

\* **HIGH COURT OF DELHI : NEW DELHI**

+ **Writ Petition (Civil) No. 4001 of 2001**

Judgment reserved on: November 19, 2009

% Judgment delivered on: January 13, 2010

Harvir Singh  
S/o Shri Dharam Vir  
R/o House No.73, CPO Block  
Madangir, New Delh-110062. ...Petitioner

Through: Mr. Arun Bhardwaj, Adv.

Versus

1. Union of India  
Through Secretary  
Ministry of Home Affairs  
North Block  
New Delhi-110001.
2. The Commissioner of Police  
M.S.O. Building, Police Headquarters  
I.P. Estate, New Delhi.
3. The Addl. Commissioner of Police  
(Armed Police & Training)  
M.S.O. Building, Police Headquarters  
I.P. Estate, New Delhi.
4. The Deputy Commissioner of Police  
VIII Bn. DAP  
Malviya Nagar, New Delhi. ...Respondents

Through: Mr. V.K. Tandon, Adv.

**WITH**

**Writ Petition (Civil) No. 2870 of 2001**

Union of India  
Through Commissioner of Police  
M.S.O. Building, Police Headquarters  
I.P. Estate, New Delhi. ...Petitioner

Through: Mr. V.K. Tandon, Adv.

Versus

1. Central Administrative Tribunal  
Through its Registrar  
Principal Bench, Faridkot House  
New Delhi.
2. Ex. Constable Harvir Singh  
No. 9748/DAP  
S/o Shri Dharam Vir  
R/o House No. 73, C.P.O. Block  
Madangir  
New Delhi-110062. ...Respondents

Through: Mr. Arun Bhardwaj, Adv.

Coram:

**HON'BLE MR. JUSTICE MADAN B. LOKUR**  
**HON'BLE MS. JUSTICE MUKTA GUPTA**

1. Whether the Reporters of local papers may  
be allowed to see the judgment? Yes
2. To be referred to Reporter or not? Yes
3. Whether the judgment should be reported  
in the Digest? Yes

**MADAN B. LOKUR, J.**

These are two writ petitions arising out of the same order dated 26<sup>th</sup> May, 2000 passed by the Central Administrative Tribunal in O.A. No. 1471 of 1998.

2. The question for consideration arises in the following circumstances: An order was passed on 16<sup>th</sup> April, 1993 in respect of Harvir Singh under clause (b) of the second proviso to Article 311 (2) of the Constitution. By this order, a departmental inquiry against him (in respect of allegations of criminal misconduct) was dispensed with on the ground that it was not reasonably practicable to hold such an inquiry. On a challenge being made, the Tribunal upheld this order. Subsequently, Harvir Singh was acquitted in the criminal cases filed against him arising out of his alleged criminal misconduct.

The question before us is this: Could the Tribunal set aside the order dated 16<sup>th</sup> April, 1993 merely on Harvir Singh's acquittal in the criminal cases? Our answer to this question is in the negative.

3. At the relevant time, Harvir Singh (hereafter referred to as

the Petitioner) was working with the Delhi Police as a Constable. It was alleged that he was involved in the theft of several cars. First Information Reports were registered against the Petitioner in several such cases and even the stolen cars were alleged to have been recovered from him. On a consideration of the entire facts and circumstances of the case, a departmental inquiry against him was dispensed with by his disciplinary authority by resorting to clause (b) of the second proviso to Article 311 (2) of the Constitution and he was thereafter dismissed from service on 16<sup>th</sup> April, 1993.

4. The Petitioner preferred a departmental appeal against his dismissal but since it was not decided for quite some time, he preferred an Original Application before the Tribunal which directed the Commissioner of Police (hereafter referred to as the Respondents) to dispose of the departmental appeal within a specified time. The Respondents eventually dismissed the appeal by an order dated 11<sup>th</sup> July, 1994.

5. Feeling aggrieved by the rejection of his departmental appeal, the Petitioner preferred OA No. 1756/1994 in the Tribunal but

that was dismissed by an order dated 6<sup>th</sup> January, 1995. Thus the order dispensing with the inquiry and his dismissal from service attained finality and even the Petitioner took no further proceedings with regard to dispensing with the inquiry by his disciplinary authority and his dismissal from service.

6. Quite separately, in respect of the first information reports filed against the Petitioner for being involved in the theft of cars, trials were conducted by the Metropolitan Magistrate and by decisions rendered, the Petitioner was either discharged or acquitted in the criminal cases.

7. Based on his discharge/acquittal, the Petitioner made a representation before the Additional Commissioner of Police on 14<sup>th</sup> October, 1997 praying that the order of dismissal be set aside and his reinstatement in service be ordered. This application was rejected on 12<sup>th</sup> June, 1998.

8. Feeling aggrieved, the Petitioner preferred OA No. 1471/1998 which came to be allowed by the Tribunal by the impugned

order dated 26<sup>th</sup> May, 2000. The Tribunal directed the Respondents to reinstate the Petitioner in service but passed no order with regard to any consequential benefits being granted to the Petitioner. Consequently, the Petitioner has challenged the decision of the Tribunal refusing to grant him consequential benefits by filing WP (C) No. 4001 of 2001 in this Court.

