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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.1817/2002 with OA No.1819/2002

New Delhi, this the 7th day of January, 2003

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

OA No.1817/2002

Ex Ct Robin Singh
F228, Gali No.12
Khajuri Khas, Delhi-94
(Shri Arun Bhardwaj, Advocate)

.. Applicant

versus

Union of India, through

1. Commissioner of Police
Police Hqrs., IP Estate, New Delhi
2. Joint Commissioner of Police
New Delhi Range
Police Hqrs. IP Estate, New Delhi
3. Deputy Commissioner of Police
East Distt. New Delhi

.. Respondents
(Shri Vimal Rathi, proxy for Smt. Protima Gupta,
Advocate)

OA No.1819/2002

Jagjeet Singh
VPO Kiriani PO Jeneke
PS Harike Pattan
The Tarn Taran, Dt. Amritsar, Punjab
(Shri Arun Bhardwaj, Advocate)

.. Applicant

versus

Union of India, through

1. Commissioner of Police
Police Hqrs., IP Estate, New Delhi
2. Joint Commissioner of Police
New Delhi Range
Police Hqrs. IP Estate, New Delhi
3. Deputy Commissioner of Police
East Distt. New Delhi

.. Respondents
(Shri Vimal Rathi, proxy for Smt. Protima Gupta,
Advocate)

ORDER(oral)

Hon'ble Smt. Lakshmi Swaminathan, Vice Chairman (J) :

In the above two applications, the applicants have impugned the action and orders passed by the respondents dismissing them from service under the provisions of Second Proviso to Clause B of Article 311 (2) of the

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Constitution. Vide order dated 27.6.2001. This order has been upheld by the appellate authority by order dated 3.6.2002. The main orders are common to both the OAs namely OA No.1891/2002 and OA No.1871/2002. Learned counsel for the parties have submitted that as the relevant facts and issues raised in these OAs are similar, they may be dealt with together.

2. Noting the facts and circumstances of the case and submissions made by the learned counsel for the parties, these two applications are disposed of by a common order.

3. For the sake of convenience, Shri Arun Bhardwaj, learned counsel for applicant has referred to the facts in OA 1819/2002 filed by Shri Jagjeet Singh. He has taken mainly two grounds to assail the validity of the impugned dismissal orders, namely, (1) on the ground that the respondents could not have dispensed with the departmental inquiry proceedings in the facts and circumstances of the case under the Second proviso of Article 311 (2) (b) of the Constitution and (2) that the appellate authority has relied on the preliminary inquiry report in the impugned order dated 3.6.2002 which is not in accordance with the Delhi Police (Punishment & Appeal) Rules, 1980 (hereinafter referred to as 'Rules').

4. We have seen the reply filed by the respondents and heard Shri Vimal Rathi, learned proxy counsel for the respondents. Learned proxy counsel has submitted that as the Complainant - Shri Devrajan, who is residing "far away" that is at 7, Indira Colony, Ram Nagar, Kashi Pur,

Uttar Pradesh, as such it was not possible to call him in case the disciplinary proceedings were held against the applicant. Accordingly, he has submitted that there was nothing wrong in the respondents taking a decision that it was not practical to hold the departmental inquiry proceedings in the case, while passing the penalty orders of dismissal against the applicant. In the reply affidavit, the respondents have submitted that "the ACP/P.G. Cell had conducted an enquiry into the matter on the orders of the Disciplinary Authority and submitted a fact finding report." Further they have submitted that the appellate authority had gone through the appeal preferred by the applicant, the brief facts and parawise comments thereto, the other relevant records available on file and also heard him before rejecting the appeal by a speaking order. Thus in the appellate authority's order, a reference has been specifically made stating that he has gone through the preliminary inquiry conducted by Shri A.K. Lall, the then ACP/P.G. Cell East Distt. on the complaint in the present case.

5. Learned counsel for applicant has relied on the judgement of the Hon'ble Supreme Court in the case of Singasan Rabi Dass's (AIR 1991 SC 1043) and also the judgement of the Tribunal in the case of Ex. Constable Radhey Shayam Vs. UOI and Others (OA 1066/2001) decided on 14.12.2001, copy placed on record. He has prayed that in case the application is allowed, the case may be remitted to the respondents with a further direction to pass any appropriate orders in the matter in accordance

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with law but has submitted that a specific order to start disciplinary proceedings may not be appropriate.

