Before Sham Sunder, J

BALJIT SINGH,—*Petitioner*

versus

SENIOR SUPERINTENDENT OF POLICE, AMRITSAR,—*Respondent*

C.W.P. No. 4077 of 1989

5th December, 2007

Punjab Police Rules, 1934—Rl. 16.24—Constitution of India, 1950—Arts. 226 & 311(2) (b)—Dismissal of constable from service by resorting to provisions of Art. 311(2)(b)—Petitioner discharged in criminal case—No reasons recorded by competent authority while dispensing with departmental enquiry—Respondent failing to produce any record—No material before respondent which could justify that it was impracticable to hold a regular departmental inquiry—Satisfaction recorded by respondent in order was merely based on conjectures and surmises—Order of dismissal quashed, petition allowed with all consequential benefits while granting liberty to respondent to hold a regular departmental inquiry as per rules.

Held, that the respondent was directed to produce the record containing such reasons so as to satisfy the conscience of the Court as to whether the same were sufficient to dispense with the departmental enquiry and invoke the provisions of Article 311 (2) of the Constitution of India, but the same was not produced. This clearly proves that no such reasons were recorded by the competent authority while dispensing with the departmental inquiry and before passing the order dismissing the petitioner from service. Under these circumstances, it was a fit case in which the regular departmental inquiry could be held against the petitioner for taking action against him. The satisfaction recorded by the respondent in the order that it was reasonably impracticable to hold a departmental enquiry against the petitioner was merely based on conjectures and surmises. It was an arbitrary satisfaction. Under these circumstances, the order dated 14th December, 1988 being illegal deserves to be quashed.

(Para 15)

Kamaldeep Singh, Advocate, *for the petitioner.*

Mukesh Kaushik, D.A.G, Punjab *for the respondent.*

SHAM SUNDER, J.

(1) Jarnail Singh, brother of the petitioner died in 1981, while on duty as Constable in Punjab Police. As such, the petitioner was enrolled as Constable in Punjab Police, on compassionate grounds, on 19th February, 1982. He completed the training for Constable, without any complaint, and remained posted in District Amritsar. Thereafter, he was transferred to Police Station, Majitha. A false FIR, was registered against the petitioner, wherein, vague allegations were levelled against him, to the effect, that he was known to a number of extremists, and provided shelter to some of them, who were in favour of Khalistan. On the basis of false case, the petitioner was taken into custody by the Amritsar Police, under the directions of the respondent. The petitioner was tried and acquitted in the aforesaid FIR. It was stated that the respondent,—*vide* order dated 14th December, 1988 (Annexure P-2) dismissed the petitioner from service, by resorting to the provisions of Article 311 (2) (b) of the Constitution of India, read with Rule 16(1) of the Punjab Police Rules. The order dated 14th December, 1988, was stated to be illegal, void and un-constitutional, on the grounds, that no reasons were recorded by the respondent, as to how, it was reasonably impracticable to hold a departmental enquiry, before dismissing the petitioner from service ; that even the separate reasons, stated to have been recorded, as mentioned in the order Annexure P-2, did not see the light of the day. Ultimately, the instant petition, for the issuance of a Writ, in the nature of Certiorari, quashing the impugned order dated 14th December, 1988 (Annexure P-2) was filed. A prayer for the issuance of a Writ of Mandamus, directing the respondents, to reinstate the petitioner, with back wages, and all other benefits, available to him, was also made.

(2) In the written statement, filed by the respondent, it was pleaded that the petition was not maintainable, as the Punjab State was not impleaded as a party. It was stated that, no cause of action, arose to the petitioner, to invoke the extraordinary jurisdiction of this Court. The appointment of the petitioner as a temporary Constable, on 19th February, 1982, was admitted. It was stated that the information was received by the respondent that the petitioner while posted in Police Lines, Amritsar, had links with dreaded terrorists. It was also admitted that FIR No. 238, dated 16th December, 1988 under Sections 216-A IPC and 3 and 4 of the Terrorist and Distruptive Activities (Prevention) Act, 1985, was registered

against the petitioner, by the Police of P.S. Lopoke. The challan was put up, before the Addl. Designated Court, Amritsar. It was further stated that the Order dated 14th December, 1988 (Annexure P-2) dismissing the petitioner from service, was passed in public interest. It was further stated that the holding of departmental enquiry was found to be reasonably impracticable and, as such, it was dispensed with, by invoking the provisions of Article 311 (2) (b) of the Constitution of India. The remaining averments were denied being wrong.

