his dismissal with all consequential benefits and to treat his suspension period between 08.08.2012 to 05.09.2012 as spent on duty.

2. The petitioner was serving as a constable in the Delhi Police. On 07.06.2012, the petitioner was absent from duty purportedly on account of medical rest. The petitioner and one other constable, namely, Ajeet Singh, while they were posted in Special Unit, Crime Branch were arrested along with two civilians, namely, Harender Yadav of Distt. Muzaffar Nagar, U.P. and Baldev Singh of Distt. Bharat Pur (Rajasthan) by U.P. police in the night of 7/8.08.2012 for kidnapping for ransom, forgery and impersonation and also under the Arms Act. Three criminal cases were registered against them. It was alleged against the accused – including the petitioner, that they had kidnapped one Sushil Bansal, Executive Engineer, Jal Board from his residence for ransom, for which FIR No.692/2012 u/s 364A IPC was registered at PS Kotwali, Bijnour. During personal search of the petitioner, one identity card of Delhi Police and one fake identity card of CBI No.28882452 having his photograph and identity as Rajender Kumar, SI, CBI and four bank ATM cards, two vehicles registration certificates and two driving licenses, were seized from him. The petitioner was placed under suspension on 08.08.2012.

3. A fact finding inquiry headed by Sh. M.C. Katoch, ACP/Crime Branch was ordered by the Delhi Police. The said ACP/ Crime Branch went to Bijnour to conduct the inquiry. Post his inquiry, Mr. Katoch made his report and opined that it was not practicable to hold departmental inquiry

against the petitioner, as no one came forward to depose against him and the other co-accused for fear. He also observed that retention of a criminal like the petitioner in Delhi Police would be unjustifiable. Acting on the said report, the Disciplinary Authority i.e. the Deputy Commissioner of Police (Crime and Railways) vide the impugned order dated 06.09.2012 dismissed the petitioner, as well as the co-accused Ajeet Singh, from service of Delhi Police without holding an inquiry and by resort to clause (b) of the 2nd proviso to Article 311 (2) of the Constitution of India with immediate effect. The period of suspension between 08.08.2012 and 06.09.2012 was directed to be treated as period not spent on duty for all intents and purposes. The petitioner and the co-accused Ajeet Singh – who was also similarly dismissed, preferred departmental appeals before the appellate authority, namely, the Additional Commissioner of Police. By the impugned order dated 26.08.2015, the same was also dismissed. Consequently, the petitioner preferred the aforesaid O.A.

4. The Tribunal, as aforesaid, did not find merit in the petitioner's O.A. and dismissed the same. In the course of its decision, the Tribunal examined a host of decisions of the Supreme Court. The relevant discussion found in the impugned order reads as follows:

“11. We have considered the arguments put forth by the learned counsel for the parties and have also perused the pleadings and the documents annexed thereto. The Hon'ble S.C. in a catena of judgment has laid down essential conditions for dispensing with the holding of departmental enquiry. The names of the cases and the principles laid down by the Hon'ble Apex Court are mentioned below:-

- (i) *Satyavir Singh & Others vs. UOI & Others* [1985(4)SCC 252]
- (ii) *Chief Security Officer & Others Vs. Singasan Rabi Das* [1991 (1) SCC 729]
- (iii) *Jaswant Singh vs. State of Punjab & Others* [1991(1) SCC 362]
- (iv) *UOI & Others Vs. R.Reddappa & Another* [1993 (4) SCC 269]
- (v) *Kuldip Singh Vs. State of Punjab & Others* [1996 (10) SCC 659]
- (vi) *Sudesh Kumar Vs. State of Haryana & Others* [2005 (11) SCC 525]
- (vii) *Ikramuddin Ahmed Borar Vs. Superintendent of Police. Darrong and other* [AIR 1988 SC 2245]
- (viii) *Onkar Lal Bajaj & Others Vs. UOI & Others* [(2003) 2 SCC 673]
- (ix) *Ajit Kumar Nag vs. General Manager (PJ), IOC Ltd. Haldia & other* [(2005) 7 SCC 764]
- (x) *Chandigarh Administration, UT Chandigarh vs. Ajay Manchanda* [1996 (3) SCC 753]
- (xi) *Ram Chander vs. UOI & Others* (AIR 1986 SC 1173]
- (xii) *Sahadeo Singh & Other Vs. UOI & Others* [(2003) 9 SCC 75]

Essential conditions for dispensing with the holding of Departmental Enquiry laid down by the Supreme Court

1. *Reasons for dispensing with the regular departmental enquiry must be established by holding that it is not reasonably practicable to do so and reasons for this must be recorded in writing.*

2. *Disciplinary enquiry should not be dispensed with lightly or arbitrarily or out of ulterior motive*
3. *Disciplinary enquiry should not be dispensed with to avoid holding of an enquiry or because the department's case against the government servant is weak and must fall.*
4. *The reasons for dispensing with enquiry need not contain detailed particulars, but the reason must not be vague or just a repletion of the language of clause (b) of second proviso.*
5. *The authority is obliged to show that his satisfaction is based on objective facts. The decision to dispense with the departmental enquiry cannot be rested solely on ipse dixit of the concerned authority.*
6. *The subjective satisfaction must be fortified by independent material to justify dispensing with the enquiry envisaged by Article 311(2) (b); recourse to Article 311 (2) (b) can be taken even after enquiry has been started, the gravity of offence is not a ground for dispensing with regular departmental enquiry and involving Article 311 (2) (b)*
7. *Courts can interfere with such orders on grounds well established in law for the exercise of power of judicial review in matters where administrative discretion is exercised; notwithstanding clause (3) of Article 311.*
8. *In examining the relevance of reasons, the court will consider the situation, which led the disciplinary authority to conclude that it was not reasonably practicable to hold enquiry.*
9. *Court should examine whether the reasons are relevant and in order to do that the court must put itself in place of disciplinary authority and consider what is the prevailing situation a reasonable person acting reasonably would have done. When two view are trouble, the court will decline to interfere; when the satisfaction of the concerned authority is questioned in the 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 which or caprice of the concerned officers. Subjective satisfaction recorded in the order has to be fortified by an independent material to justify the dispensing with the enquiry envisaged by Article 311(2) of the Constitution; and that the appellate authority must not only give a hearing to the Government servant concerned but also pass a reasoned order dealing with the contentions raised by the concerned officer in the appeal.

12. The Hon'ble Supreme Court in the case of UOI and Anr. Vs. Tulsiram Patel [1985 (2)SLR 576] on the issue of removal under Article 311(2)(b) of the Constitution has held as under:-

“ having examined the proviso to Article 311(2) and principles of natural justice, it was ruled that dispensing of enquiry takes away the right to make representation consideration of fair play and violation of natural justice requiring an opportunity of hearing to be given before major penalty is imposed and exercise of power under Article 311(2)(b) is not legally permissible under given set of circumstances. ”

5. The Tribunal then proceeded to examine the merit of the petitioner's case in the light of the above stated principles. The relevant discussion in the impugned order reads as follows:

“13. In view of the above principles laid down in Apex court in the above Cases, let us now examine as to whether the competent authority was justified to invoke its powers under 311(2)(b) of the Constitution to dismiss the applicant.

