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JASWANT SINGH

v.

STATE OF PUNJAB AND ORS.

NOVEMBER 27, 1990

B [K. JAGANNATHA SHETTY AND A.M. AHMADI, JJ.]

Constitution of India, 1950: Article 311(2) Second Proviso clause (b)—Dismissal under—Dispensing with departmental enquiry—Reasoning-subjective satisfaction of the authority—Whether open to Judicial Review.

C *Service Law: Civil Services: Punjab Police Rules—Rule 16.2—Dismissal from service—Dispensing with departmental enquiry contemplated under Article 311(2) of the Constitution—Reasonable Practicability of holding an enquiry—Absence of independent materials justifying the dispensation—Consequent dismissal order—Sustainability of.*

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The appellant, a Policeman, was dismissed from service on the basis of certain allegations that he was instigating his fellow police officials to cause indiscipline, insubordination and disloyalty. The Assistant Inspector-General of Police who passed the dismissal order, dispensed with the departmental enquiry contemplated by Article E **311(2) of the Constitution on the ground that it was not feasible to hold an enquiry in view of the appellant's threats that he with the help of other police employees, would not allow holding of any departmental enquiry against him and that he and his associates would not hesitate to cause physical injury to the withnesses and the enquiry officer.**

F **Against the said dismissal order, the appellant preferred an appeal to the authorities which was of no avail. He, therefore, filed a writ petition before the High Court challenging the dismissal order. The writ petition was dismissed *in limine*. Aggrieved by the summary dismissal of his writ petition, the appellant preferred this appeal by special leave.**

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On behalf of the appellant it was contended that the action taken against him was clearly *mala fide* and actuated by ulterior motives. It was also stated that on some earlier occasions the appellant was placed under suspension but was reinstated later. Also a case under Section 309 IPC for attempt to commit suicide was registered against him and H **he was convicted. However, the appeal preferred by the appellant was**

allowed and he was acquitted. It was further contended that there was no justification for dispensing with the enquiry contemplated by Article 311(2) of the Constitution and the reason given therefore was wholly imaginary. A

Allowing the appeal, this Court,

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HELD: 1. Clause (b) of the second proviso to Article 311(2) of the Constitution can be invoked only when the authority is satisfied from the material placed before him that it is not reasonably practicable to hold a departmental enquiry. [363C]

Union of India & Anr. v. *Tulsi Ram Patel & Ors.*, [1985)] Suppl. 2 SCR 131, relied on. C

Divisional Personnel Officer v. *T.R. Chellappan*, [1976] 1 SCR 783, referred to.

2. Although clause (3) of Article 311 makes the decision of the disciplinary authority in this behalf final, such finality can certainly be tested in a court of law and interfered with if the action is found to be arbitrary or *mala fide* or motivated by extraneous considerations or merely a ruse to dispense with the enquiry. [361G] D

Satyavir Singh & Ors. v. *Union of India & Ors.*, [1985] 4 SCC 252; *Shivaji Atmaji Sawant* v. *State of Maharashtra & Ors.*, [1986] 2 SCC 112; *Ikramuddin Ahmed Borah* v. *Superintendent of Police, Darrang & Ors.*, [1988] Suppl. SCC 663, relied on. E

3. The decision to dispense with the departmental enquiry cannot be rested solely on the *ipse dixit* of the concerned authority. When the satisfaction of the concerned authority is questioned in a 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 the whim or caprice of the concerned officer. [363E] F

4.1. In the instant case, satisfaction was based on the ground that the appellant was instigating his colleagues and was holding meetings with other police officials with a view to spreading hatred and dissatisfaction towards his superiors. This allegation is based on his alleged activities on April 3, 1981 reported by SHO. That report is not forthcoming. It is no one's contention that the said SHO was threatened. The third respondent's counter also does not reveal if he had G H

verified the correctness of the information. To put it tersely, the subjective satisfaction recorded in paragraph 3 of the order is not fortified by any independent material to justify the dispensing with of the inquiry envisaged by Article 311(2) of the Constitution. On this short ground alone the impugned order cannot be sustained. [363G-H; 364A-B]

4.2. Moreover, the earlier departmental enquiries were duly conducted against the appellant and there was no allegation that the department had found any difficulty in examining the witnesses in the said enquiries. It was incumbent on the department to disclose to the Court, the material in existence on the date of passing the order, but the department could not disclose any such material. Besides it is difficult to understand how the appellant could have given the threats when he was hospitalised. [363F, F]

[This Court directed that the appellant should be reinstated in service forthwith, with all monetary benefits like pay, allowances etc. available to him from the date of dismissial.]