(3) I have heard the learned Counsel for the parties, and have gone through the record of the case, carefully.

(4) Learned Counsel for the petitioner, at the very outset, contended that the dismissal of the petitioner from service,—*vide* order dated 14th December, 1988 (Annexure P-2) was illegal, because there was no valid ground, to dispense with the requirement of holding regular departmental enquiry, contemplated under Rule 16.24 of the Punjab Police Rules read with Article 311 (2) of the Constitution of India. He further contended that the respondent did not have any material, before him, which could justify that it was reasonably impracticable to hold a regular departmental enquiry. He further contended that the order dated 14th December, 1988 (Annexure P-2) was liable to be quashed.

(5) On the other hand, the Counsel for the respondent submitted that the satisfaction recorded by the respondent, while dispensing with the enquiry could not be said to be unjustified and, thus, the order dated 14th December, 1988 was legal and valid.

(6) In order to deal with the contentions of the learned Counsel for the parties, it would be appropriate to extract the provisions of Article 311 (2) alongwith its provisos as under :—

> *"311. Dismissal, removal or reduction in rank of persons employed in civil capacities under the Union or a State :—*
>
> *(1) XX XX XX*
>
> *(2) No such person as aforsaid 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 enquiry."*

(7) It would, however, be appropriate to deal with the judicial precedents, relied upon by the counsel for the parties. In **Union of India** *versus* **Tulsi Ram Patel, (1)** a Constitution Bench of the Apex Court, considered the scope of three clauses of second proviso to Article 311 (2) and laid down various propositions including the following :—

"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 government servant concerned is or is not a party to bringing about such an atompshpere..... The reasonable practicability of holding an enquiry is a matter of assessment to be made by the disciplinary authority. Such

(1) AIR 1985 S.C. 398

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.... 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 to Judicial review is concerned.

Where a government servant is dismissed, removed or reduced in rank by applying clause (b) or an analogous provision of the service rules and he approaches either the High Court under Article 226 or this Court under Article 32. The court will interfere on grounds well established in law for the exercise of power of judicial review in matters where administrative discretion is exercised. It will consider whether clause (b) or an analogous provision in the service rules was properly applied or not... In examining the relevancy of the reasons, the court will consider the situation which according to the disciplinary authority made it come to the conclusion that it was not reasonably practicable to hold the inquiry.... In considering the relevancy of the reasons given by the disciplinary authority the court will not, however, sit in judgment over them...."

(8) In **Chief Security Officer and others** *versus* **Singasan Raoi Das, (2)** a three Judge Bench of the Supreme Court, considered the legality of an order of removal, passed against the respondent, under Article 311 (2) (b) on the ground, that he had abetted theft of Railway properties. The competent authority had invoked Rules 44, 45 and 46 of the Railway Protection Force Rules, 1959, and dispensed with the regular enquiry, by recording the following observations :—

"Because of the facts that it is not considered feasible or desirable to procure the witnesses of the security/other Railway Employees since this will expose them and make them ineffective for future. These witnesses if asked to appear at a confronted enquiry are likely to suffer personal humiliation and insults thereafter or even they and their family members may become targets of acts of violence."

(2) 1991 (2) SLR 140

(9) The High Court relied on the decision of the Supreme Court in **T. R. Chellappah** *versus* **Union of India and others (3)** and quashed the order of punishment by observing that the writ petitioner had not been given an opportunity to represent against the proposed penalty. When the appeal was preferred, in the Apex Court, on behalf of the appellant, reliance was placed on the judgment of the Constitution Bench in Tulsiram Patel's case *(supra)* and it was urged that the order of the High Court was liable to be set aside. Their Lordships of the Supreme Court rejected the appellant's plea and observed as under :—

> *"In our view it is not necessary to go into the submissions made by Dr. Anand Prakash because we find that in this case the reason given for dispensing with the enquiry is totally irrelevant and totally insufficient in law. It is common ground that under rules 44 to 46 of the said Rules the normal procedure for removal of an employee is that before any order for removal from service can be passed the employee concerned must be given notice and an enquiry must be held on charges supplied to the employees concerned. In the present case, the only reason given for dispensing with the enquiry was that it was considered not feasible or desirable to procure witnesses of the security/other Railway employees since this further that if these witnesses were asked to appear at a confronted enquiry they were likely to suffer personal humiliation and insults and even their family members might become targets of acts of violence. In our view, these reasons are totally insufficient in law. We fail to understand how if these witnesses appeared at a confronted enquiry, they are likely to suffer personal humiliation and insults. These are normal witnesses and they could not be said to be placed in any delicate or special position in which asking them to appear at a confronted enquiry would render them subject to any danger to which witnesses are not normally subjected and hence these grounds constitute no justification for dispensing with the enquiry. There is total absence of sufficient material or good grounds for*

(3) 1976 (3) S.C.C. 190

dispensing with the enquiry. In this view, it is not necessary for us to consider whether any fresh opportunity was required to be given before imposing an order of punishment. In the result, the appeal fails and is dismissed. There will be no order as to costs."