14. The fact that the applicant and other co-accused were arrested in the Distt. Of Bijour, UP and kept under judicial custody cannot be denied. Shri Katoch ACP/Crime Branch who had gone to Bijour for conducting a fact finding enquiry on behalf of the Delhi Police, has reported that for fear of the applicant and other criminals no one came forward to depose

against them. The applicant was reported to be on medical rest since 07.06.2012 but his arrest by the UP Police in night of 7/8 August, 2012 in Bijnour District raises enormous doubt his conduct. The recovery of a false Identity Card having the photograph of the applicant but containing the name of Rajender Kumar SI, CBI would cause genuine shadow of doubt with regard to the conduct of the applicant. His acquittal by the Session Judge from the charge cannot be construed as an honorable acquittal since crucial prosecution witnesses had turned hostile in the court. The fact finding report of Shri M.C.Katoch ACP/Crime Branch indicated that for sheer fear no one came forward to depose against the applicant. This itself would suffice to describe the gravity and enormity of the then prevailing situation. We are, therefore in agreement with the assessment of the DA that conduct of department enquiry under the prevailing situation would not have been possible. When the crucial witnesses turned hostile in the criminal court for understandable reasons, the same conduct they would have exhibited even in the departmental enquiry proceedings. Needless to say that when the Police constables who are in-charge of prevention and control of crimes themselves indulge into such criminal acts, the faith of general public in police would definitely get shaken. It is settled law that unlike in the criminal court where the charge against the accused is to be proved beyond and reasonable doubt, whereas in case the departmental proceedings, preponderance of evidence is sufficient to take action against the delinquent official. In the instant case, as described in forgoing paras, preponderance of evidence against the applicant is there in abundance. The DA has convincingly described the extra ordinary situation in which the conduct of DE proceedings could not have been possible and have rightly decided to invoke its power under 311(2)(b) of the Constitution of India for dismissing the applicant from the service of Delhi Police. The said resolute action is fully justified. Only such actions can deter the police officials from indulging into criminal acts and restore faith of the common public in the law enforcing agency. We would not like to discuss the case of Const. Ashok Kumar(supra) as the

judgment of Hon'ble Delhi High Court in that case is not a judgment in rem".

6. The submission of learned senior counsel for the petitioner is that invocation of clause (b) of 2nd proviso to Article 311 (2) of the Constitution of India in the facts of the present case was completely unjustified. Ms. Singh submits that the valuable rights of the petitioner to defend himself in departmental proceedings has been taken away very lightly, and without any basis or material being available on the record-which could have formed the basis of the satisfaction of the Disciplinary Authority that it was not reasonably practicable to hold a disciplinary proceedings against the petitioner, he has been summarily dismissed from service.

7. Learned counsel submits that the petitioner and the other accused have already been acquitted by the trial Court, since the prosecution witnesses including the victim did not support the case of the prosecution. There was no basis for the ACP (Crime) M.C. Katoch to claim that no one would come forward to depose against the petitioner and the other accused, for fear. She submits that Sh. Katoch did not state in his report that he tried to contact any witnesses to record their statements, or that they refused to give their statements out of fear of retribution by the petitioner and the other accused.

8. Ms. Singh has sought to place reliance on several decisions in support of her aforesaid plea. She, firstly, refers to ***Tarsem Singh v. State of Punjab & Ors.***, (2008) 2 SCC (L&S) 140. In this case, the appellant – a police constable, was charge sheeted for commission of misconduct, namely, outraging the modesty of a woman by entering her house along with his

accomplices; having carnal intercourse against the law of nature with a migrant labourer, and; issuing threats of dire consequences to anyone deposing against him in an inquiry/ investigation. The competent authority recorded his satisfaction that the appellant could win over the aggrieved people as well as the witnesses from giving evidence, by threatening and other means and, on that premise, held that formal departmental proceedings need not be initiated. He took into consideration the preliminary inquiry report prepared by the Deputy Superintendant of Police and, on that basis, concluded that there was no need to hold a regular departmental inquiry against the appellant. Consequently, by resort to clause (b) of the 2nd proviso to Article 311(2) of the Constitution of India, the appellant was dismissed from service. His appeal was also dismissed by the appellate authority, taking note of the fact that a FIR u/s 377/34 IPC had been registered against him. He was of the view that the appellant was guilty of the gravest acts of misconduct, proving complete unfitness for police service and that the punishment awarded to the appellant was commensurate with his misconduct. The appellant's representation made to the Inspector General was also rejected. Having failed in his challenge at lower rungs, the appellant approached the Supreme Court.

9. The Supreme Court allowed the appeal preferred by the appellant. While doing so, the Supreme Court, inter alia, observed:

*“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". (emphasis supplied)

10. Ms. Singh has also placed reliance on a decision of a learned Single Judge of this Court in **Rajinder Singh Negi v. Municipal Corporation of Delhi & Anr.**, (2006) 128 DLT 133. In this case, the petitioner was arrested

on 11.03.2005 for having committed offences u/s 6 and 13 of the Prevention of Corruption Act, 1988. Soon thereafter, he was dismissed from service on 14.03.2005 without holding an inquiry against him. Defending their action, the MCD contended that since the petitioner had been caught *red handed* accepting a bribe, the MCD was of the opinion that larger public interest demanded dismissal of the petitioner to convey to the people at large that corrupt officers and employees would have no place in the MCD. The learned Single Judge held that the normal rule is that every executive action which is adverse, or results in evil consequences for a person, should be preceded by compliance of the principles of natural justice and a fair procedure. An exception to this rule is carved out to cater to exceptional cases i.e. where the nature of the charge is so conclusive as to justify not holding of an inquiry in compliance with principles of natural justice, or where public interest warrants that an inquiry would not be either practicable, or would lead to unfair results. The learned Single Judge placed reliance on the decision of the Supreme Court in ***Union of India v. Tulsi Ram Patel***, (1985) 3 SCC 398. In ***Tulsi Ram Patel*** (supra), the Supreme Court interpreted Article 311 of the Constitution of India. The extracted portion from ***Tulsi Ram Patel*** (supra) reads as follows:

“7.

“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' Third New International Dictionary defines the word 'practicable' inter alia as meaning 'possible to practise 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' 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.” (emphasis supplied)

11. **Jaswant Singh v. State of Punjab**, (1991) 1 SCC 362 was also referred to by the learned Single Judge, wherein it was held that a decision to dispense with domestic inquiry cannot be rested solely on the *ipse dixit* of the competent authority. If the satisfaction of impracticability of holding an inquiry is questioned in Court of law, it is incumbent on the authority forming the opinion to show that the satisfaction is based on certain objective facts, and is not the outcome of the whim or caprice of an official. For the same proposition, reliance was also placed on **Chief Security Officer v. Singasan Rabi Das**, (1991) 1 SCC 729.

