

AFR
Reserved

Case :- SERVICE SINGLE No. - 15506 of 2019

Petitioner :- Constable 2199 (PNO 162806090) Sandeep Kumar

Respondent :- State Of U.P. Thru Prin.Secy. Home Lucknow And Ors.

Counsel for Petitioner :- Meenakshi Singh Parihar,A.P. Singh

Counsel for Respondent :- C.S.C.

Hon'ble Chandra Dhari Singh,J.

1. The petitioner has approached this Court challenging the impugned order dated 29.09.2018 by which the Senior Superintendent of Police, Lucknow has dismissed the petitioner from service and the order dated 20.05.2019 by which the representation/ appeal of the petitioner has also been dismissed by the Inspector General of Police (Establishment), Lucknow.
2. Brief facts of the case are that the petitioner was appointed on 02.11.2016 as Constable. When the petitioner was posted as Constable at Police Station Gomti Nagar, Lucknow, an FIR with Case Crime No.1132 of 2018, under Section 302 IPC was lodged on 29.09.2018 at 4:57 hours by one Ms. Sana alleging therein that when she was going to her home along with her colleague Vivek Tiwari in the night, their car was parked near City Montessori School, Gomti Nagar Extension. Two policemen came in front of the car. They tried to go away from there, the police personnel tried to stop the car and thereafter, one shot was fired. However, Vivek Tiwari drove the car but after sometime, it collided with the wall at underpass and then the complainant witnessed that Vivek Tiwari was profusely bleeding from his head. Police came there and Vivek Tiwari was taken to the hospital where he died. On the date of occurrence, the petitioner was arrested and sent to jail and vide

Office Order dated 29.09.2018, the petitioner was placed under suspension. The inquiry was assigned to the Circle Officer, Alambagh, Lucknow and on the basis of his report dated 29.09.2018, the petitioner has been dismissed from service on the same day exercising powers conferred under Rule 8(2)(b) of the U.P. Police Officers of the Subordinate Ranks (Punishment and Appeal) Rules, 1991 read with Article 311 (2)(b) of the Constitution of India. Against the order of suspension, the petitioner filed a Writ Petition No.12911 (SS) of 2019, which was dismissed as not pressed vide order dated 22.05.2019. Vide order dated 03.01.2019, the petitioner was released on bail.

3. On 30.09.2019 at about 18:57 hours another FIR in Case Crime No.1140 of 2018, under Section 302 IPC was lodged at Police Station Gomti Nagar, Lucknow by Smt. Kalpana Tiwari wife of late Vivek Tiwari against the petitioner and co-accused Prashant Chaudhary alleging therein that the co-accused Prashant Chaudhary has murdered her husband Vivek Tiwari who was working as Area Sales Manager in Apple Company. The said FIR of Case Crime No.1140 of 2018 was clubbed with Case Crime No.1132 of 2018.
4. After conducting the investigation, the Investigating Officer has submitted charge-sheet against the petitioner under Section 323 IPC in Case Crime No.1132 of 2018. Vide order dated 24.12.2018, the learned Chief Judicial Magistrate has taken cognizance under Section 323 IPC against the petitioner and under Section 302 IPC against the co-accused Prashant Chaudhary. Vide order dated 07.03.2019 passed in ST No.49 of 2019, the petitioner was summoned for framing charges under Section 323 IPC and on 22.03.2019, the learned Additional Sessions Judge-I, Lucknow had framed charges under Sections 323 and 302 IPC read with Section 114 IPC. The petitioner was

taken into custody and sent to jail. Vide order dated 16.04.2019 passed in Criminal Misc. Case No.3881 (B) of 2019, the petitioner was released on bail by this Court. Thereafter, the petitioner filed a Criminal Misc. Case No.2068 of 2019 under Section 482 of Cr.P.C. challenging the charges framed by the court below, which is still pending.