9. The Respondents are also aggrieved by the same order of the Tribunal and have challenged the direction for reinstatement by filing WP (C) No. 2870 of 2001. No interim relief was granted to the Respondents and we are told that, therefore, they have reinstated the Petitioner in service and he is presently working with the Delhi Police.

10. The grievance of the Petitioner is limited to the grant of consequential benefits, that is, back wages, etc. for the period that he was out of service. In our opinion, the Petitioner is not entitled to any consequential relief whatsoever. The grievance of the Respondents is against the direction requiring them to reinstate the Petitioner. The Respondents are, in our opinion, entitled to the relief prayed for and the order reinstating the Petitioner in service is liable to be set aside but we

propose to deal with the issue of relief separately.

11. It appears to us that the Tribunal completely misdirected itself in law. There are effectively two orders passed against the Petitioner – first, dispensing with a departmental inquiry on the ground that it is not reasonably practicable to hold it and second, dismissing the Petitioner from service without an inquiry. Both the orders have attained finality. The Tribunal could not have reopened the second issue (while ignoring the first issue, that is, the order dispensing with the departmental inquiry) and directed the reinstatement of the Petitioner merely because of his discharge/acquittal in the criminal cases. The dismissal from service was consequential to dispensing with the departmental inquiry. The Tribunal completely lost sight of this.

12. The order dispensing with the inquiry as well as the order dismissing the Petitioner from service operate in an entirely different field from the criminal cases launched against the Petitioner. Both these orders attained finality when the Petitioner's OA was rejected by the Tribunal and he did not challenge that order by filing a writ petition in this Court. What the Tribunal has done is to effectively set aside both

the orders merely on the ground that the Petitioner has been discharged/acquitted in the criminal cases filed against him. As mentioned above, the dismissal of the Petitioner from service was a consequence of the conclusion that that it was not reasonably practicable to hold an enquiry. Merely because the Petitioner was discharged/acquitted in the criminal cases does not mean that the order of dismissal was bad in law or that the order passed by the Respondents that it was not reasonably practicable to hold an enquiry was invalid. This is more so when the correctness of both orders was upheld by the Tribunal itself. We are of the opinion that the Tribunal has mixed up two separate issues and has arrived at a wrong result in directing the reinstatement of the Petitioner in service. If at all the Tribunal could pass an order in favour of the Petitioner, then it could only be to hold a departmental inquiry against him – but not an order for reinstatement.

13. We are of the view that the Tribunal could not, in this case, pass an order for holding a departmental inquiry against the Petitioner. An order dispensing with a disciplinary inquiry under clause (b) of the second proviso to Article 311(2) of the Constitution is a solemn exercise of power by the disciplinary authority. It must not be lightly exercised,

but once it is exercised, it must not be lightly interfered with in view of clause (3) of Article 311 of the Constitution. In the celebrated decision in *Union of India v. Tulsiram Patel, (1985) 3 SCC 398* the Supreme Court held in paragraph 130 of the Report that:

“The condition precedent for the application of clause (b) is the satisfaction of the disciplinary authority that “it is not reasonably practicable to hold” the inquiry contemplated by clause (2) of Article 311. .... What is requisite is that the holding of the inquiry is not practicable in the opinion of a reasonable man taking a reasonable view of the prevailing situation. .... The reasonable practicability of holding an inquiry is a matter of assessment to be made by the disciplinary authority. Such 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. A disciplinary authority is not expected to dispense with a disciplinary inquiry 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....”

14. In our opinion, the Tribunal gave undue importance to the discharge/acquittal of the Petitioner in the criminal cases filed against him. It overlooked the fact that a departmental inquiry against the Petitioner was dispensed with and that this was upheld by the Tribunal on an earlier occasion. The Tribunal also overlooked the fact that it had earlier upheld the dismissal of the Petitioner. In the face of this, there

was no occasion for the Tribunal to revisit the order dated 16<sup>th</sup> April, 1993 and set it aside. It appears to us that the Tribunal acted more on the basis of sympathy for the Petitioner rather than on law. In *Tulsiram Patel*, the Supreme Court observed:

“[T]his Court must not forget that the object underlying the second proviso is public policy, public interest and public good and the Court must, therefore, repel the temptation to be carried away by feelings of commiseration and sympathy for those government servants who have been dismissed, removed or reduced in rank by applying the second proviso. Sympathy and commiseration cannot be allowed to outweigh considerations of public policy, concern for public interest, regard for public good and the peremptory dictate of a constitutional prohibition.”

The impugned order of the Tribunal is clearly erroneous and deserves to be set aside.

15. Be that as it may, in compliance with the direction of the Tribunal, the Petitioner has been reinstated in service by the Respondents. We have not been told of the Petitioner having come to the adverse notice of the Respondents since his reinstatement. Under the circumstances, after a gap of fifteen years, we do not think it appropriate to interfere with the order of reinstatement and direct the removal of the Petitioner from service. However, we are clearly of the

opinion that in the facts of the case as they stand, no ground is made out for the grant of any consequential benefits to the Petitioner. On the contrary, the Petitioner should consider himself fortunate that he has been reinstated in service.

16. Both the writ petitions are dismissed. No costs.

**MADAN B. LOKUR, J**

**January 13, 2010**  
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**MUKTA GUPTA, J**

Certified that the corrected copy of the judgment has been transmitted in the main Server.