12. In **Indian Railway Construction Co. Ltd. v. Ajay Kumar**, (2003) 4 SCC 579 relied upon by the learned Single Judge, the obligation to follow an objective standard for dispensing with the requirement of holding an inquiry was emphasized. The learned Single Judge then proceeded to apply the rule laid down in **Tulsi Ram Patel** (supra) and the subsequent decisions, and to examine whether the reasons adduced for not holding an inquiry were justified in the facts of the case. In the course of his reasoning, the learned Single Judge observed:

*“14. The impugned order does not disclose as to why witnesses would not come forward; **whether such opinion is based on an objective and fair Assessment or the ipse dixit of the authority issuing the order.** The intention in not holding the inquiry is not that public interest, about the sensitive nature of the subject is involved, or that disclosure of evidence would be violative of public interest, **but that holding of departmental enquiry would involve a long drawn procedure. The opinion as to why witnesses would not come forward has not been shown as based on any, much less relevant factors.** The reference to giving strong signals, though laudable, is hardly a supportive reason to dispense with inquiry, which can otherwise be conveniently held. No material was disclosed to the court as to whether any witness had apprehended some threat, or perceived injury if he deposed in a normal proceeding. The order, not to hold enquiry, essentially means that it would not be convenient to the authority to do so. Such a view is fraught with danger. The procedure prescribed is a matter of public policy, and the exception to be resorted to sparingly, in exceptional situations, under circumstances which have been clearly prescribed”. (emphasis supplied)*

13. Ms. Singh has also relied upon the decision of the Division Bench of this Court in ***Ex-Constable Mahabir Singh & Anr. v. Union of India & Ors.***, 2009 SCC Online Del 2712 (W.P.(C.) No.7068/2000 decided on 02.09.2009). This case too related to two constables of Delhi Police. It was alleged that in the evening of 25.11.1994, they had raped one lady and also assaulted her husband. The said information was passed on to the Disciplinary Authority by one MLA. The Disciplinary Authority visited the site where the offence was alleged to have been committed. He was accompanied by the SHO PS Shalimar Bagh, Insp. P.T. Rana as well as the Superintendent of Police Badli, Inspector Ravi Shankar apart from the MLA and the complainant – the husband of the prosecutrix. When the party

reached the spot at about 10:15 p.m., i.e. one hour after the MLA had passed on the information to the Disciplinary Authority, the prosecutrix was heard screaming in the bushes adjacent to the police picket. The party rushed and caught hold of one person – one of the petitioners, who was only in his underwear, while the other person had escaped in the dark. Subsequently, the other person was caught and identified. The prosecutrix claimed that the petitioners assaulted her husband, and told him to run away from the spot. Later on, both the petitioners made her drink liquor, molested and raped her continuously for about six hours. On the basis of her statement, a FIR was lodged and the prosecutrix and the petitioners were sent for medical examination. A preliminary inquiry was conducted by the Delhi Police which implicated the petitioners. Around the same time, the Disciplinary Authority passed an order under clause (b) of the 2nd proviso to Article 311(2) of the Constitution of India, concluding that it was not reasonably practicable to hold a departmental inquiry against the petitioners and dismissed them from service.

14. The Division Bench took notice of the fact that the petitioners had been arrested on the date of the alleged incident and granted bail on 17.01.2015. Thus, while passing the impugned order dispensing with the holding of a departmental inquiry, the petitioners were in judicial custody. The Division Bench also took note of the fact that in the criminal trial, the prosecutrix did not implicate the petitioners. Consequently, the learned ASJ acquitted the petitioners. The Division Bench also referred to the judgment of the learned ASJ from which it appeared that even at the stage of recording

of her statement u/s 164 Cr PC, the prosecutrix completely exonerated the petitioners. The Division Bench, inter alia, observed:

“10. ... Under the circumstances, it is quite clear that both at the stage of recording her statement under Section 164 of the Cr.P.C. as well as when she entered the witness box in the criminal trial, the prosecutrix did not implicate any of the Petitioners. However, we need not go into the merits of the case because that is not an issue before us. We have merely given these background facts to better appreciate the issue before us, which is the validity of the order dated 30th November, 1994 dispensing with the departmental enquiry”.

15. The Division Bench observed that for the purpose of a disciplinary inquiry:

“11. ... the principal witnesses in the disciplinary inquiry would be the Disciplinary Authority himself, the two police officials and the M.L.A. apart from the prosecutrix and her husband. It is not possible for us to accept the view that the Disciplinary Authority (who himself is a senior police officer) as well as the two police officials would not have supported the case of the prosecution in the departmental enquiry. Nor is it possible for us to accept the view that Chand Ram, M.L.A. a political leader, could have been terrorized by the two Petitioners so as not to give a statement in the departmental enquiry. This, coupled with the fact that at the time when the order dated 30th November, 1994 was passed, both the Petitioners were in judicial custody makes it difficult to accept the view that these Petitioners could have spread terror so as to make it reasonably impracticable to hold a disciplinary inquiry.

12. However, the Disciplinary Authority has noted that the Petitioners could have terrorized the prosecutrix and her husband who were the main witnesses. In our opinion, it was rather hasty to come to that conclusion on 30th November, 1994 considering the fact that on that day the Petitioners were

in judicial custody and given the nature of the alleged crime, it was unlikely that they would soon be given bail. There was, therefore, little factual basis for the Disciplinary Authority to come to that conclusion.”

16. The Division Bench then considered the decision in ***Tulsi Ram Patel*** (supra) and observed:

“16. Considering the law laid down by the Supreme Court, we have gone through the reasons given by the Disciplinary Authority of the Petitioners to conclude that it is not reasonably practicable to hold a disciplinary enquiry. On a perusal thereof, it appears to us that what weighed with the Disciplinary Authority was the seriousness of the alleged crime; that the Petitioners were caught “red handed”; that the Petitioners were implicated in the preliminary enquiry; and that despite all this the Petitioners might be let off if the prosecutrix and her husband turn hostile. It appears that on a cumulative assessment and to prevent a “not guilty” decision of the enquiry officer, in the event of the prosecutrix and her husband turning hostile, that apparently prompted the Disciplinary Authority to take precipitate action.

*17. We say this because the Disciplinary Authority has stated in the order dated 30th November, 1994 that the Petitioners may so terrorize the prosecutrix and her husband who may not be able to withstand the brutal force of the “two highly undesirable police personnel”. This clearly suggests that **the application of mind by the Disciplinary Authority was to the ultimate outcome of the disciplinary enquiry and not to the reasonable practicability of holding a disciplinary enquiry.** In other words, it appears from a reading of the order dated 30th November, 1994 that **it might have been possible to hold a departmental enquiry, but the Petitioners may not be found guilty in that enquiry because of their ability to terrorize the prosecutrix and her husband who were the only witnesses to the alleged offence. In our opinion, the application of mind by the Disciplinary Authority was not to the reasonable***

practicability of holding an enquiry, but to the result of the enquiry. Therefore, the reason given for dispensing with the inquiry was neither relevant nor germane to the issue.

18. *We are also of the opinion that the Disciplinary Authority misunderstood the then prevailing situation. On 30th November, 1994 the Petitioners were in judicial custody and, therefore, could not terrorize the prosecutrix or her husband. It is not as if the Petitioners were notorious criminals who could operate even while in judicial custody. Moreover, the Disciplinary Authority seems to have completely overlooked the fact that apart from the prosecutrix and her husband the main witnesses were the Disciplinary Authority himself (a senior police officer), two other police officers and an MLA. Surely, these persons could not have been prevented by the Petitioners (who were only Constables) from giving evidence in the disciplinary enquiry, for whatever it is worth. If these material and relevant facts were taken into consideration by the Disciplinary Authority, perhaps his view may have been different.” (emphasis supplied)*

17. Consequently, the order passed by the Disciplinary Authority was quashed; the petitioners were reinstated in service (for a limited purpose of holding an inquiry), and; the Disciplinary Authority was directed to take steps to conduct a departmental inquiry against the petitioners in respect of the allegations made.