5. Learned Counsel for the petitioner has submitted that vide order dated 29.09.2018, the petitioner was placed under suspension and the Circle Officer, Alambagh was appointed as Enquiry Officer to inquire the incident which was taken on 29.09.2018. Thereafter, on the basis of the report submitted on the same day, the petitioner was dismissed from service vide impugned order dated 29.09.2018 which is in contravention of the provisions of Rule 17 of the U.P. Police Officers of the Subordinate Ranks (Punishment and Appeal) Rules, 1991 (in short '1991 Rules'). The impugned order itself shows that before passing the order of dismissal, no inquiry was at all conducted against the petitioner nor any opportunity of hearing has been provided to him which is in violation of Articles 14 and 16 of the Constitution of India. In the order of suspension dated 29.09.2018, it was categorically mentioned that the petitioner is being suspended in contemplation of disciplinary inquiry as such it was incumbent upon the departmental authorities to have conducted proper inquiry in accordance with the Rules but without conducting any inquiry in a very illegal manner, the petitioner has been dismissed from service on the same day i.e. 29.09.2018 which is against the provisions of Rule 8(2)(b) of 1991 Rules read with Article 311 (2)(b) of the Constitution of India.
6. Learned Counsel for the petitioner has further submitted that while passing the impugned order, the disciplinary authority has also not recorded any reason for not holding proper inquiry

against the petitioner, which is against the provisions of sub-rule (b) of Rule 17 of 1991 Rules. While passing the dismissal order, it has been recorded that the impugned order has been passed in public as well as State interest and also in the interest of police department. The aforesaid reasons arrived at against the provisions of 1991 Rules as there is no such provisions which confers such power to the disciplinary authority to punish a police officer without conducting proper inquiry in accordance with the Rules. In these circumstances, the impugned order is liable to be set aside as the same has been passed illegally, arbitrarily and unreasonably without proper application of mind.

7. *Per contra*, learned Counsel appearing on behalf of the State has vehemently opposed the submissions of learned Counsel for the petitioner and submitted that the disciplinary authority after examining the findings recorded by the Enquiry Officer and on the basis of the evidences available on record, and also on finding that it is not practicable to conduct a detailed inquiry and that the offence committed by the petitioner is a grave misconduct and heinous in nature has passed the impugned order exercising powers conferred under Rule 8(2)(b) of 1991 Rules.
8. Learned Counsel appearing on behalf of the State has further submitted that against the dismissal order dated 29.09.2018, the petitioner filed an appeal before the appellant authority which has also been duly considered and rejected the same in accordance with law. Against the dismissal order, the petitioner has an alternative remedy for filing a revision under Rule 23 of 1991 Rules and thereafter, before the learned State Public Service Tribunal but instead of avail such alternatives remedies, the petitioner has filed the instant writ petition and, therefore,

the same is liable to be dismissed on the ground of availability of alternate remedy.

9. I have considered the submissions of learned Counsel for the parties and perused the record.
10. Before adjudicating the grievance of the petitioner on merit, it would be appropriate to reproduce the relevant portion of the impugned dismissal order dated 29.09.2018 and the order dated 20.05.2019 passed by the Appellate Authority dismissing the appeal of the petitioner which reads as under respectively:

"29-09-2018

अतः मैं कलानिधि नैथानी, आई०पी०एस०, वरिष्ठ पुलिस अधीक्षक, लखनऊ का उक्तांकित कारणों के आधार पर यह समाधान हो गया है कि निलम्बित आरक्षी 2199 ना०पु०/पीएनओ-162806090 संदीप कुमार पुत्र श्री सतेन्द्र सिंह, निवासी-कालोनी न्यू रामनगर बड़ौत, थाना बड़ौत, जनपद बागपत एवं निलम्बित आरक्षी 5948 ना०पु०/पीएनओ-162153936 प्रशान्त कुमार पुत्र श्री रविन्द्र सिंह, निवासी-ग्राम जटपुरा, थाना अहार, जनपद बुलन्दशहर को सेवा में बनाये रखना पुलिस विभाग के अनुशासन एवं कार्य क्षमता की दृष्टि से लोकहित/राज्यहित/पुलिस विभाग के हित में नहीं है। अतएव सक्षम नियुक्ति प्राधिकारी होने के कारण उ०प्र० अधीनस्थ श्रेणी के पुलिस अधिकारियों की (दण्ड एवं अपील) नियमावली-1991 के प्रस्तर-8(2)(ख) सपठित भारत के संविधान के अनुच्छेद 311(2)(B) में, प्रदत्त अधिकारों के अन्तर्गत अपने अर्न्तनिहित शक्तियों का प्रयोग करते हुए निलम्बित आरक्षी 2199 ना०पु०/पीएनओ-162806090 संदीप कुमार पुत्र श्री सतेन्द्र सिंह, निवासी-कालोनी न्यू रामनगर बड़ौत, थाना बड़ौत, जनपद बागपत एवं निलम्बित आरक्षी 5948 ना०पु०/पीएनओ-162153936 प्रशान्त कुमार पुत्र श्री रविन्द्र सिंह, निवासी-ग्राम जटपुरा, थाना अहार, जनपद बुलन्दशहर को पुलिस विभाग की सेवा से पदच्युत किये जाने का आदेश पारित करता हूँ।"

