



2025:DHC:11844-DB



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

Reserved on: 13.11.2025
Pronounced on: 24.12.2025

+ **W.P. (C) 83/2023**
NEERAJ AGARWAL

.....Petitioner

Through: Mr. Suresh Sharma, Adv.

versus

SECRETARY, DOPT AND OTHERSRespondents

Through: Mr. Rakesh Kumar, SPC with
Mr. Sunil, Adv. for UOI
Mr. Yash Narain, Adv. for CBI.

CORAM:
HON'BLE MR. JUSTICE NAVIN CHAWLA
HON'BLE MS. JUSTICE MADHU JAIN

J U D G M E N T

MADHU JAIN, J.

1. The present writ petition has been filed challenging the Order dated 20.12.2022 passed by the learned Central Administrative Tribunal, Principal Bench, New Delhi (hereinafter referred to as 'Tribunal'), in O.A. No. 2796/2018, titled ***Sh. Neeraj Agarwal v. Secretary, DOP&T & Ors.***, whereby the learned Tribunal dismissed the O.A. filed by the petitioner herein, and held as under:

"14. In a catena of judgments, it has already been held that Tribunals/Courts would normally not undertake reappraisal of the evidence in disciplinary proceedings. In this case, the trap was laid by CBI by one of its own officer and he was caught red handed. Criminal case is already pending against him. This situation more than any other situation deserves invocation of Article 311(2) of the Constitution of India and Rule 19(ii) of the



CCS (CCA) Rules, 1965 as has been done in the present case.

15. In view of the above, we find no infirmity or illegality in the action of the respondents in passing the impugned order dated 19.06.2018. Thus, the present O.A. is devoid of merit and the same is accordingly dismissed. No costs.”

BRIEF FACTS:

2. The petitioner joined the Central Industrial Security Force (CISF) as a Sub-Inspector on 01.10.1988. He, thereafter, served at various CISF units, including NTPC Badarpur, Kishtwar/Dulhasti (J&K), Group Headquarters, New Delhi, and CISF Unit, Bhilai, until his selection on deputation to the Central Bureau of Investigation (hereinafter referred to as ‘CBI’) as Inspector on 09.09.1999.

3. The petitioner continued to serve in the CBI and was subsequently absorbed as an Inspector on 20.08.2008. His Annual Performance Appraisal Reports for the years 2008-09 to 2013-14 recorded his performance as satisfactory. He was then promoted to the post of Deputy Superintendent of Police on 20.01.2014, being posted thereafter in the Banking Securities & Fraud Cell (BS&FC) of CBI, Mumbai.

4. While posted in BS&FC, Mumbai, the petitioner was entrusted with the investigation of several bank-fraud matters. The petitioner claims that during this period, disputes arose between the petitioner and the then Superintendent of Police (BS&FC), Respondent No.3, regarding the mode of issuing and recording instructions in investigations. According to the petitioner, he insisted that directions be issued in writing in accordance with the Manual of Office



Procedure issued by the administrative department of CBI, whereas Respondent No.3 expected investigations to be conducted on verbal instructions. This disagreement forms the background to the petitioner's allegations of *mala fides* against Respondent No.3.

5. On 22.04.2017, a complaint was received from one Shri Pradip V. Shah, a retired Head Cashier of Bank of Baroda, alleging demand and acceptance of illegal gratification by the petitioner. The complaint was marked for verification on the same day, and an FIR being RC BA1/2017/A0017 was registered. An alleged trap was laid on 23.04.2017, in which the petitioner was apprehended. He was arrested on the same date and remained in judicial custody until 06.05.2017.

6. Consequent to the arrest, the petitioner was placed under deemed suspension on 08.05.2017, which was periodically extended. Parallely, a criminal investigation into the FIR continued against the petitioner herein.

7. In December 2017, the Disciplinary Authority initiated proceedings under Article 311(2)(b) of the Constitution of India read with Rule 19(ii) of the CCS (CCA) Rules, 1965, proposing dismissal of the petitioner from service without a regular inquiry on the ground that it was not reasonably practicable to hold one.

