

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 2087 OF 2004

Deshmukh Baburao Gopal alias
Ramdas Baburao Gopal

...Petitioner

Versus

M. N. Singh & Anr.

...Respondents

Mr. D. S. Mhaispurkar i/b. Ms V. S. Mhaispurkar for
Petitioner.

Mr. N. C. Walimbe – AGP for Respondents.

**CORAM: SMT. V. K. TAHILRAMANI, Acting C. J. &
M. S. SONAK, J.**

Date of Reserving the Judgment : 19 April 2018

Date of Pronouncing the Judgment : 26 April 2018

ORAL JUDGMENT :

1] Heard the learned counsel for the parties.

2] The challenge in this petition is to the judgment and order dated 12th June 2003 made by the Maharashtra Administrative Tribunal (MAT) in Original Application No. 1207 of 2002 instituted by the petitioner questioning his dismissal from service by an order dated 31st October 2002.

3] Mr. Mhaispurkar, the learned counsel for the petitioner submits that the dismissal order dated 31st October 2002 contains no reasons whatsoever as to why it was not reasonably practicable to hold the departmental enquiry against the petitioner before his dismissal from service by invoking the principles of Article 311(2)(b) of the Constitution of India. He submits that in any case, the reasons so stated, relate more to the presumed guilt of the petitioner than the reasons for dispensing with the enquiry. He submits that the impugned dismissal order is in violation of the principles of natural justice and fair play which are guaranteed by Article 311(2) of the Constitution of India. For all these reasons, he submits that the impugned dismissal order is required to be set aside.

4] Mr. Mhaispurkar submits that since all these aspects have not been considered by the MAT, the impugned judgment and order made by the MAT is also required to be set aside. He relies on ***S. J. Meshram vs. Union of India & Ors. 1987 (Supp) SCC 164*** and ***Union of India & Anr. vs. Tulsiram Patel (1985) 3 SCC 398***, in support of his

contentions.

5] Mr. N. C. Walimbe, the learned AGP for the State submits that cogent reasons have been set out in the dismissal order and the subjective satisfaction recorded by the disciplinary authority is based upon objective material on record. Mr. Walimbe submits that disciplinary authority in the present case was the man on the spot and therefore there is no reason to interfere with the subjective satisfaction recorded by the disciplinary authority, which, in turn is, based upon the ample material on record. He submits that in this case, there is no allegation of *mala fides*. Upon taking into consideration all these circumstances, Mr. Walimbe urges that this petition be dismissed.

6] The rival contentions now fall for our determination.

7] The dismissal order dated 31st October 2002 notes that at least 3 criminal cases have been registered against the petitioner for offences punishable under sections 420, 117, 114 of Indian Penal Code, 223, 224, 225(A) r.w. section

34, 117 of IPC and sections 387, 506(2) r.w 34 of IPC. The dismissal order further states that an accused ran away from the lawful custody of the petitioner, who was a police constable. The dismissal order also states that the petitioner was found to be illegally demanding money from common man and threatening them for which, the petitioner was preventively detained under the provisions of The Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers, Drug-Offenders, Dangerous Persons, Video Pirates, Sand Smugglers and Persons Engaged in Black-Marketing of Essential Commodities Act, 1981 (MPDA Act), and the petitioner, has suffered detention of one year.

8] By way of an annexure to the dismissal order, the disciplinary authority, has set out reasons as to why it is not reasonably practicable to hold the departmental enquiry against the petitioner. The reasons read as under:

“1) The applicant is involved in various criminal offences though he is an employee in a disciplined force.

2) He is misusing his Identity Card as a Police Constable for committing offences.

3) He is having connection with criminals and

he is committing serious offences.

4) While committing such criminal offences, he is using dangerous weapons.

5) He is extracting money (Khandni / Haftas) from ordinary people by threatening them.

6) For doing such serious acts he was preventively detained for one year and he was in detention for one year.

7) An offender ran away from his custody therefore a criminal case has been registered against him in Thane.

8) Because of such acts of the applicant, the image of the Police Department is tarnished.

9) Because of the terror created by him, it is not possible that ordinary witnesses would come forward for giving evidence during the departmental enquiry and he was convinced about it."

9] There are no *mala fides* alleged by the petitioner. The petitioner, is not even in a position to deny most of the circumstances, particularly because such circumstances, are a matter of record. In particular, the petitioner does not deny that he was preventively detained for a term of one year under the MPDA Act. The petitioner did not even challenge such detention. The factum about criminal cases is also undeniable. The charges against the petitioner relate to extracting money (Khandni / Haftas) by threatening

ordinary people and misusing his position as a police constable. In such circumstances, there is no reason to interfere with the satisfaction recorded by the disciplinary authority that it was not at all reasonably practicable to hold an enquiry into the charges against the petitioner.

10] The scope of judicial review in such matters is quite limited. In this case, there is sufficient material on record on basis of which, the disciplinary authority has recorded subjective satisfaction with regard to reasonability and practicability of holding an inquiry against the petitioner. It is not permissible for the MAT or for that matter this Court to reassess or re-appreciate such materials as if, they were appellate courts. The issue of sufficiency of evidence is also, to a great extent, irrelevant in a matter of this nature. There are no *mala fides* as such alleged. Once, we come to the conclusion that there was enough material before the disciplinary authority to arrive at a reasonable conclusion that it was not reasonably practicable to hold an inquiry as contemplated by Article 311 (2) of the Constitution of India, there is no good reason to fault the invocation of powers conferred by sub-clause (b) of the second proviso to Article

311 (2) of the Constitution of India.