"20.05.2019

अपीलकर्ता द्वारा प्रस्तुत अपील के आलोक में पत्रावली पर उपलब्ध साक्ष्यों का परिशीलन किया गया, जिससे यह स्पष्ट है कि दिनांक 28.09.2018 को आरक्षी 2199 ना०पु० पीएनओ-162806090 संदीप कुमार एवं एक

अन्य आरक्षी 5984 ना0पु0/162153936 प्रशांत कुमार थाना गोमतीनगररजट संख्या-79 समय 21.28 बजे रात्रि 9.00 बजे से दिनांक 29.09.2018 की प्रातः 9.00 बजे तक चीता मोबाइल गश्त क्षेत्र मकदूमपुर हेतु खानाशुदा ड्यूटीरत थे। मृतक विवेक तिवारी अपनी सहकर्मी सना के साथ अपनी कार में मौजूद था। ड्यूटीरत उक्त दोनों आरक्षियों द्वारा मृतक विवेक तिवारी व उसकी सहकर्मी से पूछताछ किये जाने के दौरान कहा-सुनी होने पर विवेक तिवारी की गोली मारकर हत्या कर दी गयी, जिससे विवेक तिवारी की मृत्यु हो गयी। वादिनी सना की तरफ से थाना गोमतीनगर पर मु0अ0सं0-1132/2018 धारा 302 पंजीकृत किया गया। विवेचना के दौरान आरक्षी 2199 ना0पु0 पीएनओ-162806090 संदीप कुमार एवं आरक्षी 5984 ना0पु0/162153936 प्रशांत कुमार, थाना गोमतीनगर, लखनऊ प्रकाश में आये, जिन्हे गिरफ्तार कर जेल भेजा गया। प्रकरण की जांचोपरान्त इन्हें दोषी पाया गया है। अपीलार्थी ने अपने अपील में उल्लिखित तथ्यों में कोई ऐसा विशिष्ट तथ्य अंकित नहीं किया है, जिसके आधार पर प्रश्नगत दण्डादेश निरस्त किया जाना विधिपूर्ण हो। प्रश्नगत दण्डादेश में किसी प्रकार की प्रक्रियात्मक त्रुटि अथवा असंवैधानिकता प्रतीत नहीं हो रही है। इस प्रकार प्रकरण में पारित आदेश औचित्यपूर्ण एवं विधि सम्मत है।

उपरोक्त विश्लेषण से मैं इस निष्कर्ष पर पहुँचा हूँ कि प्रत्यावेदक का अपीलीय प्रत्यावेदन बलहीन व निराधार है, जो निरस्त किये जाने योग्य है।

अतः उपरोक्त प्रकरण में वरिष्ठ पुलिस अधीक्षक, लखनऊ के आदेश संख्या-स-1132/2018 दिनांक 29-9-2018, जिसके माध्यम से उ0प्र0 अधीनस्थ श्रेणी के पुलिस अधिकारियों की (दण्ड एवं अपील) नियमावली-1991 के नियम-8(2) (ख) के अन्तर्गत पदच्युति के दण्ड से दण्डित किये जाने का आदेश पारित किया गया है, जो नियमाकूल है, तथा जिसमें किसी प्रकार के हस्तक्षेप की आवश्यकता नहीं है। एतद्वारा अपीलकर्ता आरक्षी 2199 ना0पु0 पीएनओ-162806090 संदीप कुमार की अपील अस्वीकार की जाती है।"

11. It is not disputed that the Competent Authority can very well exercise the powers as have been provided under Rule 8(2)(b) of 1991 Rules while dispensing with the service of a subordinate officials and record the reasons as to why the power is being exercised under Rule 8(2)(b) of 1991 Rules. The argument of the petitioner is that the impugned order dated 29.09.2018 does not indicate any reason as to why it is not

reasonably practicable to hold inquiry against the petitioner. The said order was under challenged in the appeal but the Appellate Authority dismissed the appeal on the ground that the appeal has no force and there are no illegality in the order dated 29.09.2018 passed by the Senior Superintendent of Police, Lucknow.