18. Ms. Singh has also relied upon the decision of a Division Bench of this Court in **Govt. of NCT of Delhi & Ors. v. Ex. Constable Ashok Kumar & Anr.**, W.P.(C.) No. 10866/2009 decided on 16.09.2011. In this case, the Tribunal had allowed the O.A. preferred by the respondent, thereby setting aside his dismissal from service by resort to clause (b) of 2nd proviso to Article 311 (2) of the Constitution of India. While the respondent was serving as a constable in Delhi Police, one FIR No.359/2006 was registered

at P.S. Timarpur u/s 186/353/ 307/34 IPC read with Section 27 of the Arms Act in relation to an encounter involving two persons, namely, Najakat and Zulfikar, who were claimed to have been injured and subsequently died in retaliatory fire by the police. Thereafter, a complaint was received alleging that Delhi Police personnel-including the respondent, had taken the said persons to their vehicle and on the next day morning it came to notice that they had been killed in an encounter. On the basis of the said complaint, FIR No.383/2006 u/s 302/34 IPC was registered at PS Timarpur, wherein the respondent was also an accused. The respondent was dismissed from service without holding an inquiry under Article 311(2)(b) of the Constitution on 09.08.2006, 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.

19. As aforesaid, the Tribunal quashed the said order of the Disciplinary Authority which had also been upheld by the appellate authority. The Division Bench while dismissing the writ petition preferred by the State, held that there was no document or material shown on the basis of which the inference could be drawn that there was a reasonable apprehension that the witnesses may not come forward to depose against the charged officers. No such material had been placed either before the Tribunal, or before this Court in support of the subjective satisfaction arrived at by the Disciplinary Authority with regard to the reasonable impracticability of holding a regular departmental inquiry, on the ground that the witnesses may not come forward to depose against the charged officers. The Division Bench observed that in the criminal case the witnesses had deposed against the

respondents, which had ultimately culminated in their conviction by the Sessions Court, and the appeals of the respondents in the matter were still pending adjudication. The Division Bench also observed that the plea of the petitioner that it is common experience that due to terrorizing and intimidation, the witnesses and the complainant do not come forward to depose against the delinquents in investigation/ inquiry, and that such intimidation are common tactics adopted by unscrupulous police personnel, was based on assumptions and surmises. The Division Bench observed that in the same case, the eye witnesses and the complainant had deposed against the respondents in the preliminary inquiry conducted by the D.M. Ghaziabad as well as by the Crime Branch, Delhi. Consequently, the Division Bench dismissed the writ petition preferred by the State.

20. Premised on the aforesaid decisions, the submission of Ms. Singh is that the impugned orders passed by the respondents and by the Tribunal are unsustainable.

21. On the other hand, Mr. Satyakam, learned counsel for the respondent-GNCTD has submitted that the impugned order has considered practically all the relevant decisions rendered by the Supreme Court on the subject and after examining the same, the conclusions drawn from the said decisions have also been set out in the impugned order itself. The said principles have been applied in the facts of the case. Learned counsel submits that this Court should, therefore, not exercise its discretionary jurisdiction while conducting judicial review of the order of the Tribunal, which appears to be reasonable and correct.

22. Learned counsel for the respondent has also produced the record before us. Learned counsel submits that the petitioner and the other constable Ajeet Singh were both caught red handed while committing the crime of kidnapping for ransom of Sh. Sushil Bansal, Executive Engineer from his residence. Consequently, the aforesaid FIR was registered. They were also found to be in possession of their ID cards, apart from one fake identity card of CBI having the photograph of the petitioner and fake identity as Rajender Kumar, SI/ CBI.

23. Mr. Satyakam submits that the petitioner and constable Ajeet Singh appear to be desperate criminals. In this regard, he has referred to the order passed by the Disciplinary Authority on 05.09.2005, which records the facts on the basis of which the said order was passed. The same, inter alia, reads:

*“The two constables namely **Constable Ajeet Singh**, No.1645/ Crime (PIS No.29990041) and **Constable Mukesh Yadav**, No.730/ Crime (PIS No.28900968) posted in Special unite, Crime Branch (here-in-after called the accused Constables) alongwith two civilians namely Harender Yadav, r/o Distt. Muzaffer Nagar, UP and Baldev Singh, r/o Distt Bharat Pur, Rajasthan were arrested by U.P. police on the intervening night of 7/8 August, 2012 in connection with the kidnapping for ransom case, forgery, impersonation and Arms Act. Three criminal cases vide FIR Nos.692/12 u/s 364-A IPC PS Kotwali, Bijour, UP, 741/2012 u/s 171/420/467/468/471 IPC PS Milak, Distt Rampur, UP and 742/2012 u/s 25 Arms Act, PS Milak, Distt Rampur, UP were registered against them. They were caught red handed by UP Police. It was found that Constable Ajeet Singh was found absent vide D.D. No.4 dated 07.08.2012, Spl. Unit/ Crime Branch and other accused Constable Mukesh Yadav was also found absent on the pretext of medical rest since 7.06.2012 from their duty. From the perusal of FIR, it revealed that they along with their two*

known persons kidnapped Shri Sushil Bansal, Executive Engineer, Jal Board, Bijnour, U.P. aged 57/58 years from his residence for the purpose of seeking ransom. A case FIR No.692/12 u/s 364A IPC, PS Kotwali, Bijnour has also been registered into the matter. On personal search of Constable Ajeet Singh, one fake identity card, bearing his photograph and identity as Amit Rana, SI, CBI No.28961331 was seized. His original identity card of Delhi Police, cash Rs.860/-, two mobile phones make Carbon and Nokia were also seized. During personal search of Constable Mukesh Yadav, one identity card of Delhi Police, one fake identity card of CBI No.28882452 having his photograph and identity as Rajender Kumar, SI, CBI, cash Rs.8340/-, four bank ATM cards, two vehicle registration certificate, two driving licenses were seized. During search of seized car, one set of number plates having No. HR 51 AC 6188 was found. One file cover having written Central Bureau of Investigation, in which letter addressed to SSP Bijnour, UP was found, wherein action was sought against Shri Sushil Bansal. One official diary of CBI, one official diary of Delhi Police was also recovered from seized car along with one set of handcuffs. One illicit firearm (9 mm pistol) with 16 live cartridges was also recovered from the possession of Constable Ajeet Singh.

Both accused Constables had hatched a well planned conspiracy with their associates to extort money from a Govt. Official for which they even prepared forged documents and impersonated themselves as CBI officials. To carry out their nefarious design, they also produced an illegal weapon. This shows a deep rooted criminal bent of their minds. In order to execute their plans, accused Constable Ajeet Singh absented himself from his official duty and accused Constable Mukesh Yadav purposely proceeded on medical leave. They had even future plans to extort money from other Govt. officials also as revealed in the disclosure of accused. Such indulgence in criminal activities by police officials not only brings bad name to the department but also distort the image of police in the entire society. It also shakes the faith of peace loving citizens in law enforcing agency". (emphasis supplied)

24. Mr. Satyakam submits that looking to the very serious nature of the offence in which the petitioner and constable Ajeet Singh were involved, namely, kidnapping for ransom – which reflects on the desperate and daring mindset of the two constables; the fact that they were caught red handed with two other civilians while they were moving with the victim Sushil Bansal in a vehicle, and; the fact that they were also possessed with fake identity cards of CBI and other documents of CBI, itself shows that the conclusion drawn by the respondents with regard to impracticability of holding a fair disciplinary inquiry – since the witnesses would not depose in any such departmental enquiry for fear of their safety and retribution, was based on material. Mr. Satyakam submits that the assessment made by the Disciplinary Authority on the basis of the report of Sh. M.C. Katoch, ACP/ Crime Branch made after his visit to Bijour, that considering the desperate criminal act of the petitioner and Ajeet Singh, it was not likely that the witnesses would depose against them in a disciplinary inquiry was completely justified. He further submits that the fact that the petitioner and Ajeet Singh have been acquitted in the said case on account of the independent witnesses – including the complainant turning hostile, only shows that the conclusion drawn by the Disciplinary Authority on the basis of the report of Sh. M.C. Katoch was entirely justified.