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 10587 of 1983.

From the Judgment and Order dated 11.8.1982 of the Punjab and Haryana High Court in Civil Writ Petition No. 932 of 1982.

R.K. Garg, and P.N. Gupta him for the Appellant.

M.S. Gujral, C.M. Nayyar, Arun Madan and H.S. Munjral for the Respondents.

The Judgment of the Court delivered by

AHMADI, J. Invoking clause (b) of the second proviso to Article 311(2) of the Constitution of India and Rule 16.1(2) of the Punjab Police Rules, the Assistant Inspector General, Government Railway Police, Patiala, passed the impugned order dated April 7, 1981 dismissing the petitioner from service with immediate effect. The reasons assigned for dispensing with the departmental enquiry contemplated by Article 311(2) of the Constitution are set out in paragraph 3 of the impugned order, which reads as under:

> "And whereas it has been reported that he has thrown threats that he with the help of other police employees will

not allow holding of any department enquiry against him and he and his associates will not hesitate to cause physical injury to the witnesses as well as the enquiry officer."

The dismissal order is based on the allegation that the appellant was instigating his fellow police officials to cause indiscipline, show insubordination and exhibit disloyalty; that he was meeting other police officials and inducing them to stand against the senior officers and was thus spreading discontentment, hatred and dissatisfaction amongst his fellow policemen towards the superiors and that he betrayed lack of sense of discipline which was highly unbecoming of a member of the police force expected to maintain law and order. The appellant, feeling aggrieved by this order, preferred an appeal but of no avail. He, therefore, filed a Writ Petition No. 932 of 1982 in the High Court of Punjab & Haryana challenging the impugned order on diverse grounds. The said Writ Petition was dismissed *in limine* on August 11, 1982. Feeling aggrieved by the summary dismissal of his Writ Perition he has preferred the present appeal by special leave. In order to understant his grievance it may be necessary to notice a few facts.

The appellant was placed under suspension on April 19, 1978 on the ground that he had absented himself from duty to attend the Annual Nirankari Samagam held on April 13, 1978. The allegation was enquired into through the concerned Assistant Superintendent of Police. As nothing objectionable was found he was exonerated and was ordered to be taken back in service with effect from the date of his suspension. Thereafter, two departmental enquiries were initiated. against him. The outcome of the first inquiry was his reversion to the lower post of Constable: the second inquiry resulted in his dismissal from service. Both these orders of April 27, 1979 and October 12, 1979 respectively, passed by ASP/GRP, Patiala were challenged by two separate appeals. Both these appeals were dismissed by the third respondent by his orders dated March 18 and 19, 1980. The appellant preferred two separate Revision Applications to the Inspector General of Police. Punjab which were allowed on October 13, 1980 and both the cases were remanded with a direction to re-consider the inquiry report and pass fresh orders. The ASP/GRP was directed to reinstate the appellant and then issue fresh show cause notices. After the above orders were passed the appellant re-joined duties as Head Constable on March 5, 1981. The third respondent. however, placed him under suspension forthwith. Thereafter, the appellant sought an interview with the Director General/Inspector General of Police, Punjab by his