12. In order to appreciate the respective arguments which has been advanced relevant Rule 8 of U.P. Police Officers of the Subordinate Rank (Punishment and Appeal) Rules 1991 is being quoted below:

"8. Dismissal and removal. (1) No Police Officer shall be dismissed or removed from service by an authority subordinate to the appointing authority.

(2) No Police Officer shall be dismissed, removed or reduced in rank except after proper inquiry and disciplinary proceedings as contemplated by these rules:

Provided that this rule 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 enquiry; or

(c) Where the Government is satisfied that in the interest of the security of the State it is not expedient to hold such enquiry.

(3) All orders of dismissal and removal of Head Constables or Constables shall be passed by the Superintendent of Police. Cases in which the Superintendent of Police recommends dismissal or removal of a Sub-Inspector or an Inspector shall be forwarded to the Deputy Inspector General concerned for orders.

(4) (a) The punishment for intentionally or negligently allowing a person in police custody or judicial custody to escape shall be dismissal unless the punishing authority for reasons to be recorded in writing awards a lesser punishment.

(b) Every officer convicted by the Court for an offence involving moral turpitude shall be dismissed unless the punishing authority for reasons to be recorded in writing considers it otherwise."

13. Bare perusal of the aforesaid rules would go to show that holding of inquiry is a rule and dispensing with the enquiry is an exception. Before proceedings to impose any one of the major penalty of dismissal, removal or reduction in rank the departmental inquiry is a must and is a condition precedent. However in certain contingency said rigour of the rule can be dispensed with and one such contingency provided for is that in case it is not reasonably practicable to hold inquiry and for this reasons will have to be recorded in writing. The said authority is to be exercised in exceptional circumstances and that to by recording finding to the effect as to why it is not reasonably practical to hold an inquiry. Thus, recording of finding that it is not reasonably practicable to hold inquiry before proceeding to exercise aforesaid authority of dispensation of service under Rule 8 (2)(b) of 1991 Rules is *sine quo non*.
14. The words "reasons to be recorded in writing that it is not reasonably practicable to hold enquiry" means that there must be some material for satisfaction of the disciplinary authority that it is not reasonably practicable. The decision to dispense with the departmental enquiry cannot be rested solely on the *ipse dixit* of the concerned authority. The Apex Court in the case of ***Jaswant Singh vs. State of Punjab and others; AIR 1991 SC 385*** has observed as under:

"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."

" ... 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."

15. Clause (b) of the second proviso to clause (2) of Article 311 provides that where an authority empowered to dismiss or remove a person or to reduce him in rank, is satisfied that for some reason to be recorded by the authority in writing, it is not reasonably practicable to give to that person an opportunity of showing cause against the proposed punishment, the provisions of clause (2) of Article 311 of the Constitution shall not apply. Article 311(2) of the Constitution of India is quoted below for ready reference:

"311. Dismissal, removal or reduction in rank of persons employed in civil capacities under the Union or a State. - (1) No person who is a member of a civil service of the Union or an all-India service or a civil service of a State or holds a civil post under the Union or a State shall be dismissed or removed by an authority subordinate to that by which he was appointed.

[(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: 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 inquiry.

[(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.]"