25. Apart from distinguishing the decisions relied upon by the petitioner, learned counsel for the respondent has also placed reliance on the following two decisions of this Court.

26. In *Parveen Kumar v. Commissioner of Police & Ors.*, 2007 (98) DRJ 433 (DB), this Court upheld the order of the Tribunal dismissing the O.A.

preferred by the petitioner to assail his dismissal from service by resort to clause (b) of the 2nd proviso to Article 311 (2) of the Constitution. The petitioner Parveen Kumar had joined Delhi Police as a constable in the year 1998. On 05.09.2003, he was arrested for his alleged involvement in several criminal cases. FIRs were registered in various police stations against him. He was booked under various provisions of IPC and the Arms Act. In one of the cases filed u/s 395 IPC vide FIR 171/2003 at PS Daurala, UP, he was released by the CJM, Meerut on 15.03.2004 due to non-identification by the witnesses in TIP, and also on account of there being no evidence against him.

27. The petitioner had assailed his dismissal from service on the plea that the criminal cases were still pending against him. Charges had been framed against him in those cases, which were fixed for prosecution evidence. He was dismissed from service on 20.09.2003 on the ground of his involvement with a gangster in a dacoity case, and also on account of pendency of criminal cases against him.

28. The respondent had claimed that during the interrogation of notorious gangster Vikrant @ Vicky, it came to be known that the petitioner was also an accomplice and was identified with the gangster in a police raid against the said gangster. The Disciplinary Authority also claimed to have learnt about the petitioner's involvement in a number of cases in Haryana and U.P. – in respect whereof, cases were registered under various sections of IPC and Arms Act against him. While passing the order of dismissal, the Disciplinary Authority had, inter alia, observed:

“During the entire process of departmental proceedings the witnesses would be put under constant fear of threat to their person and property from the delinquent Police officer”.

29. The Division Bench took note of ***Tulsi Ram Patel*** (supra). The Division Bench also relied upon ***S.R. Bommai v. Union of India***, (1994) 3 SCC 1. While observing that even though the Disciplinary Authority was well within its right to dismiss the petitioner, the Division Bench observed that the only question that remained to be answered was whether the said decision was in accordance with the provisions of law, and whether grounds to dispense with the inquiry were present. The Division Bench observed that in ***S.R. Bommai*** (supra) the Supreme Court had:

“... .. held that realms of judicial review are limited to the decision-making process and not open to the merits of the decision. The courts can look into the material on the basis of which a particular decision has been reached however since the decision arrived at is under exclusive domain of the decision making authority which in turn is based on subjective satisfaction of the authority, therefore, in view of lack of judicially manageable standards to scrutinize the decision, the courts refrain from transgressing into administrative domain of decision making. This Court is in agreement with the aforesaid observations”.

30. The Division Bench then proceeded to examine the merits of the case in the light of ***Tulsi Ram Patel*** (supra) and ***S.R. Bommai*** (supra) and observed:

“18. From the foregoing, it is apparent that the Disciplinary Authority on the basis of the material on record, namely, interrogation in the dacoity case revealing petitioner's involvement as also the factum of his facing five criminal cases in which charges have been framed and also the

attendant circumstances reached the conclusion that petitioner was a desperate person having criminal propensities. Further on account of his association with other criminals and the discharge of the petitioner in one case due to non identification by the witnesses and lack of availability of other evidence, the prospect of witnesses shying away from proceedings and not deposing due to fear of severe reprisal at his hands would be a genuine apprehension and not a mere possibility.

19. Further the petitioner, being a Constable of Delhi Police having sanctimonious duty to protect the citizens and maintain law and order, has in violation of his sworn obligation involved himself in most heinous and reprehensible acts of lawlessness. The Disciplinary Authority on the basis of the facts borne from records and attending circumstances dispensed with the enquiry and dismissed the petitioner from Force. The said decision of the Disciplinary Authority is based on material record and not on assumptions or conjectures. A police Constable or an official who is found to have strayed from his obligation and duty ought to be dealt with sternly in accordance with law. **The petitioner in present case is a delinquent who has been involved in heinous act of crime and has associations with people having criminal propensity.** If the law keeper becomes lawbreaker, quick and expedient action ought to be taken, to maintain transparency, accountability and above all to maintain public trust and faith in the Police. This is an imperative requirement of a civilized society. The decision to dispense with the enquiry and proceedings was taken having regard to the gravity of offence and its possible and probable fall-outs. To our mind, this is a fit case for invoking Article 311(2) (b) of the Constitution”. (emphasis supplied)

31. In *Ex. Ct. Jasminder Singh v. Union of India & Anr.*, 2009 (113) DRJ 11 (DB), the petitioner was similarly dismissed from service by invoking clause (b) of the 2nd proviso to Article 311 (2) of the Constitution while dispensing with the departmental inquiry. The petitioner too was a

police constable. The allegation against the petitioner was that there was a gang of criminals consisting of one Sandeep, Jitender Rathi @ Kala, Sanjay, Virender etc., which was involved in several heinous crimes including murder, armed dacoity etc. Nine members of the gang had been caught by the Crime Branch of North Distt. Their interrogation had revealed that the petitioner was an associate of the gang. Specific instances of the involvement of the petitioner with the members of the said gang – known as Bhoori gang, were narrated in the order of dismissals. The petitioner had not reported at the concerned police station about the involvement of gang members in heinous offences. Instead, he had assisted the criminals. The involvement of the petitioner had been revealed during the interrogation of various persons, namely, members of the Bhoori gang. The competent authority concluded that none of these criminals are going to depose against the petitioner if a departmental inquiry is conducted against him. For this reason, and other reasons recorded in the order, the holding of an inquiry against the petitioner was dispensed with as it was not considered reasonably practicable, and he was dismissed from service. The appeal preferred by the petitioner before the appellate authority was also dismissed and his revision before the Commissioner of Police was also rejected. The O.A. was dismissed by the Tribunal leading to the filing of the writ petition before this Court. Similar arguments were raised in this case, as the petitioner has raised in the present case. It was argued that there was no material to show that the petitioner was in a position to influence or terrorize the witnesses; holding of the disciplinary inquiry was the rule, and dispensing with the holding of the same is the exception. Sufficient reasons for dispensing with the disciplinary inquiry have to exist, and should be recorded so as to

conclude that it was not reasonably practicable to hold the inquiry in the given facts and circumstance of the case. The petitioner placed reliance on the following decisions in support of his submission:

- a) ***Sahadeo Singh vs. Union of India***, (2003) 9 SCC 75;
- b) ***Delhi Administration Vs. Ex. Constable Inderjit***, 2003 Vol. I AD (Delhi) 32;
- c) ***Tarsem Singh vs. State of Punjab & Ors.***, 2006 (11) SCALE 104;
- d) ***Chief Security Officer & Ors. vs. Singasan Rabi Das***, (1991) 1 SCC 729;
- e) ***Jaswant Singh vs. State of Punjab & Ors.***, 1991 (1) SCC 362;
- f) ***Chandigarh Administration, Union Territory, Chandigarh & Ors. vs. Ajay Manchanda etc.*** JT 1996 (4) SC 113; and
- g) ***Sudesh Kumar vs. State of Haryana & Others***, (2005) 11 SCC 525.

