



2024:DHC:5281-DB



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IN THE HIGH COURT OF DELHI AT NEW DELHI

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*Judgment in W.P.(C) 9098/2024 reserved on: 08.07.2024**Judgment in W.P.(C) 9227/2024 reserved on: 09.07.2024**Judgment pronounced on: 18.07.2024*

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W.P.(C) 9098/2024 and CM APPL. 37244/2024

COMMISSIONER OF POLICE AND ORS

.....Petitioners

Through: Ms. Avnish Ahlawat, Standing Counsel with Mr. Nitesh Kumar Singh, Ms. Laavanya Kaushik, Ms. Aliza Alam and Mr. Mohnish Sehrawat, Advocates.

versus

SHRI KARAM PAL

.....Respondent

Through: Ms. Urvi Mohan, Advocate.

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W.P.(C) 9227/2024 & CM APPL. 37808/2024 (stay)

COMMISSIONER OF POLICE AND ORS

.....Petitioners

Through: Mrs. Avnish Ahlawat, SC with Mr. Nitsh Kumar Singh, Ms. Laavanya Kaushik, Mrs. Aliza Alam and Mr. Mohnish Sehrawat, Advocates

versus

RAM KISHAN MEHTA

.....Respondent

Through: Ms. Urvi Mohan, Advocate

CORAM:**HON'BLE MR. JUSTICE SURESH KUMAR KAIT****HON'BLE MR. JUSTICE GIRISH KATHPALIA****[Physical Hearing/Hybrid Hearing (as per request)]****GIRISH KATHPALIA, J.:**

1. These writ petitions, brought under Articles 226 and 227 of the



Constitution of India involve similar legal and factual matrix, so the same are taken up together for disposal. Both these writ petitions assail orders passed by the learned Principal Bench of Central Administrative Tribunal, New Delhi, whereby the Original Applications filed by the present respondents were partly allowed, and the orders dated 12.12.2022 and 30.05.2023 passed by the Disciplinary and Appellate Authorities respectively were set aside, further granting all consequential benefits, though also granting liberty to the present petitioners to initiate disciplinary proceedings against the present respondents.

2. On the basis of advance notice, the respondents entered appearance through counsel and at request of all concerned, final arguments were heard in WP(C) 9098/2024 on 08.07.2024 and in WP(C) 9227/2024 on 09.07.2024. The issue involved in these petitions is the challenge to dismissal of the respondents from service under Article 311(2)(b) of the Constitution of India, which dismissal was upheld by the Appellate Authority but set aside by the learned Tribunal, leading to the present petitions.

3. Briefly stated, circumstances leading to the present petitions are as follows. On the complaint dated 11.11.2022 of one Pawan Gupta, a trap was laid by the CBI in which both respondents, employed as Head Constable with the Delhi Police were allegedly caught red handed while accepting bribe at Police Booth of Lado Sarai in jurisdiction of PS Saket, so both of them were arrested and consigned to judicial custody in RC 0023022A0065 dated 13.11.2022 of CBI/ACB/New Delhi. Consequently, both respondents



were placed under suspension with effect from 13.11.2022 and Preliminary Enquiry was conducted against them. By way of order dated 12.12.2022, both respondents were dismissed from service by their Disciplinary Authority, invoking the powers under Article 311(2)(b) of the Constitution of India, which order was upheld by the Appellate Authority vide order dated 30.05.2023. As such, the respondents filed their individual Original Applications and the same were allowed by way of the impugned orders, thereby setting aside the orders of the Disciplinary Authority and the Appellate Authority and granting consequential benefits to the present respondents though with liberty to the present petitioners to initiate disciplinary proceedings against them. Hence, the present writ petitions.