(10) In **Chandigarh Administration, U.T., Chandigarh and others** *versus* **Ajay Manchanda, (4),** a two Judge Bench of the Apex Court, interpreted Article 311 (2), and upheld the order of dismissal, passed by the competent Authority, in the case of respondent-Ajay Manchanda, which is extracted as under :—

"Makhan Singh alias *Swaran Singh made a complaint which was marked to Shri S. C. Sagar DSP/Central, who submitted detailed report dated 11th March, 1994 whereby he found truth in the allegations of Makhan Singh* alias *Swaran Singh against S.I. Ajay Manchanda. S.I. Ajay Manchanda has extorted Rs. 50,000 and was further demanding Rs. 50,000 more from the accused. He threatened the accused to such an extent that the accused and the witnesses refused to make any statement before D.S.P., S.C. Sagar.*

Shri S.C. Sagar, D.S.P. has reported that the witnesses are so terrorized by the threats of S.I. Ajay Manchanda that they have expressed their inability to pursue the matter in the court of law or in any other enquiry against him and more so they refused to make any statement before him.

Whereas after going through the report of D.S.P. statement before him.

Whereas after going through the report of D.S.P., S.C. Sagar, the complaint of Makhan Singh alias Swaran Singh and my oral examination of Makhan Singh alias Swaran Singh, it has been proved to my subjective satisfaction that S.I. Ajay Manchanda has extorted Rs. 50,000 from accused Makhan Singh alias Swaran Singh and he was further demanding Rs. 50,000 more and he threatened him with dire consequences and the witnesses are so terrorized that they expressed their inability to pursue the matter.

(4) JT 1996 (4) S.C. 113

The Judicial prosecution is not ordered in the case. The regular departmental enquiry is also not reasonably practicable in view of threats and witnesses inability to come forward to depose against the delinquent official due to threats of elimination. Therefore, I dispense with regular departmental enquiry in exercise of power vested in me under Article 311 (2) (b) of the Constitution of India."

(11) The Central Administrative Tribunal, Chandigarh Bench had quashed the order of dismissal, by observing that the opinion formed by the punishing authority, on the impracticability of enquiry, was totally unwarranted. Their Lordships of the Supreme Court reversed the order of the Tribunal, and held that the material available, before the punishing authority, was sufficient to form an opinion, that it was not reasonably practicable to hold an enquiry against the respondent.

(12) In **Ex. Constable Chhote Lal** *versus* **Union of India and others (5)** the Apex Court reversed the order of this Court and held that the order of punishment could not be passed, by presuming that being a Police Constable, the appellant was in a position to influence the witnesses.

(13) In **Jaswant Singh** *versus* **State of Punjab and others (6),** the principle of law, laid down, was to the effect, that subjective satisfaction of dispensing with the enquiry, must be based, on indpendent material. It cannot be dispensed with solely on the ipse dixit of the concerned authority. Subjective satisfaction for dispensing with the enquiry, not supported by any independent material, can be held to be unjustified.

(14) A careful perusal of the principle of law, laid down, in the aforesaid authorities, referred to hereinbefore, reveals that the Apex Court upheld the order of dismissal, where it found that some material was available, before the competent authority, in the form of preliminary enquiry report, information etc. which could be made the basis for forming an opinion, that it was reasonably impracticable to hold a regular enquiry. But, where no such material was available, the exercise of power under Clause (b) of Second proviso to Article 311 (2), was held to be arbitrary. In view of the above, it is to be seen, as to whether the respondent was justified in invoking Clause (b) of second proviso to Article 311 (2) of the Constitution, in this case.

(5) (2000) 10 S.C.C. 196

(6) 1991 (1) SLR 181 (S.C.)