32. While rejecting the writ petition, the Division Bench, inter alia, observed:

“10. ... In the judgments relied by the Petitioner, complaints of bribery were made against the delinquent police officials. Enquiry was dispensed with, on the ground that the witnesses may not come forward to depose against the police official during enquiry proceeding, either due to fear of the uniformed force or on account of probable threats to be extended by the delinquent police official. In these facts it was held that since there was no material available before the Disciplinary Authority regarding threats extended by the delinquent police official, therefore, the orders passed in these cases dispensing with the enquiry, by invoking Article 311(2)(b) of the Constitution, were perverse and based on no material. In

our view, the judgments relied upon by the learned counsel for the Petitioner are of no help to the Petitioner, as the same are in different facts.

11. In the present case, Petitioner was hobnobbing with the criminals and was providing help to them. During interrogation of the members of Bhoori Gang Petitioner's name surfaced as the person, who had been meeting them and was providing them help. Not only this, Petitioner despite having knowledge about their criminal activity did not take any step to inform his superiors. He being a police official was under legal and moral obligation to see that the persons carrying on unlawful activities are brought to book and are punished in accordance with law of the land. In spite of the fact that Petitioner was having information regarding the involvement of the Bhoori Gang in the murder of K.S. Rana, he did not bring this fact to the notice of his superior officers. In fact, during the personal hearing given by the Appellate Authority to the Petitioner, he had admitted that he was having knowledge of the accused persons involved in the murder of late Mr. K.S. Rana and also about their plans to commit more murders. A categorical reference in this regard has been made by the Appellate Authority in his order. Perusal of appeal also shows that the accused persons were known to the Petitioner and he had been meeting them. This fact itself reflects on his conduct and shows his association with the Bhoori gang thereby lending support to the confessional statements made by the accused persons in certain criminal cases. We have also perused the memorandum of appeal filed by the Petitioner before the Appellate Authority and we find that submissions made therein clearly indicate that the Petitioner had been hobnobbing with the criminals. Not only this, he was also meeting with them off and on. In these facts it was not expected from the members of the Bhoori gang to depose against the Petitioner in enquiry. In view of the above discussion, we are of the opinion that Disciplinary Authority has rightly concluded that it was not reasonably practicable to hold a departmental enquiry against the Petitioner and has rightly

passed the order of dismissal, by invoking Article 311 (2) (b) of the Constitution.” (emphasis supplied)

33. We have considered the rival submissions of learned counsels and given due considerations to the decisions relied upon by them in support of their contentions.

34. It is well settled that a constitutional right conferred upon a delinquent employee cannot be dispensed with lightly or arbitrarily, or out of ulterior motive, or merely in order to avoid the holding of an inquiry. This was so held in ***Tarsem Singh*** (supra). The Constitution provides security of tenure to the government servants so that they can discharge their functions and duties without fear or favour. The constitutional protection granted by Article 311 saves government servants from *hire and fire* and, as a matter of rule, a government servant cannot be dismissed, removed or reduced in rank except after an inquiry in which he has been informed of the charges against him and given reasonable opportunity of being heard in respect of those charges. However, the Constitution itself carves out an exception in the 2nd proviso to Article 311(2), and enumerates situations wherein the holding of an inquiry under sub Article (2) of Article 311 may be dispensed with. The three situations wherein the holding of the inquiry may be dispensed with are the following:

“(a) where a person is dismissed or removed or reduced in rank on the ground of conduct which has led to his conviction on a criminal charge; or

(b) where the authority empowered to dismiss or remove a person or to reduce him in rank is satisfied that for some

reason, to be recorded by that authority in writing, it is not reasonably practicable to hold such inquiry; or

(c) where the President or the Governor, as the case may be, is satisfied that in the interest of the security of the State it is not expedient to hold such inquiry.” (emphasis supplied)

35. In the present case, we are concerned with clause (b) aforesaid, since it is this clause which has been invoked by the respondent to dismiss the petitioner from service. The disciplinary authority has while dismissing the petitioner observed that he was satisfied, for the reasons contained in the impugned order, that it is not reasonably practicable to hold an inquiry against the petitioner. Sub Article (3) of Article 311 states that if a question arises whether it is reasonably practicable to hold such an inquiry – as is referred to in clause (2), the decision thereon of the authority empowered to dismiss or remove such person, or to reduce him in rank, shall be final. Thus, the decision of the competent authority on the issue: whether, or not, it is reasonably practicable to hold an inquiry under clause (2) is his subjective decision – based on objective criteria, and the same is final, meaning thereby, there is no appeal from the said decision. However, the said subjective satisfaction would be open to judicial review, and the concern of the court would be to see whether the said subjective satisfaction is premised upon relevant and cogent material, i.e. upon an objective criteria.

36. The decisions cited by the parties bring out that the judicial approach has been to examine whether, or not, there was material to support the said subjective satisfaction arrived at by the competent authority. Clause (b) of the 2nd Proviso to Article 311 itself casts a duty on the competent authority to reduce in writing his reasons for his satisfaction that it is not reasonably

practicable to hold an inquiry against the delinquent employee. Thus, it is open to the Court, while undertaking judicial review of the administrative action undertaken by resort to clause (b) of the 2nd Proviso to Article 311(2), to examine whether the said administrative action is founded upon relevant and cogent materials; whether the reasons recorded by the competent authority are reasonable and emerge from the materials available on record; whether the administrative action appears to be *mala fide*, or arbitrary, or whimsical, or; whether the reasons recorded by the competent authority are so perverse as not to appeal to any reasonable mind. At the same time, if it appears that the reasons recorded are founded upon materials and considerations which are germane and relevant, and the reasons recorded by the competent authority contain a plausible view, the subjective satisfaction of the competent authority-that it is not reasonably practicable to hold the inquiry, would not be open to judicial review, merely because the Court may have a different view – which may be an alternate plausible view in the matter.

37. One other important aspect which emerges from the analysis of the decisions cited before us, is that the Courts while testing the order passed under clause (b) of 2nd Proviso to Article 311(2) of the Constitution, in most of the cases, took into account the nature of the offence/wrong doing in which the delinquent employee was embroiled, and invariably took into account even those circumstances which unfolded after the passing of the order – so as to judge whether the subjective satisfaction of the competent authority was justified, or not.

38. Having made the aforesaid observations on our reading of the

aforesaid decisions, we may now proceed to deal with the cases cited by the petitioner.

39. **Tarsem Singh** (supra) was, undoubtedly, a case involving a police constable who was accused of a very serious and heinous offence of outraging the modesty of a woman by entering her house along with his accomplices, and having carnal intercourse against the law of nature with a migrant labourer. He was accused of issuing threats of dire consequences to anyone deposing against him in an inquiry/investigation, and even extracted money.