4. During arguments, learned counsel for petitioners took us through the impugned orders and contended that the same are not sustainable in the eyes of law. It was argued on behalf of the petitioners that since in the CBI trap laid on the basis of complaint of Pawan Gupta, the respondents were caught red handed while accepting bribe, there was no necessity to conduct a Departmental Enquiry especially because in the Preliminary Enquiry, the respondents were found guilty of the misconduct. Learned counsel for petitioners also contended that even if the Departmental Enquiry was ordered, as usual no witness would have come forward to depose against the respondents. It was also argued that the decision to dispense with the Departmental Enquiry by invoking powers under Article 311(2)(b) of the Constitution of India has to be based on subjective satisfaction of the Disciplinary Authority as held in the case of *Jaswant Singh vs State of Punjab*, (1991) 1 SCC 362. Learned counsel for petitioners also contended



that since the orders of dismissal against the respondents were passed by senior police officers, who have risen to the high ranks over years, the same cannot be lightly brushed aside. It was further contended on behalf of the petitioners that in view of gravity of offence and its possible fall outs, powers under Article 311(2)(b) of the Constitution of India were rightly invoked.

5. On the other hand, learned counsel for respondents supported the impugned orders of the learned Tribunal and contended that the present petitions are devoid of merits. Learned counsel for respondents argued that powers under Article 311(2)(b) of the Constitution of India cannot be invoked arbitrarily by the Disciplinary Authority, without examining the reasonable practicability of conducting an enquiry. Learned counsel for respondents argued that since no effort at all was done by the petitioners to summon any witness and there is no material to show that either or both of the respondents would intimidate the witnesses, invocation of powers under Article 311(2)(b) of the Constitution of India was not justifiable. In support of their arguments, learned counsel for respondents placed reliance on certain judicial precedents as well as circulars of the petitioners, as discussed hereafter.

6. In the above backdrop, the issue before us is as to whether dismissal of the respondents from service through invocation of powers under Article 311(2)(b) of the Constitution of India is sustainable in the eyes of law.



7. The provision under Article 311(2) of the Constitution of India has been the subject matter in plethora of judicial as well as administrative pronouncements, since this salutary provision protects the government servant from vengeful and/or arbitrary termination of her services. Such protection is vital for any government servant so as to enable her to take decisions and act according to best of her wisdom in national interest. This provision flows from the core of *jus naturale* that no administrative action adverse to a person can be sustained if taken without affording a fair opportunity to the said person to be heard. In the matters of termination of services or any other punishment sought to be inflicted on the government servant, the Departmental Enquiry into the allegations is an important facet of right to be heard, whereby the effected government servant would have an opportunity to challenge the truthfulness of the allegations leveled against her. In view of extreme disparity of power between the State and the Subject, it is necessary that the Subject be not deprived of a fair opportunity to defend herself.

8. Another paradigm is that in order to ensure that personal vendetta of any officer serving the government should not lead to depriving the State services of an efficient and competent employee, the allegations must be tested through Departmental Enquiry. In other words, the proceedings of Departmental Enquiry are to the benefit of not just the Subject but the State as well.



9. It is keeping in mind the aforesaid that the provision under Article 311 of the Constitution of India has to be analyzed. It would be apposite to quote the provision here:

“311. Dismissal, removal or reduction in rank of persons employed in civil capacities under the Union or a State

(1) No person who is a member of a civil service of the Union or an all-India service or a civil service of a State or holds a civil post under the Union or a State shall be dismissed or removed by a authority subordinate to that by which he was appointed.

(2) No such person as aforesaid shall be dismissed or removed or reduced in rank except after an inquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges;

Provided that where it is proposed after such inquiry, to impose upon him any such penalty, such penalty may be imposed on the basis of the evidence adduced during such inquiry and it shall not be necessary to give such person any opportunity of making representation on the penalty proposed;

Provided further that this clause shall not apply:-

(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.

(3) If, in respect of any such person as aforesaid, a question arises whether it is reasonably practicable to hold such 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”.

10. The provision under Article 311 of the Constitution of India as quoted above, read in its entirety amply shows that the basic principle is that no government servant shall be dismissed or removed or reduced in rank except after an enquiry in which she has been informed of the charges against her



and has been given a reasonable opportunity of being heard on those charges; and that the penalty imposed upon her has to be only on the basis of evidence adduced during such enquiry. After laying down this basic principle, the provision carves out exceptions to the effect that the enquiry into the charges can be dispensed with in case where the misconduct has led to conviction of the government servant or where the President or the Governor is satisfied that in the interest of the security of the State, it is not expedient to hold such enquiry or *“where the authority empowered to dismiss or remove a person or 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 enquiry”*. It is the italicized quoted portion of Article 311(2)(b) of the Constitution of India, with which we are concerned.