8. The case was referred to the Union Public Service Commission (UPSC) for advice. The UPSC rendered its advice on 28.02.2018 recommending dismissal. The petitioner submitted a representation dated 17.05.2018 in response.

9. After considering the UPSC advice and the petitioner's representation, the Disciplinary Authority passed the order dated



19.06.2018 dismissing the petitioner from service by invoking Article 311(2)(b) of the Constitution of India.

10. The petitioner challenged the dismissal order by filing O.A. No. 2796/2018 before the learned Tribunal.

11. The learned Tribunal, by its order dated 20.12.2022, dismissed the O.A., holding that the competent authority had correctly invoked Article 311(2)(b) and that the petitioner's challenge was devoid of merit.

12. Aggrieved thereby, the petitioner has filed the present writ petition.

SUBMISSIONS ON BEHALF OF THE PETITIONER:

13. The learned counsel for the petitioner submits that under Section 4 of the Delhi Special Police Establishment Act, 1946, as amended by the Central Vigilance Commission Act, 2003, the superintendence over investigations relating to offences under the Prevention of Corruption Act vests exclusively in the CVC. In terms of the CBI Crime Manual, 2020, and the Vigilance Manual, the CVC's First Stage and Second Stage Advice are mandatory prerequisites wherever action under Article 311(2) is contemplated in a corruption related matter. He further submits that the respondents, however, neither sought nor obtained such advice. This failure vitiates the entire disciplinary process, particularly because the dismissal order has been passed on allegations forming part of an ongoing corruption case.

14. The learned counsel further submits that the very grounds



recorded in the dismissal order dated 19.06.2018, namely that the petitioner, being a gazetted officer of the CBI, would intimidate witnesses, terrorise the inquiry officer, influence the environment of the office, or cause public perception issues, were themselves anticipatory, speculative, and unsupported by any factual foundation. It was contended that all four reasons are based on “predicted future events”, rather than actual subsisting circumstances, contrary to the explicit directions contained in the DoPT O.M. dated 11.11.1985.

15. The learned counsel for petitioner further submits that the entire process culminating in his dismissal stands vitiated on the doctrine of *sublato fundamento cadit opus*, for the reason that the initiation itself is without jurisdiction. Respondent No.3, who was only an investigating officer and not the competent disciplinary authority, had, much prior to any independent consideration by the competent authority, recommended dismissal under Article 311(2)(b), as reflected from documents obtained under the RTI Act and placed before the learned Tribunal. Once the very foundation of the decision is tainted, the consequential order cannot survive.

16. The learned counsel for petitioner asserts that the principles of *audi alteram partem* stand wholly violated. No material forming the basis of the alleged complaint, inquiry notes, or communications with UPSC, were ever furnished to the petitioner. His detailed representation dated 17.05.2018 was completely ignored by the Disciplinary Authority. The learned Tribunal also did not appreciate that the respondents’ own pleadings disclose that the Disciplinary Authority merely “agreed with the reasons” suggested by Respondent



No.3, demonstrating absence of independent application of mind.

17. The learned counsel further submits that the Disciplinary Authority, instead of independently recording its satisfaction that it was not reasonably practicable to hold an inquiry, merely reproduced the advice of the UPSC verbatim in the dismissal order. The UPSC's mandate is limited to advising on the quantum of penalty, however, in the present case, its advice has been mechanically treated as determinative even on the threshold question of the applicability of Article 311(2)(b). Such abdication of statutory responsibility vitiates the order.

18. The learned counsel further submits that the learned Tribunal failed to appreciate that Respondent No.3 acted in a *mala fide* manner throughout by discarding the binding directions of DoPT issued *vide* ID No. 221/14/2017-AVD-II(B) dated 23.06.2017 requiring examination of whether the parameters laid down in the DoPT O.M. No. 11012/11/85-Estt.(A) dated 11.11.1985 were satisfied before recommending action under Rule 19(ii) of the CCS (CCA) Rules, 1965. Instead of complying with these directions, Respondent No.3 pressed ahead with her predetermined proposal for dismissal.