16. A disciplinary authority is not expected to dispense with the disciplinary inquiry in exercise of the power under clause (b) of Article 311 lightly or arbitrarily or out of ulterior motives or merely in order to avoid holding of a disciplinary inquiry or because the department's case against the government servant is weak and likely to fail. The finality given to the decision of the disciplinary authority by Article 311(3) does not preclude judicial review. In such cases the court will strike down the order dispensing with the inquiry as also the order-imposing penalty. If the court finds that the dispensing with the inquiry has been done without any basis, without recording reasons or recording reasons, which have no nexus to the dispensing of the inquiry or if the decision is made on collateral basis, the order is

liable to be set aside by the court. The scope of Clause (b) of the second proviso to Article 311(2) and of Article 311 (3) came up for consideration before a Constitution Bench of Hon'ble Supreme Court in the case of ***Union of India and another vs. Tulsiram Patel; (1985) 3 SCC 398***. In para 130, Hon'ble Supreme Court has held as under:

"130. 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 pertinent to note is that the words used are "not reasonably practicable" and not "impracticable". According to the Oxford English Dictionary "practicable" means "Capable of being put into practice, carried out in action, effected, accomplished, or done; feasible". Webster's Third New International Dictionary defines the word "practicable" inter alia as meaning "possible to practice or perform: capable of being put into practice, done or accomplished: feasible". Further, the words used are not "not practicable" but "not reasonably practicable". Webster's Third New International Dictionary defines the word "reasonably" as "in a reasonable manner: to a fairly sufficient extent". Thus, whether it was practicable to hold the inquiry or not must be judged in the context of whether it was reasonably practicable to do so. It is not a total or absolute impracticability which is required by clause (b). 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. It is not possible to enumerate the cases in which it would not be reasonably practicable to hold the inquiry, but some instances by way of illustration may, however, be given. It would not be reasonably practicable to hold an inquiry where the government servant, particularly through or together with his associates, so terrorizes, threatens or intimidates witnesses who are going to give evidence against him with fear of reprisal as to prevent them from doing so or where the government servant by himself or together with or through others threatens, intimidates and terrorizes the officer who is the disciplinary

authority or members of his family so that he is afraid to hold the inquiry or direct it to be held. 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 concerned government servant is or is not a party to bringing about such an atmosphere. In this connection, we must bear in mind that numbers coerce and terrify while an individual may not. 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. 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 of judicial review is concerned and in such a case the court will strike down the order dispensing with the inquiry as also the order imposing penalty. The case of Arjun Chaubey v. Union of India [(1984) 2 SCC 578 : 1984 SCC (L&S) 290 : (1984) 3 SCR 302] is an instance in point. In that case, the appellant was working as a senior clerk in the office of the Chief Commercial Superintendent, Northern Railway, Varanasi. The Senior Commercial Officer wrote a letter to the appellant calling upon him to submit his explanation with regard to twelve charges of gross indiscipline mostly relating to the Deputy Chief Commercial Superintendent. The appellant submitted his explanation and on the very next day the Deputy Chief Commercial Superintendent served a second notice on the appellant saying that his explanation was not convincing and that another chance was being given to him to offer his explanation with respect to those charges. The appellant submitted his further explanation but on the very next day the Deputy Chief Commercial Superintendent passed an order dismissing him on the ground that he was not fit to be retained in

service. This Court struck down the order holding that seven out of twelve charges related to the conduct of the appellant with the Deputy Chief Commercial Superintendent who was the disciplinary authority and that if an inquiry were to be held, the principal witness for the Department would have been the Deputy Chief Commercial Superintendent himself, resulting in the same person being the main accuser, the chief witness and also the judge of the matter."

17. In ***Sudesh Kumar vs. State of Haryana and others; (2005) 11 SCC 525***, the Supreme Court observed as follows:

"5. It is now established principle of law that an inquiry under Article 311(2) is a rule and dispensing with the inquiry is an exception. The authority dispensing with the inquiry under Article 311(2)(b) must satisfy for reasons to be recorded that it is not reasonably practicable to hold an inquiry. A reading of the termination order by invoking Article 311(2)(b), as extracted above, would clearly show that no reasons whatsoever have been assigned as to why it is not reasonably practicable to hold an inquiry. The reasons disclosed in the termination order are that the complainant refused to name the accused out of fear of harassment; the complainant, being a foreign national, is likely to leave the country and once he left the country, it may not be reasonably practicable to bring him to the inquiry. This is no ground for dispensing with the inquiry. On the other hand, it is not disputed that, by order dated 23-12-1999, the visa of the complainant was extended up to 22-12-2000. Therefore, there was no difficulty in securing the presence of Mr Kenichi Tanaka in the inquiry.

