

PETITIONER:
JASWANT SINGH

Vs.

RESPONDENT:
STATE OF PUNJAB AND ORS.

DATE OF JUDGMENT 27/11/1990

BENCH:
AHMADI, A.M. (J)
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AHMADI, A.M. (J)
SHETTY, K.J. (J)

CITATION:
1991 AIR 385 1990 SCR Supl. (3) 354
1991 SCC (1) 362 1990 SCALE (2) 1152

ACT:

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.

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

HEADNOTE:

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 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 cause physical injury to the witnesses and the enquiry officer.

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.

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 09 IPC for attempt to commit suicide was registered against him and he was convicted. However, the appeal preferred by the appellant was

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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.

Allowing the appeal, this Court,

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.

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

2. Although clause (3) of Article 311 makes the decision $\bar{A}$ 7
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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]

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

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]

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

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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 dismissal.]

JUDIS