(15) Keeping in view the principle of law, laid down, in these authorities, the impugned order dated 14th December, 1988 (Annexure P-2) is to be tested, to find out, as to whether, it was reasonably impracticable, for the competent authority, to hold a departmental enquiry, against the petitioner or not. As stated above, FIR, copy whereof is Ex. P-1, bearing No. 238 under Section 216/A and 3/4 of the Terrorist And Distruptive Activities (Prevention) Act, 1985, was registered, against the petitioner, on the information of Dharam Singh, Inspector of P. S. Lopoke. In the FIR, it was recorded that the said Inspector was informed by the special informer, that Baljit Singh s/o Khazan Singh was providing shelter to the extremists, and was having contacts with them. It was further recorded in the FIR that Kuldip Singh Pappu of Tarkan, Police Station Gharinda and Satnam Singh @ Satta, resident of Sabajpur, Police Station, Ajnala, who were absconding extremists were visiting the petitioner, and he was providing food as also bed etc. to them. It was further recorded in the FIR that Baljit Singh was standing at Adda Korali, and was preaching for Khalistan, and creation of the same. He was also declaring that the Hindus would not be allowed to live in Punjab. It was further recorded in the FIR, that the said Inspector, alongwith his companions, went to Adda Korali, and apprehended Baljeet Sngh, when he was raising slogans that Hindus, would not be allowed to remain in Punjab. He was also raising pro-Khalistan slogans and preaching for ousting the Hindus. If a criminal case, could be registered, against the petitioner,—*vide* the aforesaid FIR, mentioning therein, the names of a number of police officials, who allegedly witnessed the petitioner indulging into the aforesaid activities, it could not be said, as to how, it was reasonably impracticable to hold departmental enquiry against the petitioner. During the course of the enquiry, the Police officials, whose names are mentioned in the FIR, could be examined, against the petitioner. Had those witnesses deposed against the petitioner, that he was indulging into the aforesaid alleged activities, he could be punished. There is no material, on the record, that the petitioner could influence the witnesses. There is also, no material, on the record, that the witnesses were under fear of reprisal, in case, they deposed against the petitioner. There is also, no material, on the record, that the Police officials, whose names are mentioned in the FIR, were themselves indulging into anti-national activities, or conniving with the extremists and therefore, were reluctant to depose against the petitioner, in the departmental enquiry. Not only this, in the criminal case, which was registered against the petitioner, he was discharged by the Additional Judge, Designated Court, Amritsar,—*vide* order dated 11th October, 1989 (Annexure P-3) holding that no *prima facie*

offence, under Section 216-A I.P.C., and 3 and 4 of the Terrorist And Distruptive Activities (Prevention) Act, 1985, was made out, against him. It was clearly held, in the order dated 11th October, 1989 by the Additional Judge, Designated Court, that no copy of FIR No. 221/87 of P.S. Lopoke, on the basis whereof, the State sought to prove that Kuldip Singh @ Pappu and Satnam Singh were absconding terrorists, was produced. It was further held by the said Court, that slogans which were allegedly shouted did not constitute the terrorist act, as defined in Sections 3 and 4 of Terrorist And Distruptive Activities (Prevention) Act, 1985. It may be stated here, that in the order Annexure P-2, it was recorded that separate reasons were mentioned by the respondent for dispensing with the departmental enquiry, for invoking the provisions of Article 311 (2) (b) of the Constitution of India. The Counsel for the respondent, was directed to produce the record, containing such reasons, so as to satisfy the conscience of the Court, as to whether, the same were sufficient to dispense with the departmental enquiry, and invoke the provisions of Article 311 (2) of the Constitution of India, but the same was not produced. This clearly proves that no such reasons were recorded, by the competent authority, while dispensing with the departmental enquiry and before passing the order Annexure P-2, dismissing the petitioner from service. Under these circumstances, it was a fit case, in which the regular departmental enquiry, could be held, against the petitioner, for taking action against him. The satisfaction recorded by the respondent, in the Order Annexure P-2, that it was reasonably impracticable to hold a departmental enquiry, against the petitioner, was merely based on conjectures and surmises. It was an arbitrary satisfaction. Under these circumstances, the order dated 14th December, 1988 (Annexure P-2) being illegal deserves to be quashed.

(16) For the reasons, recorded hereinbefore, the Writ Petition is accepted, with no order as to costs, and the order of dismissal dated 14th December, 1988 (Annexure P-2) is quashed. The respondent is directed to reinstate the petitioner into service, and compute the consequential monetary benefits, flowing from the quashing of the aforesaid order, as per the relevant Rules, and pay the same to him, within a period of four months, from the date of receipt of a certified copy of the judgment. The respondent shall, however, be competent to hold a regular departmental enquiry, as per the relevants Rules, in relation to the allegations, referred to hereinbefore, and take further action in accordance with law.

R.N.R.