

Central Administrative Tribunal
Principal Bench

O.A. No.1255/2002

New Delhi this the 10th day of February, 2003

Hon'ble Smt. Lakshmi Swaminathan, Vice-Chairman (J)
Hon'ble Shri V.K. Majotra, Member (A)

Inder Veer Singh
Ex Const. No. 9245/DAP
(PIS No. 28840288)
R/o Vill. & P.O. Mor Khurd,
PS: Hastna Pur,
Distt: Meerut (UP)

(By Advocate: Shri Anil Singhal)

-Applicant

Versus

1. Commissioner of Police
Police Headquarters,
I.P. Estate, New Delhi.
2. The Addl. Commissioner of Police,
Armed Police, PHQ,
I.P. Estate, New Delhi.
3. The D.C.P.,
8th Bn. DAP,
Malviya Nagar, New Delhi.

-Respondents

(By Advocate: Shri Harvir Singh)

ORDER (Oral)

Hon'ble Shri V.K. Majotra, Member (A)

Applicant has assailed punishment of dismissal in disciplinary proceedings against him on the allegation that on 16.8.93, he had manhandled one Shri Nanne Lal and also attempted extortion. Criminal proceedings were also initiated against him. However, the applicant was acquitted in the criminal case against him ultimately. The Disciplinary Authority stated that applicant appears to be a person of criminal bent of mind and that his conduct was found to be reprehensible. Being a police man, whereas he was supposed to protect the life and property of the citizens, applicant had attempted at robbing/looting

public and as such he had no right to be the member of civilized society and deserves no leniency. Such policeman having turned criminals are slur on the fair name of the police and should be weeded out at the earliest. The Disciplinary Authority concluded that it was not reasonably practicable to hold an enquiry against the applicant and as such under the provisions of Article 311 (2) of the Constitution of India, punishment of dismissal was imposed upon him. The Appellate Authority too endorsed the punishment of dismissal whereupon the applicant had filed OA 54/2001 which vide order dated 10.12.2001 was partly allowed and the punishment was quashed and set aside. The Appellate Authority was directed to re-consider the appeal and pass a detailed and speaking order. The Appellate Authority on re-consideration, rejected the appeal and the punishment of dismissal was affirmed.

2. Learned counsel of the applicant stated that the authorities had not made any efforts regarding summoning the witnesses but concluded that it was not practicable to hold the enquiry against the applicant. On the other hand, learned counsel of the respondents stated that even in the criminal proceedings against the applicant, out of five, one witness had turned hostile on the basis of which the applicant had been let off by the court of ^{Metropolitan U} Learned Magistrate, New Delhi vide its order dated 13.7.99. The learned counsel stated that this was reason enough to believe that it was not practicable to hold the departmental enquiry against the applicant.

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4. In terms of Article-311 (2) the pre-requisite is that the Disciplinary Authority has to satisfy himself with the reasons to be recorded in writing that it was not reasonably practicable to hold an enquiry against the delinquent. In the present case, respondents have acted on surmises to conclude that it was not reasonably practicable to hold an enquiry against the applicant. They have not come up to show us any evidence of having made any attempts to procure the presence of the witnesses in conducting the departmental enquiry against the applicant. To state that one prosecution witness in the criminal proceedings against the applicant out of a total of five had turned hostile is not reason enough to reach a conclusion that it was not practicable to hold the departmental proceedings. As a matter of fact, we find that whereas the Disciplinary Authority had passed final orders on 17.8.93 in the departmental proceedings concluding that it was not practicable to hold the departmental enquiry against the applicant, the factum of turning hostile of a witness came to notice at ^a later stage as the orders in the criminal case was passed on 13.7.99, i.e., six years after the final order of the Disciplinary Authority. The Appellate Authority passed his orders on directions of this court much later on 11.2.2002 simply parrot-mouthing the reason given by the Disciplinary Authority not basing the conclusion on any good ground and fact, that it was not practicable to hold the enquiry. ~~merely rephrasing~~ ^{merely rephrasing} the language of Article 311(2) by the authorities in their efforts to bring home the charges against the applicant without

providing the reason why it is not practicable to hold such enquiry does not satisfy us about the conclusion to dispense with the requirement of holding the enquiry.

5. In the above circumstances and for the reasons stated above, we are not convinced that it was not reasonably practicable to hold departmental enquiry against the applicant and ^{for the} inflicting the severest punishment of dismissal from service without holding the regular enquiry against him. As such, in our view, the penalty orders must be quashed and set aside. Accordingly, the applicant must be reinstated forth-with with consequential benefits. Ordered accordingly. However, respondents shall have liberty, if so advised to conduct the departmental enquiry as per law. In case the respondents take a decision to initiate disciplinary proceedings against the applicant, this shall be done within a period of two months from the date of receipt of a copy of this order.

6. The OA is disposed of in the above terms.

No costs.

V.K.Majotra

(V.K. Majotra)
Member (A)

Lakshmi Swaminathan

(Smt. Lakshmi Swaminathan)
Vice-Chairman (J)

CC.