19. The learned counsel for the petitioner further submits that several similarly placed officers, including gazetted officers senior to the petitioner, were proceeded only under Rule 14 of the CCS (CCA) Rules, 1965 despite facing analogous allegations. In contrast, the petitioner alone has been summarily dismissed under Article 311(2)(b) without inquiry, solely on the ground of apprehended witness influence.



20. It is further submitted that the reliance placed by the respondents on a speculative theory of witness intimidation is wholly misconceived. From the date of the petitioner's suspension and arrest till date, the respondents have, not once, complained before the concerned criminal court regarding any breach of bail conditions or attempt to influence witnesses. The bail order itself prohibits such conduct and no violation has ever been alleged. The apprehension, therefore, is neither borne out from facts nor sustainable in law.

21. He further submits that the case is one of legal malice as understood by the Supreme Court in *Kalabharati Advertising v. Hemant Vimalnath Narichania & Ors.*, (2010) 9 SCC 437. The respondents have exercised statutory power for a purpose foreign to the statute, namely, to shield senior officers and to project an appearance of institutional integrity, while consciously violating constitutional and statutory safeguards. Such action is patently vitiated.

22. The learned counsel for the petitioner further submits that the respondents' failure to consult the CVC is not merely procedural but goes to the root of jurisdiction. The mandatory First Stage Advice in corruption matters must be obtained before the disciplinary authority forms its opinion on practicability of holding an inquiry. He further submits that the respondents' claim that the advice was unnecessary because a decision under Article 311(2)(b) had already been taken, only demonstrates pre-determination and further invalidates the entire exercise.

23. It is contended that the Impugned Order of the learned Tribunal



suffers from serious infirmities, including (i) failure to examine whether the strict conditions under Article 311(2)(b) were satisfied, (ii) non-consideration of material irregularities in the process, (iii) reliance on speculative apprehensions contrary to judicial precedents, and (iv) disregard of constitutional mandates under Articles 14, 16 and 311. The dismissal order dated 19.06.2018, founded on an unlawful process, is liable to be set aside, and the petition deserves to be allowed.

SUBMISSIONS ON BEHALF OF THE RESPONDENTS

24. The learned counsel for the respondents submits that the petitioner's allegation that the FIR was irregularly registered, or that documents were withheld from him, is misconceived. He further submits that the material relied upon for disciplinary action is based on official record, including the trap proceedings, arrest memo, and case diary entries, all of which clearly indicate that the petitioner was apprehended while he was receiving bribe money.

25. The learned counsel submits that the respondents have acted strictly in accordance with the constitutional scheme. The proviso to Article 311(2)(b) read with Rule 19(ii) of the CCS (CCA) Rules, 1965 empowers the disciplinary authority to dispense with an inquiry where it is not reasonably practicable to hold one. He further submits that the disciplinary authority has recorded detailed reasons in writing demonstrating such impracticability in conducting an inquiry against the petitioner.

26. The learned counsel for the respondents further submits that as



recorded in the dismissal order, there existed genuine and well-founded apprehensions that witnesses, being officers and staff of the CBI, would be intimidated by the petitioner who, as a Gazetted Officer of the same organisation, was in a position to influence or terrorise them. The possibility of pressure on the Inquiry Officer was also a relevant consideration before the Disciplinary Authority. Additionally, allowing the petitioner to frequently visit the CBI office for the purpose of inquiry would adversely impact the public perception of the organisation, which is the premier anti-corruption agency of the nation.

27. It is submitted that the disciplinary authority did not act mechanically but only after receiving and considering the UPSC's advice dated 28.02.2018, which itself recorded that (i) the petitioner was caught red-handed in a trap, (ii) a serious criminal case under Sections 7 and 8 of the PC Act and Section 120B of IPC had been registered, (iii) the misconduct was grave, and (iv) the CBI had bona fide reservations about feasibility of a departmental inquiry in the prevailing atmosphere. The UPSC, after analysing the material, advised the imposition of the penalty of dismissal. This advice was forwarded to the petitioner for representation, which he duly submitted and which was duly considered.