11] Besides, it is necessary to appreciate that disciplinary authority, was the man on the spot and was required to satisfy himself as to the reasonability and practicability of holding an inquiry into incident and the involvement of the petitioner therein. As long as no *mala fides* have been alleged or proved, normally it is not for this Court to re-appreciate or reassess the material available before such authority as if, this Court were exercising any appellate jurisdiction.

12] In *Tulsiram Patel (supra)*, the Constitution Bench of the Supreme Court has held that *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, it needs to be borne 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.

13] Further, in *Tulsiram Patil (supra)*, the Constitution Bench has held that 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. Such officer, 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.

14] In *Tulsiram Patel (supra)*, the Constitution Bench had held that the courts and tribunals exercising powers of judicial review in such matters, 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 he 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.

15] In ***Kuldip Singh vs. State of Punjab & Ors.*** - ***AIR 1997 SC 79***, a police head constable was dismissed from service without enquiry by invoking proviso (b) to clause 2 of Article 311 of the Constitution of India on the ground that it was not reasonably practicable to hold enquiry. The charge against the police head constable was that he had links with terrorists and was supplying secret information of the police to them. The designated court under the Terrorist and Disruptive Activities (Prevention) Act (TADA) had in fact, acquitted the police head constable at the stage when his petition came up for hearing before the High Court. The High Court, however, upheld the dismissal order. The Hon'ble Supreme Court, after taking into consideration the acquittal by the designated court, held that once the High Court has opined that there was enough material before the appropriate authority upon which it could come to a

reasonable conclusion that it was not reasonably practicable to hold an enquiry as contemplated by clause 2 of Article 311, there was no reason to interfere with the dismissal order. The Hon'ble Supreme Court held that once proviso (b) is held to have been validly invoked, the government servant concerned is left open no legitimate ground to impugn the action except perhaps to say that the facts said to have been found against him do not warrant the punishment actually awarded. In the case before the Hon'ble Supreme Court as well, the appellate authority and the High Court had held that the action of dismissal was legal and proper and further, no *mala fides* were alleged. This authority is relevant in the facts and circumstances of the present case.

16] In ***Southern Railway Officers Association & Anr. vs. Union of India & Ors. - (2009) 9 SCC 24***, the issue involved before the Hon'ble Supreme Court was whether the disciplinary authority was justified in imposing penalty on delinquent employees without holding any enquiry, as provided in Article 311(2) second proviso clause (b) of the Constitution and Rule 14(ii) of the Railway Servants

(Discipline and Appeal) Rules, 1968. The incident involved some railway employees who were alleged to have abused, threatened and assaulted a railway officer who was proceeding to his native place on retirement. The incident took place at the railway station itself from where the officer was to board train. The other officers who had come to the railway station to see him were also threatened. An FIR was also lodged as a result of which one of the delinquent employees was arrested on the same day and others were arrested later on. Besides, handwritten posters were displayed at the railway workshop and railway station that the officer in question would die on the date he proceeded to his native place. The Hon'ble Supreme Court allowed the appeals and held that it is now well settled that reasons so recorded must be cogent and sufficient. Satisfaction to be arrived at by the disciplinary authority for the aforementioned purpose cannot be arbitrary. It must be based on objectivity. The court is required to consider what a reasonable man taking a reasonable view would have done in the situation then prevailing. An order of disciplinary authority in a case of this nature must be judged by a court exercising power of judicial review by

placing itself in the disciplinary authority's armchair. The disciplinary authority was a man at the spot. He acted on the basis of a report made to him. He also knew about the handwritten posters having been displayed. The atmosphere which was prevailing in the workshop must be known to him. Not only the disciplinary authority but also the appellate authority, having regard to the materials brought on record, arrived at the said finding. This is a case where immediate action was absolutely essential.

17] In *Southern Railway Officers Association & Anr. (supra)*, the Hon'ble Supreme Court has further held that acquittal in criminal case by itself cannot a ground for interfering with the order of punishment imposed by the disciplinary authority. In this case, the Hon'ble Supreme Court found that the revisional authority had in fact taken into consideration the ground for acquittal and therefore, this was not a case where the authorities were oblivious to the issue of acquittal or had failed to take this consideration into account. The Hon'ble Supreme Court went on to observe that it is now well settled principle of law that the order of dismissal can be passed even if a delinquent

official had been acquitted of the criminal charge. This is a complete answer to Mr. Deo's contentions based upon the acquittal of the petitioner in the criminal prosecution.

18] In *S. J. Meshram (supra)* upon which reliance was placed by the learned counsel for the petitioner, the only reason stated for not holding an enquiry was that the evidence in the form of bill register may be destroyed and the members of the Mahila Samiti being lady folk may not come up to adduce evidence in the fear of threat and harassment. The charges against the appellant in the said case were that he wilfully lost a bill register which is vital document to bring out the actual amount of misappropriation. It is in these circumstances that the Hon'ble the Supreme Court held that such reasons were altogether irrelevant and *ex facie* inadequate for dispensing with the enquiry. The facts in the present case, are entirely different and therefore, on the basis of the ruling in *S. J. Meshram (supra)*, there is no case made out to warrant interference.

19] For all the aforesaid reasons, we dismiss this petition.
Rule is discharged. There shall be no order as to costs.

(M.S. SONAK, J.)

(ACTING CHIEF JUSTICE)

CHANDKA