

UNION TERRITORY, CHANDIGARH AND ORS.

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v.

MOHINDER SINGH

FEBRUARY 14, 1997

[B.P. JEEVAN REDDY AND SUJATA V. MANOHAR, JJ.]

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Service Law :

Dismissal—Departmental enquiry—Reasonable practicability of—Senior Superintendent of Police dismissed Sub-Inspector in the year 1991 after dispensing with regular departmental enquiry—For the reason that witnesses would not come forward freely to depose against the Sub-Inspector—Order of dismissal was based on report of Superintendent of Police after an enquiry into allegations against the Sub-Inspector of gross misuse of power and extortion of money by illegally detaining and torturing an innocent person—The said report confirmed the allegations and further stated that the Sub-Inspector was a terror in the area, that in the very presence of the Superintendent of Police the Sub-Inspector intimidated the complainant victim—Two other persons arrested along with the complainant—Victim and present there left the office of the Superintendent of Police terrified by the threats held out by the Sub-Inspector—Held: In such circumstances, keeping in view the situation in Punjab in the year 1991, the conclusion of the Senior Superintendent of Police that holding of enquiry against the Sub-Inspector was not reasonably practicable, not unjustified—Constitution of India, 1950: Article 311(2) proviso (b) & (3).

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The respondent-Sub Inspector was dismissed from service in the year 1991 by the Senior Superintendent of Police. The Superintendent of Police dispensed with the regular departmental enquiry-invoking Article 311(2) proviso (b) of the Constitution for the reason that witnesses would not come forward freely to depose against the respondent. The order of dismissal was based on the report of the Superintendent of Police after an enquiry into allegations against the respondent of gross misuse of power and extortion of money by illegally detaining and torturing an innocent person. The said report confirmed the allegations and further stated that the respondent was a terror in the area, that in the very presence of the Superintendent of Police the respondent had intimidated the complainant-

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A victim. Two other persons arrested along with the complainant-victim and present there immediately left the office of the Superintendent of Police terrified by the threats held out by the respondent. Under these circumstances the Senior Superintendent of Police concluded that holding of departmental enquiry against the respondent was not reasonably practicable.

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The appeal preferred by the respondent was allowed by the Central Administrative Tribunal. Being aggrieved the appellant preferred the present appeal.

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Allowing the appeal, this Court

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HELD : 1. The Central Administrative Tribunal has not referred to Article 311(3) at all in its order. It is not suggested that because of clause (3), the court or the Tribunal should completely shut its eyes. Nor is it suggested that in every case the court should blindly accept the recital in terms of the said proviso contained in the order of dismissal. In the instant case - keeping in view that the incidents were happening in the year 1991 in the State of Punjab - the Senior Superintendent of Police cannot be said to be not justified in holding that it is not reasonably practicable to hold an inquiry against the respondent. [76-D-G]

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CIVIL APPELLATE JURISDICTION : Civil Appeal No. 787 of 1997.

From the Judgment and Order dated 15.9.95 of the Central Administrative Tribunal, Chandigarh in O.A. No. 1446 of 1991.

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Ms. Kamini Jaiswal for the Appellants.

M.L. Verma and M.K. Dua for the Respondent.

The Judgment of the Court was delivered by

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B.P. JEEVAN REDDY, J. Leave granted. Heard the counsel for the parties.

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The respondent, a Sub-Inspector of Police in the service of the Administration of the Union Territory of Chandigarh, has been dismissed from service by the Senior Superintendent of Police, Union Territory,

Chandigarh. The Senior Superintendent of Police dispensed with the enquiry invoking proviso (b) to clause (2) of Article 311 of the Constitution of India and made the order of dismissal on 5th July, 1991. An appeal preferred by the respondent was dismissed by the Inspector General of Police on 30th September, 1991 whereupon the respondent approached the Central Administrative Tribunal, Chandigarh. The Tribunal found, following its earlier order dated June 2, 1995 in O.A. No. 232/Ch/94 (*Baljit Singh v. Chandigarh Administration*), that the ground upon which the Senior Superintendent has dispensed with the enquiry is not sustainable in law. Accordingly, the Tribunal quashed the order of dismissal and the appellate order and directed the administration to reinstate the respondent with all attendant benefits.

The order of dismissal reads as follows :

"ORDER

Whereas SI Mohinder Singh No. CHG/1 was holding the post of Sub-Inspector in the Police Department, Union Territory, Chandigarh.

It was brought to my notice that he indulged in gross misuse of official power and attempted to extort money from an innocent victim after illegally detaining and torturing him in the Police Station, which amounts to grave misconduct on the part of a Police Officer.

Shri Baldev Singh, Superintendent of Police, Intelligence, UT, Chandigarh, has also conducted an enquiry against him for his aforesaid nefarious activities and misdeeds and has submitted a report which proves the misconduct of SI Mohinder Singh No. CHG/1.

From the facts and circumstances of the case, I am satisfied that he has indulged in gross misuse of official power.