28. He further submits that the petitioner's attempt to invoke the OM dated 11.11.1985 or rely upon judicial precedents in *Union of India v. Tulsiram Patel*, (1985) 3 SCC 398, is misplaced. The disciplinary authority has recorded reasons strictly in accordance with the parameters laid down therein. The petitioner cannot substitute his



own assessment in place of the authority's satisfaction,

29. It is further contended that the plea of prejudice owing to alleged failure to obtain the approval of the Minister for Personnel or CVC advice is without merit. The matter was processed strictly as per procedure through the Single Window System. The competent authority considered all necessary material, including the UPSC's detailed advice.

ANALYSIS AND FINDINGS:

30. We have considered the submissions of the learned counsels for the parties and have perused the record.

31. The principal question that falls for consideration is whether the respondents were justified in invoking Article 311(2)(b) of the Constitution of India, read with Rule 19(ii) of the CCS (CCA) Rules, 1965 to dismiss the petitioner from service without holding a departmental inquiry and whether the learned Tribunal was correct in sustaining such action.

32. The Article 311(2)(b) of the Constitution of India, reads as under:

“(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”

33. The law governing the invocation of Article 311(2)(b) is well settled. In ***Tulsiram Patel*** (supra), the Supreme Court held that



dispensing with an inquiry is permissible only where the authority demonstrates, on the basis of objective material, that holding such an inquiry is not reasonably practicable. The power is exceptional and cannot be invoked merely because the allegations are grave, or because conducting an enquiry may be inconvenient or protracted. The satisfaction must be reasoned, and based on circumstances peculiar to the case.

34. The Order dated 19.06.2018 justifying the invocation of Article 311(2)(b) of the Constitution of India to dispense with an inquiry against the respondents, gives the following reasons for dispensing with the departmental inquiry against the petitioner:

“(i) the accused is a Gazetted Officer belonging to the CBI itself and he has the power to intimidate witnesses who will not give evidence against him due to fear of reprisal.

(ii) the accused has the power to threaten and terrorize the enquiry officer or members of his family.

(iii) the accused is seen to be frequenting the office for the conduct of the enquiry, this will have a negative impact on the society's attitude towards the CBI.

(iv) The CBI, being the premier anti-corruption agency in the country cannot be seen as engaging with an accused, who has committed such a grave offence.”

35. After examining the reasons cited above, we are of the opinion that they do not meet the standard of Article 311(2)(b) of the Constitution of India. The respondents rely on the possibility that witnesses might be intimidated or that the petitioner's presence in the office might tarnish the organisation's image. These are broad,



anticipatory statements, unaccompanied by any material indicating that a single witness has expressed fear or reluctance. There is nothing on record to show a situation where conducting an inquiry became genuinely impossible.

36. The record also reveals that Respondent No.3, who was only the supervising officer and not the Disciplinary Authority, had recommended the petitioner's dismissal much before any independent application of mind by the competent authority. The respondents themselves admit that the disciplinary authority merely agreed with the reasons suggested by Respondent No.3. This strikes at the foundation of Article 311(2)(b), which requires the authority to reach its own independent satisfaction. Satisfaction borrowed or induced from another source is no satisfaction in the eyes of law.

37. The petitioner is also justified in contending that the directions of DoPT dated 23.06.2017, which required a careful examination of whether the parameters in the OM No. 11012/11/85-Estt.(A) dated 11.11.1985 were met, were simply brushed aside. These instructions call for a factual evaluation of the real likelihood of witness intimidation; they do not permit broad presumption.

CONCLUSION:

38. Accordingly, for the reasons recorded hereinabove, the writ petition is allowed. The Impugned Order dated 19.06.2018 passed by the Disciplinary Authority, as well as the Order dated 20.12.2022 passed by the learned Tribunal in O.A. No. 2796/2018 are hereby set aside. The respondents are directed to reinstate the petitioner in



2025:DHC:11844-DB



service with all consequential benefits, including restoration of seniority and notional continuity, in accordance with law.

39. The respondents shall, however, be at liberty to initiate disciplinary proceedings against the petitioner, if so advised, strictly in accordance with law.

40. The directions contained herein shall be complied with within a period of four weeks from the date of receipt of a copy of this Order.

41. There shall be no order as to costs.

MADHU JAIN, J.

NAVIN CHAWLA, J.

DECEMBER 24, 2025/P