6. We have carefully considered the submissions of the learned counsel for the parties and perused the record.

7. We have perused the impugned orders passed by the disciplinary authority dated 27.6.2001 and the appellate authority's order 3.6.2002. The disciplinary authority in his order has come to the conclusion that in the facts and circumstances of the case, in his opinion it would not be reasonably practicable to hold a departmental inquiry against the delinquent officers i.e. applicants in the aforesaid two applications. He has submitted the reasons as follows:-

....since it is certain that during the enquiry/entire process of departmental proceedings, the complainant and other witnesses would be put under constant fear/danger to their person by the delinquent police officers and no body would come forward to give a statement against them. Considering the fact that the complainant is residing in the far-flung area, it would be extremely difficult for the complainant and the witnesses to muster enough courage and time again the delinquent police officers. In case the Departmental Enquiry is initiated against the delinquent officers, it is certain that it would not be easy to secure presence of the complainant from time to time and as such keeping in view the above mentioned reasons, I feel totally satisfied that it would not be reasonably practicable to hold a DE against the delinquent - (1) Constable Jagjit Singh, 595/E; and (2) Constable Robin Singh, 640/E whose act has clearly indicated serious criminal propensity on their part."

8. The above reasons have been referred to in the appellate authority's order and there is a specific reference that the complainant was residing in a far-flung area, i.e. in the State of Uttar Pradesh,

while the incident is stated to have occurred at Gazipur Border, which comes between the territory of the National Capital Territory of Delhi and the State of Uttar Pradesh. He has, therefore, stated that it would have been extremely difficult for the complainant and the witnesses to muster enough courage and time to come against the delinquent police officers. He has also stated that it would not be easy to secure the presence of the complainant from time to time which reasons have also been given by the disciplinary authority and quoted and approved by the appellant authority in his order dated 3.6.2002. The appellate authority has further referred to the fact that he has also gone through the preliminary inquiry which was conducted by Shri A.K. Lall, the then ACP/P.G. Cell East Distt., on the complaint of Shri S. Devrajan r/o Indira Colony, Ram Nagar, Kishi Pur (U.P.) and found that the arguments extended by the appellants are not convincing in the light of the findings and the evidence on record.

9. There is no doubt that from a perusal of the appellate authority's order, the preliminary inquiry which has been referred to as a fact finding inquiry held by Shri A.K. Lall, the then ACP/P.G. Cell East Distt. sent by the respondents, has been taken into account by the appellate authority while arriving at his decision to reject the appeal submitted by the applicant. This procedure adopted by the appellate authority is contrary to Rule 15 (3) of the Rules and, therefore, the same is not tenable.

10. Another ground taken by Shri Arun Bhardwaj, learned counsel is that in the last part of the order of the

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appellate authority, a reference has been made to the effect that the applicants were directed to give any evidence to prove their innocence before the DCP or the undersigned within 10 days. Such a procedure is also not under the provisions of the Rules. The respondents ought to have initiated departmental inquiry proceedings against the applicants, in which case they could be given a reasonable opportunity to prove their innocence which procedure has not been followed in this case. The mere direction to the applicants to give evidence to prove their innocence before the disciplinary authority or the appellate authority in the manner mentioned in the appellate authority's order is contrary to the Rules and by adopting such a procedure the respondents cannot absolve themselves from holding a regular departmental inquiry as provided under the Rules.

11. It is clear from the above, that both the disciplinary authority and the appellate authority have taken decisions to dispense with the disciplinary proceedings under the Second Proviso to 311 (2) (b) of the Constitution on the aforesaid facts. These facts can hardly be stated to be sufficient grounds to dispense with the statutory provisions for holding a departmental inquiry i.e. on the ground that the complainant is living in a very far off place which happens to be in the State of Uttar Pradesh and the incident had also occurred in the border area between the State of U.P. and the National Capital Territory of Delhi. In any case, there is no evidence on record to show that the respondents have taken any steps to call the complainant or any other witness. As such, the reasons given by the disciplinary

authority that the complainant is residing at a far-flung place and it would be extremely difficult for the complainant and the witnesses to muster enough courage and time against the delinquent police officers cannot be accepted. This appears to be based only on conjectures and surmises on the part of the respondents. There is also nothing to indicate from the documents on record that even an attempt had been made by the respondents to call the complainant or any of the other witnesses, so that the departmental inquiry can be held in accordance with the statutory rules. They have merely dispensed with it on the basis of conjectures and surmises that witnesses would be in fear and danger from the delinquent police officers. This stand taken by a disciplined force like the Delhi Police/respondents cannot be sustained as they themselves have the duty as protectors of the public to uphold and enforce the law.

12. The judgement of the Hon'ble Supreme Court in the case of S.R. Dass's (supra) is fully applicable to the facts of the present case.

13. In the facts and circumstances of the case and for the reasons given above, both aforesaid OAs succeed and are allowed with the following directions:-

- i) The impugned penalty orders dated 27.6.2001 and 3.6.2002 passed by the respondents are quashed and set aside;
- ii) Accordingly, the respondents shall reinstate the applicants in service within two months from

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the date of receipt of a copy of this order with all consequential benefits in accordance with law; ✓

111) However, in the facts and circumstances of the case, liberty is granted to the respondents to proceed in the matter, if so advised, in accordance with law.

No order as to costs.

15. Let a copy of this order be also placed in OA

No. 1917/2002.

16. Later Shri S.K. Gupta, learned counsel for the respondents has appeared.

V. Srikantan
(V. Srikantan)
Member (A)

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

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