11. It is trite that while interpreting any statute, the exception through proviso cannot be read in such a manner so as to negate the main provision. The main provision under Article 311 of the Constitution of India is that no dismissal or removal or reduction in rank of a government officer is permissible without any Departmental Enquiry. One of the exceptions to the said principle is in the form of Article 311(2)(b) of the Constitution of India and the same has to be read as an exception only and not otherwise. Even the mandate issued in Article 311(2)(b) of the Constitution of India to the effect that the concerned authority has to record her satisfaction by way of reasons to be recorded in writing, shows that this provision is not to be invoked lightly.

12. The Constitution Bench of the Supreme Court of India in the case of



Union of India vs Tulsi Ram Patel, (1985) 3 SCC 398 examined the legal position under Article 311(2)(b) of the Constitution of India and held that the condition pre-requisite to invoke powers under Article 311(2)(b) is the satisfaction of the disciplinary authority that “*it is not reasonably practicable to hold*” an enquiry contemplated by Article 311(2). Elucidating the distinction between the expressions “*not reasonably practicable*” and “*impracticable*”, as well as “*reasonably not practicable*” and “*not practicable*”, the apex court held that what is required for invoking Article 311(2)(b) is that holding of the enquiry is not practicable in the opinion of a reasonable man taking a reasonable view of the prevailing situation. The Hon’ble Supreme Court further held that it is not possible to enumerate the circumstances in which it would not be reasonably practicable to hold enquiry, though some such circumstances may be where the government servant personally or through associates so terrorizes, threatens or intimidates the witnesses, who are expected to give evidence against him with fear of reprisal as to prevent them from doing so or where the government servant himself or through his associates threatens, intimidates or terrorizes the disciplinary authority or any member of his family so as to scare him from holding the enquiry or where an atmosphere of violence or general indiscipline and insubordination prevails. It is the disciplinary authority which has to assess the situation while coming to record its satisfaction that it would not be reasonably practicable to hold enquiry.

13. In the case of *Jaswant Singh* (supra) the Supreme Court held that when satisfaction of the disciplinary authority about reasonable impracticability of holding an enquiry under Article 311(2)(b) is questioned in



court, it is for the State to establish that the satisfaction is based on objective facts and not on whims of the concerned officer.

14. In the case of ***Commissioner of Police & Anr. vs. Jagmal Singh***, 2024:DHC:2259-DB, a coordinate bench of this court in which one of us (Girish Kathpalia, J.) was a member, the justification for invocation of powers under Article 311(2)(b) advanced on behalf of petitioners was that they had dispensed with the departmental enquiry against the concerned official because the nature of allegations levelled against was grave and the official concerned tarnished the image of the organization, which called for an exemplary punishment in order to send a stern message to undesirable persons in service. The justification was rejected by the learned Tribunal as well as this court, holding the same not covered by the parameters within which such powers have to be invoked.

15. In the case of ***Govt. of NCT of Delhi & Ors. vs. Dushyant Kumar***, 2024:DHC:1247-DB, a coordinate bench of this court while dealing with similar issue extracted two important guidelines as follows:

“9. Having considered the rival submissions of learned counsel for the parties, we may begin by noting the Circular dated 21.12.1993 which succinctly lays down the guidelines for dealing with situations, where decision is taken to dispense with the enquiry by resort to Article 311(2)(b) of the Constitution of India. The same reads as under:-

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

It is, once again emphasized that the Disciplinary



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

10. We may also now refer to petitioners’ subsequent Circular dated 11.09.2007, which again reiterates that an enquiry must not be dispensed with lightly. The same reads as under:

“CIRCULAR No. /2007

An analysis has been done by PHQ in 38 cases pertaining to the period between 1.1.2000 to 31.12.05 where action under Article 311 (2) (b) of the Constitution of India was taken against the defaulters. The analysis shows that out of the 38 cases, the action of the department has been upheld by CAT only in two cases and out of these two cases only one case action was upheld by the Hon’ble High Court of Delhi and most of these cases have been remanded back in the Department by the Tribunal for initiating departmental inquiry.