40. A preliminary inquiry followed wherein it was opined that there seems no need of a regular departmental inquiry against Tarsem Singh. Pertinently, the order passed by the disciplinary authority did not record that the holding of the inquiry was impracticable. Paragraph 3 of the said order reads as follows:

“(3) He along with his other two accomplices further caused threats of dire consequences to anyone deposing against him in an enquiry/investigation which has further caused a scare amongst colleagues and citizens. That in the public and administrative interest the retention of the abovesaid Constable Tarsem Singh No. 4C/371 is considered wholly undesirable.”

41. The appellate order passed by the appellate authority took note of the FIR registered against the appellant under Section 377/34 IPC, which was still under investigation. The appellate authority, in view of the “guilt” of the appellant of ‘*gravest acts of misconduct proving complete unfitness for police service*’ held that the punishment awarded to the appellant was commensurate with his “misconduct”. Therefore, the appeal was rejected.

On the directions of the Punjab & Haryana High Court in writ proceedings initiated by the appellant, the Inspector General of Police, Commando Battalion, Bahadurgarh, Patiala, passed an order on 26.11.1999, dismissing the appellant's representation. He stated that he was satisfied:

“that the nature of the misconducts committed by the petitioner which are proved from the statements of various persons recorded by Shri Gurbachan Singh DSP/Adjutant during the preliminary enquiry conducted by him under the orders of the Commandant are of a very grave and heinous nature and bring a bad name to the police force of the State on the whole, and there is every likelihood that none of the said witnesses may come forward to depose against the petitioner in a regular enquiry due to the fear of injury to their lives. Thus, I am of the considered view that in view of the abovesaid facts, it was not reasonably practical to hold a regular enquiry before passing the dismissal order by the Commandant and that the dismissal order dated 6-11-1997 passed by the Commandant, 4th Commando Battalion, Bahadurgarh, Patiala is perfectly in order and has been passed on the basis of the record available on the file and also by keeping in view that image of whole of the police force of the State shall be tarnished in a regular enquiry and also that the witnesses may not come forward to depose against the petitioner for fear of any injury or danger to their lives. The said order has been correctly passed under Exception (b) to second proviso to Article 311(2) of the Constitution of India. Vide order dated 24-6-1998, the appellate authority has rightly dismissed the appeal. Hence, finding no force in the revision petition, I dismiss the same being without merit.”

42. What weighed with the Supreme Court while allowing the appeal of the appellant Tarsem Singh, was the fact that, ultimately, the police on investigation did not find any case against the appellant, in respect of which the FIR was lodged against him under Section 377 IPC.

43. The Supreme Court observed that the order of dismissal was passed, inter alia, on the ground that there was no need of a regular departmental inquiry. For this, reliance was placed on the preliminary inquiry report. The Supreme Court observed that if preliminary inquiry could be conducted – wherein statements of witnesses were recorded, there was no reason why a formal departmental inquiry could not have been initiated against the appellant. The Supreme Court also observed that the appellant authority had jumped to the conclusion that the appellant was “guilty” of grave acts of misconduct, proving complete unfitness for police service and that 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 considerations. Even the Inspector General of Police while passing his order dated 26.11.1999, 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 as a whole. None of the authorities mentioned hereinabove 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.

44. The Supreme Court, therefore, held that the concerned authorities, namely, the disciplinary authority, the appellate authority as well as the Inspector General of Police did not proceed 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 inquiry. The Supreme Court also observed that the formal inquiry 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 had been placed, or disclosed, either in the said order or before the Court to show that subjective satisfaction arrived at by the statutory authority was based upon objective criteria. Thus, in judicial review, the material – to show that the subjective satisfaction was arrived at by the statutory authority on the basis of objective criteria, could be examined by the courts itself.

45. In para 14, the Supreme Court observed;

“that no material had been placed by the respondents herein to satisfy the Court that it was necessary to dispense with a formal enquiry in terms of proviso (b) appended to Clause (2) of Article 311 of the Constitution of India.”

46. The aforesaid observation again shows that the competent authorities would be entitled to justify their administrative action by producing the relevant and cogent material before the Court which is undertaking judicial review of the administrative action under clause (b) of the 2nd proviso to Article 311 of the Constitution of India.

47. The distinguishing features of **Tarsem Singh** (supra) from the facts of the present case are that the appellant Tarsem Singh was not caught red handed – like in the present case. Secondly, though the nature of the offence in which Tarsem was allegedly involved was also serious and heinous, in our view, the offence in which the petitioner was embroiled, was

qualitatively even more serious and dangerous. To execute the offence of kidnapping for ransom in a pre-meditated and planned manner, by resort to impersonation as an officer of another investigating agency, namely, the CBI; the recovery of the arms from the vehicle in which the kidnapped person – who was no less than an Executive Engineer of the Jal Board i.e. a government servant was kidnapped for ransom, unquestionably exhibits a desperate and scheming mind. It also reflects on the extent to which the petitioner was prepared to go to execute his plan, and achieve his objective. Thirdly, in ***Tarsem Singh*** (supra), even though the FIR was registered in view of the serious allegations made against him, even the charge-sheet was not eventually filed against the appellant *Tarsem Singh* in the said FIR lodged against him under Section 377 IPC. Thus, upon investigation, even a *prima facie* case was not found to have been made out. Fourthly, the disciplinary inquiry was dispensed with by the disciplinary authority on the premise that there was “no need” of a regular departmental inquiry, and not on the premise that it was not reasonably practicable to hold such an inquiry. The appellate authority rejected the appeal of *Tarsem Singh* by observing that, “*the appellant is guilty of gravest acts of misconduct proving complete unfitness for police service.....*”. Thus, the appellate authority proceeded on the assumption that the appellant was “guilty” of gravest act of misconduct when, as a matter of fact, even the charge-sheet was not filed by the police, eventually. The Inspector General of Police had also proceeded on the same basis, in view of the preliminary inquiry report. It was only the Inspector General of Police who recorded in his order, for the first time, that it was not reasonably practicable to hold a regular inquiry, since there was every likelihood that one of the witnesses may come forward to depose

against the petitioner. Even this reason was belied by the fact that witnesses were examined in the preliminary inquiry, which formed the basis of the appellant's dismissal.

48. The facts of the present case are, however, starkly different. The offence in which the petitioner was embroiled was committed outside the jurisdiction of respondent-Delhi Police. It was in the State of Uttar Pradesh. The petitioner along with constable Ajeet Singh and others were caught red handed while transporting the kidnapped person on the road. They were both absent from duty on purported medical grounds. Even a fire arm was recovered from the party. The fake identity card of the petitioner and other papers were also recovered, through which the petitioner faked his identity as Rajinder Kumar, SI/CBI. The fact that none of the material witnesses, in fact, deposed against the petitioner and the other accused in the criminal trial – and they turned hostile, fortifies the subjective satisfaction arrived at by the competent authority that the witnesses would not depose in a regular departmental inquiry out of fear of retribution.