And further, I, Sumedh Singh Saini, Senior Superintendent of Police, Union Territory, Chandigarh, after considering all the facts and circumstances of the case, am satisfied under sub clause (b) of the proviso to sub-section (2) of Article 311 of the Constitution

A of India, that it is not reasonably practicable to hold an enquiry against SI Mohinder Singh No. CHG/1 for the reasons that the witnesses cannot come forward freely to depose against him in a regular departmental enquiry.

B Now, therefore, I, Sumedh Singh Saini, Senior Superintendent of Police, Union Territory, Chandigarh, appointing authority of SI Mohinder Singh No. CHG/1, hereby dismiss him from Government service with immediate effect.

sd/-

C Senior Superintendent of Police
UT, Chandigarh

SI Mohinder Singh, No. CHG/1,
PS North, Chandigarh."

D The order of dismissal refers to and is based upon the report of Sri Baldev Singh, Superintendent of Police, Intelligence, Union Territory, Chandigarh. It is, therefore, necessary to notice the main features of the said Report. The Report says that the respondent arrested one Ranjit Singh from his house at about 11.45 P.M. on the night intervening 3rd/4th July, 1991 along with two friends of Ranjit Singh who happened to be in his house at that time, brought Ranjit Singh to the police station and tortured him mercilessly on the plea that he was harbouring terrorists. It is reported that the respondent was in a drunken condition at that time and that he was repeatedly asking Ranjit Singh about the whereabouts of a particular terrorist. The respondent also told Ranjit Singh that he was torturing him at the instance of his superior officers. He demanded a sum of Rupees sixty thousand from Ranjit Singh as a condition for releasing him. Ultimately, a sum of Rupees twenty thousand was paid to the respondent whereafter Ranjit Singh was released. The Report submits that the ground on which Ranjit Singh was arrested and tortured was wholly baseless and that it was done with a view to extort money from him. The last paragraph of the Report is relevant for the present purposes and reads thus :

H "I may mention that this SI is a terror in the area and in a regular departmental enquiry no policemen or private man is likely to depose against him. In my presence he intimidated the com-

plainant, Shri Ranjit Singh who appeared to be visibly terrified of this Sub Inspector. Also, the 3 guests of Shri Ranjit Singh, who were also victims of the harassment caused by SI Mohinder Singh, left Chandigarh immediately on being released as they were terrified of the Sub Inspector. Before going they told Shri Ranjit Singh that they would not testify against SI Mohinder Singh because they were scared of him. As such I am of the opinion that no useful purpose would be served by initiating any departmental proceedings against him and would recommend that stern disciplinary action be taken against him.

Sd/-
Superintendent of Police
Intelligence, UT, Chandigarh
Dt. 5.7.91"

We are unable to understand the reasoning of the Tribunal when it says that the reason given by Senior Superintendent of Police is not sufficient reason for dispensing with the enquiry under proviso (b) to Article 311(2). The order of dismissal recites that "it is not reasonably practicable to hold an enquiry against SI Mohinder Singh CHG/1 for the reason that the witnesses cannot come forward freely to depose against him in a regular departmental enquiry". Clauses (2) and (3) of Article 311, insofar as, they are relevant read thus :

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

(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.

A Provided further that this clause shall not apply --

(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

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(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."

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Clause (3) of Article 311, it may be noticed, declares that where a question arises whether it is reasonably practicable to hold an inquiry as contemplated by clause (2), the decision of the authority empowered to dismiss such person shall be final on that question. The Tribunal has not referred to clause (3) at all in its order. We are not suggesting that because of clause (3), the court or the Tribunal should completely shut its eyes. Nor are we suggesting that in every case the court should blindly accept the recital in terms of the said proviso contained in the order of dismissal. Be that as it may, without going into the question of extent and scope of judicial review in such a matter, we may look to the facts of this case. The Superintendent of Police, Intelligence, has reported that the respondent "is a terror in the area" and, more important, in his very presence, the respondent "intimidated the complainant Shri Ranjit Singh who appeared to be visibly terrified of this Sub Inspector". It is also reported that the other persons who were arrested with Ranjit Singh, and who were present there, immediately left his office terrified by the threats held out by the respondent. In such a situation - and keeping in view that all this was happening in the year 1991 in the State of Punjab - the Senior Superintendent of Police cannot be said to be not justified in holding that it is not reasonably practicable to hold an inquiry against the respondent.

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Sri M.L. Verma, learned counsel for the respondent, submitted that a similar allegation was made against the Inspector of Police (superior of the respondent) but that in his case, proviso (b) to Article 311(2) was not invoked. We have seen the Report against the Inspector. We find that H allegation against him is entirely different. Above all, there is no allegation

that the Inspector held out any threat to Ranjit Singh in the present of the Superintendent of Police or any other superior officers. The said plea has no substance whatsoever. A

Accordingly, this appeal is allowed and the judgment of the Tribunal is set aside. No costs.

V.S.S.

Appeal allowed. B