A two letters dated March 23 and 27, 1981 addressed to respondent No. 3. Since respondent No. 3 refused permission the appellant claims to have written a letter dated March 24, 1981 to the DG/IGP informing him about the objectionable activities of respondent No. 3. the receipt of this letter by the office of DG/IGP is, however, disputed although the appellant has produced an acknowledgement dated March 27, 1981 B evidencing the receipt thereof. Be that as it may, the fact remains that after the remand orders were passed in the appellant's two Revision Applications, the third respondent issued two separate notice, both dated April 4, 1981, calling upon the appellant to show cause within 10 days from receipt thereof why he should not be dismissed from service. Before the service of these show cause notices an incident occurred at about 11.00 a.m. on April 6, 1981 in GRP Lines, Patiala, where the C appellant resided. The allegation is that on that date at the said time and place S.I., Niranjan Singh, A.S.I., Harmel Singh and A.S.I., Ram Prakash were in the verandah of barrack No. 8. In their full view the appellant appeared in the verandah with a knife in his left hand and tried to plunge the same into his chest with a view to committing D suicide. S.I., Niranjan Singh, acting on impulse, gave a push to the appellant's left but in the process the blade of the knife caused an injury to the appellant on his right arm and his shirt was blood stained. The appellant was charge-sheeted under section 309 I.P.C. and was sent to the hospital for treatment. It is alleged that while he was in hospital the two show cause notices were served on him on April 6, E 1981 at about 10.00 p.m. Even though 10 days time was allowed to him to show cause, the third respondent who was biased against him passed the impugned order of dismissal on April 7, 1981. The appellant contends that the third respondent's action was clearly *mala fide* and actuated by ulterior motives. The appellant further contends that there was no justification for dispensing with the enquiry contemplated by F Article 311(2) and the ground given in paragraph 3 of the impugned order is wholly imaginary. He further contends that the impugned order of April 7, 1981 was not actually served on him but his signature was obtained on some piece of paper while he was in hospital. According to him, after he was discharged from the hospital he applied for a copy of the impugned order but the third respondent failed to furnish G the same to him. Similar applications were also addressed to the DG/IGP from time to time but he did not receive any reply to his letters and reminders. Since the period of limitation for filing an appeal was likely to expire he preferred his appeal without being aware of the contents of the impugned order. This appeal was dismissed by the DG/IGP by his order dated January 29, 1982. He then filed a Civil Suit H in the Court of the learned Senior Sub-Judge, Patiala, wherein he

applied for production of documents and secured an order for the production of a copy of the impugned dismissal order dated April 7, 1981. After a copy of the impugned order was produced he preferred another departmental appeal but that too was dismissed on February 5, 1982. After he failed to pursuade the Appellate Authority to look into his grievances he filed the Writ Petition which has given rise to this appeal. The department's case found in the counter is that on the night of April 5/6, 1981. The Lines Officer had gone to check the presence of the appellant in his quarter when the latter bolted the door from inside and threatened the Lines Officer and then filed a false case that the Lines Officer had broken his window panes and had thrown stones in his room. On inquiry the complaint was found to be baseless. Thereafter, on April 6, 1981, at about 11.00 a.m. the appellant attempted to commit suicide

Before we deal with the challenge to the impugned order of dismissal it may be stated that the appellant was convicted under section 309 I.P.C. by the learned Judicial Magistrate, First Class, Patiala, by his order dated March 15, 1985. The appellant preferred an appeal, being Criminal Appeal No. 27 of 1985, in the Court of the learned Sessions Judge, Patiala, which was allowed. The learned Sessions Judge found several flaws in the prosecution version regarding the incident and opined that the two eye-witnesses S.I., Niranjan Singh and A.S.I., Harmel Singh had betrayed special bias against the appellant whose relations with his superiors were strained. The learned Sessions Judge also felt that evidence regarding his radiological examination was suppressed and no effort was made to measure the depth of his injury which would have thrown considerable light. While dealing with the prosecution evidence against the appellant, the learned Sessions Judge observed as under:

> "Against this background, I find no difficulty to deduce the inference that the accused was considered by him (respondent No. 3) a thorn in flesh. S. I. Niranjan Singh was also inimically deposed towards the accused. In these circumstances evidence of the eye-witnesses has to be approached with a pinch of salt."

He reached the conclusion of acquittal in paragraph 8 of his judgment in the following words:

> "In the light of the above discussion, it is permissible to conclude that for certain reasons not disclosed on the file,

A the accused had incurred wrath of his superiors including Shri S.S. Mann (respondent No. 3), the appointing and dismissing authority of the accused. Before the present occurrence, the authorities had passed very drastic orders against the accused. Against this back ground, in the absence of any independent and reliable evidence, the pos-
B sibility of the accused having been falsely implicated in this case cannot be ruled out."