6. A reasonable opportunity of hearing enshrined in Article 311(2) of the Constitution would include an opportunity to defend himself and establish his innocence by cross-examining the prosecution witnesses produced against him and by examining the defence witnesses in his favour, if any. This he can do only if inquiry is held where he has been informed of the charges levelled against him. In the instant case, the mandate of Article 311(2) of the Constitution has been violated depriving

reasonable opportunity of being heard to the appellant."

18. On the parameter of the aforesaid provisions and law laid down by Hon'ble Supreme Court, I have examine the instant case. In the present case, it is accepted position that first information report was lodged as Case Crime No.1132 of 2018, under Section 302 IPC and second first information report was as Case Crime No.1140 of 2018, under Section 302 IPC. Later on, second FIR was clubbed with Case Crime No.1132 of 2018. The learned Additional Sessions Judge-I, Lucknow had framed charges under Sections 323 and 302 IPC read with Section 114 IPC against the petitioner, vide order dated 22.03.2019. The authority concerned in his wisdom has proceeded to pass order of dismissal on account of the fact that it is not reasonably practicable to hold inquiry.
19. In the impugned order, it has been stated that looking into the nature of alleged offence and seriousness of the charges, it is not feasible to hold departmental inquiry against the petitioner but fact of the matter is that nothing has been disclosed, as to why it is not reasonably practicable to hold inquiry. It is true that petitioner has been implicated in a murder case during the course of duty and it is not specified that in what way and manner seriousness of alleged offence has got connected with not reasonable and practicable to hold inquiry. Thus, non recording of finding that it is not reasonably practicable to hold inquiry is contrary to the requirement of the provisions of Rule 8(2)(b) of 1991 Rules.
20. It is emerging from the factual scenario that no regular departmental inquiry has been held and no exercise has been undertaken which would substantiate that said inquiry was not reasonably practicable then in this background order of

dismissal on this score is liable to be set aside. While dismissing the appeal by the Appellate Authority has also not taken into consideration that the disciplinary authority has not recorded any reason as to why it is not reasonable practicable to hold inquiry. The dismissal order nowhere discloses that disciplinary authority has ever arrived at a conclusion that holding of an inquiry as per Rule 8(2)(b) of 1991 Rules was not reasonably practicable. The reasons assigned in the impugned order are not at all sustainable in the eyes of law.

21. So far as the argument of learned Counsel appearing on behalf of the State that the petitioner has an alternative remedy of filing revision under Rule 23 of 1991 Rules before the revisional authority is concerned, the issue of said alternative remedy has already been settled by the co-ordinate Bench vide order dated 29.05.2019. The relevant portion of the order dated 29.05.2019 passed in this case is quoted below:

"6. The words of Rule 23 of the aforesaid Rule 1991 clearly indicate an entitlement upon the officer whose appeal has been rejected to prefer a Revision to the superior authority. The Revision is entertainable only upon specific conditions being met. The revising authority has also been granted discretion to call for and examine the records of any order passed in appeal against which no Revision has been preferred.

7. The aforesaid words of Rule 23 of the Rules of 1991 clearly indicate that the provisions of Revision are not mandatory in nature and are clearly at the discretion of the Officer whose appeal has been rejected. In view of the aforesaid, the preliminary objection raised against the maintainability of the writ petition is rejection."

22. In view of the aforesaid, I am of the view that the order of dismissal passed against the petitioner does not fulfill the requirements of Rule 8(2)(b) of 1991 Rules read with Article-

311(2) Proviso Clause (b) of the Constitution of India and therefore, cannot be sustained.

23. Accordingly, the order dated 29.09.2018 passed by the Senior Superintendent of Police, Lucknow and the order dated 20.05.2019 passed by the Inspector General of Police (Establishment), Lucknow are set aside. The writ petition is *allowed*.
24. The ts are directed to reinstate the petitioner in service with all consequential benefits, if there is no other legal impediment leaving it open to the respondents to proceed with the departmental inquiry, in accordance with law, if they so advised. It is also made clear that the reinstatement of the petitioner is subject to outcome of the trial proceedings.

Order Date:-02.03.02021

akverma

(Chandra Dhari Singh, J)