Though some cases are still pending in the Hon’ble High Court for decision, in a majority of cases, Disciplinary Authorities have resorted to Article 311 (2) (b) on assumptions and conjectures. No speaking orders were passed based on and supported by material/facts on record for dispensing with prior enquiry. Orders for dismissal were passed arbitrarily violating Article 311 and the principles of natural justice.

Henceforth, it has been decided that whenever any Disciplinary Authority intends to invoke Article 311 (2) (b) of the Constitution of India, he must keep in mind the judgment in the case of UOI v. Tulsi Ram Patel, AIR 1985 SC 1416. Only in cases where Disciplinary Authority is personally satisfied on the basis of material available on file that the case is of such a nature that it is not practicable to hold an enquiry in view of threat, inducement, intimidation, affiliation with criminals etc. and keeping in view of specific circumstances of the case



it is not possible that PWs will depose against the defaulter and Disciplinary Authority has no option but to resort to Article 311 (2) (b) should such an action be taken. Prior to such an order, a PE has to be conducted and it is essential to bring on record all such facts. It has also been decided that before passing on order under Article 311 (2) (b) of the Constitution of India, Disciplinary Authority has to take prior concurrence of Spl. CP / Admn. This has the approval of C.P., Delhi.

*Sd/-
Jt. Commissioner of Police,
HDQRS; Delhi”
(emphasis supplied)*

16. Further, the respondents have also brought to our notice communication no.174/C/HC/24/5110/60/DAIII/CourtCell/PHQ dated 13.05.2024 whereby, the office of Commissioner of Police issued advisory to the Deputy Commissioners of Police to ensure that directions of this court shall be taken into consideration before passing termination orders by dispensing with the departmental enquiries in future. The said directions issued by this court were in the case of **Commissioner of Police Delhi vs. Manjeet**, 2024:DHC:3132-DB and the same were as follows:

“13. Before we conclude, we are constrained to observe that in a large number of petitions filed by the Commissioner of Police which are coming up before this Court, we are finding termination orders are being passed by the petitioners by dispensing with departmental enquiries in a most mechanical manner without recording any valid reasons. We, therefore, direct that a copy of this order be placed before the Commissioner, Delhi Police to ensure that in future, enquiries are not dispensed with without assigning justifiable reasons.”

17. In order to maintain brevity, the remaining judicial precedents cited by respondents are not being quoted herein. Suffice it to record that repeatedly, this court as well as the Hon’ble Supreme Court have laid down the broad parameters within which powers under Article 311(2)(b) can be



invoked. But unfortunately, despite such clear judicial pronouncements and even their own internal circulars and communications, the petitioners continue to exercise those powers unjustifiably, thereby depriving their officials fair opportunity to defend themselves.

18. Falling back to the present case, as mentioned above, the allegations on the basis whereof services of the respondents were summarily terminated by way of dismissal orders are that while accepting bribes in the course of trap laid by CBI, they were apprehended *flagrante delicto*. Keeping in mind the above quoted legal position, we examined the orders whereby the respondents were dismissed from service.

19. From the said dismissal orders, it comes out that the SHO, PS Saket was telephonically informed by the CBI Inspector about the said trap, followed by apprehending of the respondents. It also comes out that a Preliminary Enquiry into the incident was conducted by the ACP, Public Grievances Cell, South District, Delhi in which only the SHO was examined. Neither any member of the CBI team nor any public witness nor even the complainant Pawan Gupta was examined. Not only this, according to the observations recorded in the said dismissal orders, no incriminating material was found during search (*apparently the personal search of the respondents after they were apprehended*).

20. Most importantly, there is not even a whisper in the said dismissal orders that the complainant or any other person, considered to be examined as a witness was terrorized or threatened or intimidated by either of the



respondents or their associates, so as to dissuade them from appearing before the Departmental Enquiry. Even otherwise, keeping in mind that the respondents are mere Head Constables, in the absence of any cogent material, it does not sound reasonably possible to apprehend that they would be able to threaten the members of the CBI team or even the complainant Pawan Gupta, who was bold enough to lodge a complaint against the respondents with CBI, as alleged.