It will thus be seen from the learned Sessions Judge's order that the appellant's defence was that he was wrongly framed at the behest of respondent No. 3 by S.I., Niranjan Singh and A.S.I., Harmel Singh who had posed as eye-witnesses to the incident. According to him
C there was actually an attempt to take his life. The prosecution admittedly did not pursue the matter any further and allowed the order of acquittal to become final. From the judgment of learned Sessions Judge two things become abundantly clear, namely, (i) that the incident had taken place on the morning of April 6, 1981 at the GRP
D Lines, Patiala in which the appellant had sustained a knife injury on his right upper arm; and (ii) that he was in hospital on April 6 and 7, 1981 when the two show cause notices and the impugned order of dismissal were served upon him. The story that an attempt was made to serve the notices on April 6, 1981 early in the morning cannot be believed. It is in the backdrop of these facts that we must consider the
E appellant's allegation that the dismissal order was passed in hot haste by the third respondent who was inimical towards him as he had become a threat to his prejudicial activities.

Article 310 of our Constitution which engrafts the pleasure doctrine of the English common law is, however, qualified by the
F opening words 'except as expressly provided by this Constitution'. Article 311 is one such express provision. According to clause (1) thereof, a person who is a member of a civil service cannot be dismissed or removed from service by an authority subordinate to that by which he was appointed. Clause (2) next provides that no such person shall be dismissed or removed or reduced in rank except after an
G 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. Then comes the first proviso with which we are not concerned. The second proviso has three clauses but we are concerned with clause (b) only. Clause (b) of that second proviso reads as under:

H "Provided further that this clause shall not apply-

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(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."

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Thus the English doctrine incorporated in Article 310 which is qualified by the opening words "except as expressly provided by this Constitution" is subject to Article 311(1) and (2) which contains safeguards against termination from service. However, the second proviso to Article 311(2) is again in the nature of an exception and lays down that in cases catalogued in clauses (a), (b) and (c) thereof the requirement of an inquiry can be dispensed with. The scope of Articles 310 and 311 of the Constitution was examined by this Court in *Union of India & Anr.* v. *Tulsi Ram Patel & Ors.*, [1985] Suppl. 2 SCR 131 wherein by majority this Court held that once the requirements of the relevant clause of the second proviso are satisfied, the services of a civil servant can be terminated without following the *audi alteram partem* rule. It was held that since the requirement of Article 311(2) was expressly excluded by the second proviso, there was no question of introducing the same by the back door. On this line of reasoning, the majority held that *Challapan's* case [1976] 1 SCR 783 was not correctly decided. It, therefore, took the view that it is not necessary to offer a hearing to the civil servant even on the limited question of punishment. Insofar as clause (b) is concerned this Court pointed out that two conditions must be satisfied to sustain any action taken thereunder. These are (i) there must exist a situation which renders holding of any inquiry "not reasonably practicable" and (ii) the disciplinary authority must record in writing its reasons in support of its satisfaction. Of course the question of practicability would depend on the existing fact-situation and other surrounding circumstances, that is to say, that the question of reasonable practicability must be judged in the light of the circumstances prevailing at the date of the passing of the order. Although clause (3) of that Article makes the decision of the disciplinary authority in this behalf final such finality can certainly be tested in a court of law and interfered with if the action is found to be arbitrary or *mala fide* or motivated by extraneous considerations or merely a ruse to dispense with the inquity. Also see: *Satyavir Singh & Ors.* v. *Union of India & Ors.*, [1985] 4 SCC 252; *Shivaji Atmaji Sawant* v. *State of Maharashtra & Ors.*, [1986] 2 SCC 112 and *Ikramuddin Ahmed Borah* v. *Superintendent of Police, Darrang & Ors.*, [1988] Suppl. SCC 663.

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A The impugned order of April 7, 1981 itself contains the reasons for dispensing with the inquiry contemplated by Article 311(2) of the Constitution. Paragraph 3 of the said order, which we have extracted earlier, gives two reasons in support of the satisfaction that it was not reasonably practicable to hold a departmental enquiry against the appellant. These are (i) the appellant has thrown threats that he with B the help of other police employees will not allow holding of any departmental enquiry against him and (ii) he and his associates will not hesitate to cause physical injury to the witnesses as well as the enquiry officer. Now as stated earlier after the two Revision Applications were allowed on October 13, 1980, the appellant had re-joined service as Head Constable on March 5, 1981 but he was immediately placed under suspension. Thereafter, two show cause notices dated April 4, C 1981 were issued against him calling upon him to reply thereto within 10 days after the receipt thereof. Before the service of these notices the incident of alleged attempt to commit suicide took place on the morning of April 6, 1981 at about 11.00 a.m. In that incident the appellant sustained an injury on his right arm with a knife. He was, D therefore, hospitalised and while he was in hospital the two show cause notices were served on him at about 10.00 p.m. on April 6, 1981. Before the appellant could reply to the said show cause notices the third respondent passed the impugned order on the very next day i.e. April 7, 1981. Now the earlier departmental enquiries were duly conducted against the appellant and there is no allegation that the depart- E ment had found any difficulty in examining witnesses in the said inquiries. After the Revision Applications were allowed the show cause notices were issued and 10 days time was given to the appellant to put in his replies thereto. We, therefore, enquired from the learned counsel for the respondents to point out what impelled respondent No. 3 to take a decision that it was necessary to forthwith terminate the F services of the appellant without holding an inquiry as required by Article 311(2). The learned counsel for the respondents could only point out clause (iv)(a) of sub-para 29(A) of the counter which reads as under:

> "The order dated 7.4.81 was passed as the petitioner's G activities were objectionable. He was instigating his fellow police officials to cause indiscipline, show insubordination and exhibit disloyalty, spreading discontentment and hatred, etc. and his retention in service was adjudged harmful."

H This is no more than a mere reproduction of paragraph 3 of the

impugned order. Our attention was not drawn to any material existing on the date of the impugned order in support of the allegation contained in paragraph 3 thereof that the appellant had thrown threats that he and his companions will not allow holding of any departmental enquiry against him and that they would not hesitate to cause physical injury to the witnesses as well as the enquiry officer if any such attempt was made. It was incumbent on the respondents to disclose to the Court the material in existence at the date of the passing of the impugned order in support of the subjective satisfaction recorded by respondent No. 3 in the impugned order. Clause (b) of the second proviso to Article 311(2) can be invoked only when the authority is satisfied from the material placed before him that it is not reasonably practicable to hold a departmental enquiry. This is clear from the following observation at p. 270 of *Tulsi Ram's* case:

> "A disciplinary authority is not expected to dispense with a disciplinary authority 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 decision to dispense with the departmental enquiry cannot, therefore, be rested solely on the *ipse dixit* of the concerned authority. When the satisfaction of the concerned authority is questioned in a 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 the whim or caprice of the concerned officer. In the counter filed by the third respondent it is contended that the appellant, instead of replying to the show cause notices, instigated his fellow police officials to disobey the superiors. It is also said that he threw threats to beat up the witnesses and the Inqury Officer if any departmental inquiry was held against him. No particulars are given. Besides it is difficult to understand how he could have given threats, etc., when he was in hospital. It is not shown on what material the third respondent came to the conclusion that the appellant had thrown threats as alleged in paragraph 3 of the impugned order. On a close scrutiny of the impugned order it seems the satisfaction was based on the ground that he was instigating his colleagues and was holding meetings with other police officials with a view to spreading hatred and dissatisfaction towards his superiors. This allegation is based on his alleged activities at Jullundur on April 3, 1981 reported by SHO/GRP, Jullundur. That report is not forthcoming. It is no one's contention that the said SHO was threatened. The third respondent's counter also

A does not reveal if he had verified the correctness of the information. To put it tersely the subjective satisfaction recorded in paragraph 3 of the impugned order is not fortified by any independent material to justify the dispensing with of the inquiry envisaged by Article 311(2) of the Constitution. We are, therefore, of the opinion that on this short ground alone the impugned order cannot be sustained.

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It was then submitted by learned counsel for the respondents that since the High Court had dismissed the appellant's Writ Petition *in limine* we may remit the matter to the High Court for disposal on merits. We do not think that we would be justified in doing so after a lapse of almost 7 to 8 years. As we do not consider it necessary to go into the factual aspect bearing on the question of *mala fides* and rest C our judgment on the legal aspect only, we do not think it necessary to remit the matter to the High Court and vex the appellant further by another round of litigation.

In the result we allow this appeal, set aside the order of the High D Court and quash the impugned order of dismissal dated April 7, 1981 and direct that the appellant shall be re-instated in service forthwith with all monetary benefits as to pay, allowances, etc., available to him from the date of his dismissal. Needless to say that it would be open to the department, if it is so advised notwithstanding the lapse of time, to proceed with the two show cause notices dated April 4, 1981. The respondents will pay the cost of this appeal.

G.N. Appeal allowed.