49. The petitioner has placed on record the judgment delivered by the Sessions Judge, Bijnaur, in S.T. No. 646 of 2012 (Crime No. 692/2012) titled, '*State Vs. Ajeet Singh and others*' registered at police station Kotwali City Bijnor, wherein Ajeet Singh is shown as first accused and the petitioner-Mukesh Yadav as the second accused. A perusal of the said judgment shows that the complainant Tek Bahadur – who was the domestic servant of Shri Sushil Bansal i.e. the person kidnapped for ransom, contrary to his earlier statement, stated that he had never seen the accused persons, and did not know them; that his earlier statement recorded before the

Magistrate was not out of his own free will but given under pressure of police. He retracted from his earlier statement recorded before the learned Magistrate. The kidnapped person Sushil Kumar Bansal also made statements in favour of the accused persons. He stated that the accused persons had not taken him forcibly, nor abducted him. He also stated that they did not demand anything as ransom amount. He stated that the accused were apprehended by the police at check-post, PS Milak, Distt. Rampur, on account of some altercation which had taken place between the accused persons and the police at the check-post. The victim disowned his own statement recorded under Section 161 Cr.P.C. by the investigating officer. He also disowned his statement recorded before the Magistrate by stating that the same was recorded under pressure of police. Similarly, the other public witnesses also turned hostile. The judgment shows that not only the public witnesses but even PW5-SI Shambhu Dayal did not support the case of the prosecution.

50. Thus, the decision in ***Tarsem Singh*** (supra), in our considered view, is not of any avail to the petitioner in view of the materially different facts of the present case.

51. There can be no quarrel with the legal propositions laid down by the Supreme Court in ***Tarsem Singh*** (supra). However, before the ratio of a judgment is applied to any case, the facts of the decided case, and of the case in hand, would have to be carefully examined and appreciated. Having done the aforesaid exercise, we are of the view that ***Tarsem Singh*** (supra) does not advance the petitioner's case.

52. On the contrary, as noticed hereinabove, it shows that the order passed under clause (b) of the 2nd Proviso to Article 311 of the Constitution would be tested by taking into account all the relevant facts and circumstances, including, the nature and gravity of the offence/misconduct in which the government servant/delinquent is stated to be involved, and also the facts which may unfold even after the passing of the order and which support/ negate the reasoning adopted in the order.

53. So far as ***Rajinder Singh Negi*** (supra) is concerned, we need not detain ourselves by undertaking a detailed examination. This is for the simple reason that the nature of offence/misconduct in a case under Sections 6 and 13 of the Prevention of Corruption Act, is starkly different from a case like the present. ***Rajinder Singh Negi*** (supra) was a case of an officer of MCD, and not an officer of police force – who wields much more power and authority. In fact, in ***Ex Ct Jasminder Singh*** (supra), the Division Bench also noticed the fact that the petitioner was relying upon a case relating to a complaint of corruption made against the delinquent police official. The Division Bench observed that in such a case, it could not be said that there was material available for the disciplinary authority to support the conclusion that threats would be extended by the delinquent police official to the witnesses.

54. ***Ex. Ct. Mahabir Singh*** (supra) was a case wherein the petitioner-police constable of Delhi Police, was alleged to have raped a woman and was allegedly apprehended, partially clad, while he was running away from the spot of the crime. The Division Bench held that the reason given for concluding that it was not reasonably practicable to hold a departmental

inquiry – as the witnesses may be threatened by the petitioner, could not be said to be a valid reason because of the nature/ stature of witnesses involved. The witnesses were the disciplinary authority himself, the SHO of PS Shalimar Bagh Inspector P.T. Rana, Superintendent of Police, Badli, Inspector Ravi Shankar and the MLA concerned, apart from the husband of the prosecutrix. Thus, a constable of Delhi Police could not have exercised such influence over his superiors in the same force, or against a politician MLA. Moreover, the Division Bench also took note of the fact that in the criminal trial, the prosecutrix did not implicate the petitioner. The prosecutrix did not implicate the petitioner even while recording her statement under Section 161 Cr.P.C. and completely exonerated the petitioner. The petitioner was acquitted by the learned ASJ. It was in these peculiar facts and circumstances that the Division Bench upset the order passed by the disciplinary authority under clause (b) of 2nd Proviso to Article 311 (2) of the Constitution.

55. The Division Bench also took note of the fact that the petitioner was not a notorious criminal, who could operate even while in judicial custody. The petitioner was in judicial custody when the order of dismissal was passed. As noticed hereinabove, the facts of the present case are starkly different in view of the nature of offence alleged against the petitioner, and the surrounding circumstances in which he along with the other co-accused were apprehended and recoveries made from them.

56. In our view, the decision in *Ex-Constable Mahabir Singh* (supra), therefore, does not advance the submission of the petitioner. The decision in *Ex. Constable Ashok Kumar* (supra) is also clearly distinguishable on facts.

That was a case where the delinquent was not only charged, inter alia, under Section 302/34 IPC but he was also convicted and his appeal against his conviction was pending before the High Court. Thus, there was no premise for the competent authority to assess the reasonable impracticability of holding a regular departmental inquiry, on the ground that the delinquent may terrorise or intimidate the witnesses and the complainant from deposing against him in the disciplinary inquiry. In this case, eye witness and the complainant had not only deposed in the preliminary inquiry conducted by the D.M., Ghaziabad, but also before the Crime Branch, Delhi. Thus, there was no basis to even reasonably apprehend that the said witness would not depose in the disciplinary proceedings.

57. As it turns out, the position is entirely to the contrary in the present case. As noticed hereinabove, the complainant, the victim and other independent witnesses turned turtle and retracted from their earlier incriminating statements, including, those which were made before the Magistrate, on the ground that the same had been made under police pressure. It appears from the record that, at no stage, the petitioner disclosed any reason as to why the police in the State of Uttar Pradesh would falsely frame and implicate the petitioner. There was no explanation offered at any stage, including before us, as to what the petitioner was doing in Uttar Pradesh when he was apprehended red handed with the kidnapped person; co-delinquent/co-accused; with fire arm, and; with false identity documents, when he was supposed to be on sick leave.

58. On the other hand, we find that the case of the petitioner is comparable with the two decisions relied upon by the respondent in the

cases of *Parveen Kumar* (supra) and *Ex. Constable Jasminder Singh*(supra). Whereas, in *Ex. Constable Jasminder Singh* (supra), the petitioner was found to be hobnobbing with criminal who were members of a notorious gang, in the facts of the present case, it appears that the petitioner was himself a member of the gang.

59. We cannot lose sight of the fact that the impugned order was passed by a high ranking police officer, namely, the Deputy Commissioner of Police (Crime and Railways), Delhi. The opinion formed and assessment made by high ranking police officers-who have risen in rank over the years, cannot be lightly brushed aside, particularly, when there is no material to suggest to the contrary i.e. that it would not be practically reasonable to hold an inquiry against the delinquent police official. As it turns out, the said opinion/assessment has been proved to be entirely well founded since the complainant, the victim and other witnesses turned hostile in the criminal trial against the petitioner and the co-accused Constable Ajeet Singh. As it is said “*The proof of the pudding lies in its eating*”. What better evidence or material could there be to justify the opinion/assessment made by the competent authority with regard to the impracticability of holding an enquiry against the petitioner, then to demonstrate that, as a matter of fact, in the criminal trial, the victim and the witnesses turned hostile and did not support their earlier statements made against the accused persons, including, the petitioner.

60. For all the aforesaid reasons, we are of the view that the order dated 05.09.2012 passed by the competent authority dismissing the petitioner by resort to clause (b) of the 2nd proviso to Article 311(2) of the Constitution of

India is unexceptionable and it was completely justified in the facts and circumstances of the present case. We are of the view that the Tribunal correctly rejected the petitioner's original application by invoking the correct principles laid down by the Supreme Court in several decisions. Accordingly, the present writ petition is dismissed leaving the parties to bear their respective costs.

VIPIN SANGHI, J

REKHA PALLI, J

SEPTEMBER 20, 2017

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