21. For dispensing with the Departmental Enquiry under Article 311(2)(b) of the Constitution of India, it is not enough to say that there is possibility that no witness/complainant would come forward to depose against the delinquent official. Such a belief has to be on the basis of sound and cogent reasons and those reasons must be explicitly recorded in the dismissal order.

22. The relevant extract of the dismissal orders in question is as below:

“During the enquiry conducted so far, documents available on record, statement of SHO/Police Station Saket and statement of complainant Shri Pawan Gupta, it was revealed that HC (Exe) Ram Kishan Mehta, No. 2137/SD (PIS No. 28093689) and HC (Exe) Karm Pal, No. 940/SD (PIS No. 28107645) were found involved in corrupt practices with malicious intention. They showed gross negligent, unprofessional behaviour. They were caught red handed by CBI authorities.

Whereas, being a member of disciplined force, they were responsible for protecting the life and property of the citizen of this country, but instead of discharging their duties honestly and sincerely they themselves indulged in corrupt practice, which is most abhorrible, most reprehensible and most unexpected being a member of a disciplined force. If the police man who is charged with sacred responsibility of upholding the rule of law indulging in such acts of crime and lawlessness it shatters the faith of the common man in the Government's law and order machinery. It also attracts immediate public attention and compels the authority to take action. Such acts of police misdemeanour produce highly deleterious impact on the organization. Such misconduct directly erodes the basis of police



functioning i.e. “Public Trust” the foundation on which police work is built. Without people’s trust the police as service to people would become rather irrelevant. Reputation and image assiduously built on sustained and good team work, suffer irreparable damage when an individual member of the service traps and indulges in such an abhorable act.

Whereas the Govt. is always anxious and every effort is being made to root out corruption from the public service, after such act of serious misconduct if the defaulters Head Constables are allowed to be continued in Police force, it would be detrimental to public interest. The facts and circumstances of the case are such that it would not be reasonably practicable to conduct a regular Departmental Enquiry against the defaulter Head Constables as there is a reasonable belief that the witness may not come forward to depose against them and possibility of misusing their official position cannot be ruled out. It is common experiences that due to terrorizing and intimidating the witnesses and complainant do not come forward to depose against the delinquents in the Departmental Enquiry and this kind of intimidation is a common tactic adopted by the unscrupulous police personnel. It also calls for great courage to depose against desperate person and the task become more acute and difficult where the delinquents are police officials who may use their job to influence the statement/deposition of the witnesses.

Whereas, in the backdrop of the position explained in the foregoing paras, it is clear that HC (Exe) Ram Kishan Mehta, No. 2137/SD (28093689) and HC (Exe) Karm Pal, No. 940/SD (28107645) are public servants with criminal bent of mind and there is every possibility that no witness/complainant would come forward to depose against them in case a Departmental Enquiry is initiated against them. Under these set of compelling circumstances, Article 311(2)(b) of the Constitution of India is invoked in this case. It would be in the interest of general public and society as well as for the establishment of rule of law”.

23. Thence, except writing an essay on corruption by police, nothing has been stated in the said dismissal orders on the basis whereof the concerned authority arrived at a satisfaction that it would not be reasonably practicable to hold Departmental Enquiry against the respondents. The concerned authority appears to be under a presumptive impression that since the delinquents are police officials, no witness or complainant would come forward to depose. This impression, to say the least is not just baseless but



even completely irrational. For, accepting this impression would lead to absurd result that in all cases of misconduct by police officials, Departmental Enquiry would not be possible and the authorities would be per force compelled to resort to Article 311(2)(b) of the Constitution of India, thereby throwing completely in the trash bin the elaborate structures created under the Delhi Police (Punishment & Appeal) Rules, 1980.

24. The irresistible conclusion in the light of aforesaid is that services of the respondents were terminated by the petitioners through dismissal orders without following due process of law and the invocation of powers under Article 311(2)(b) of the Constitution of India was completely unsustainable.

25. In view of the above discussion, we are unable to find any infirmity in the impugned orders, so the same are upheld and both these petitions as well as pending applications are dismissed.

**GIRISH KATHPALIA
(JUDGE)**

**SURESH KUMAR KAIT
(JUDGE)**

JULY 18, 2024/as/ry