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Central Administrative Tribunal, Principal Bench

Original Application No.439 of 2002

New Delhi, this the 8th day of April, 2003

Hon'ble Mr. Justice V.S. Aggarwal, Chairman  
Hon'ble Mr. S.K. Malhotra, Member (A)

Ex. Constable Satender Kumar No.1780/DAP  
S/o Shri Kartar Singh, aged 34 years,  
Previously employed in Delhi Police,  
R/o Vill- P.O. Sinoli, P.S. Chaprauli,  
District Bagpat, Uttar Pradesh

.... Applicant

(By Advocate: Shri Sachin Chauhan)

Versus

1. Union of India,  
through its Secretary,  
Ministry of Home Affairs  
North Block, New Delhi
2. Addl. Commissioner of Police,  
Armed Police,  
New Police Lines, Kingsway Camp,  
Delhi.
3. Dy. Commissioner of Police,  
2nd Bn, D.A.P.  
Kingsway Camp, New Police Lines  
Delhi

.... Respondents

(By Advocate: Ms. Renu George)

O R D E R (ORAL)

By Justice V.S. Aggarwal, Chairman

Applicant was a Constable in Delhi Police. Invoking Article 311 (2)(b) of the Constitution of India, he has been dismissed from service and his appeal has also failed. By virtue of the present application, he seeks quashing of the above said orders in this regard.

2. Reference to some of the facts would be in the fitness of things. The applicant had been arrested in F.I.R.41/92, Police Station Budhana of U.P. with respect to offences punishable under Section 395 of the Indian Penal Code read with Section 25 of the Arms Act. The disciplinary authority gave the following reasons in

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concluding that it is not practicable to hold the enquiry against the applicant:

"i) Almost all the main and material witnesses are natives of Uttar Pradesh State and it will be quite difficult to procure their presence for expeditious DE proceedings.

ii) The involvement of Constable Satender Kumar No.1780/DAP in criminal activity followed by the registration of cases despite being a police man shows that he is of a criminal character and his continuance in police force is hazardous to the public. The police is a protector of citizens and involvement of police officer in such a heinous crime will shatter the faith of the people in the system. The involvement of Constable Satender Kumar, 1780/DAP in such criminal activities is not only undesirable but also amounts to serious misconduct and indiscipline. He has acted in a manner unbecoming of a police officer which is highly prejudicial to the security of the citizens.

iii) It is not uncommon in such cases to find the witnesses turning hostile due to fear of reprisals. Terrorising, threatening or intimidating the witnesses who will come forward to give evidence against him in the D.E. are common tactics adopted by the criminal defaulters. The desperate and daring criminal mentality of the Constable who indulged in such a heinous crime of dacoity and his being in possession of country made pistol shows that he would indulge in any criminal act to harm the witnesses and to obstruct the holding of enquiry in a normal way. It requires a lot of courage to depose against an ordinary criminal and much more courage has to be shown to depose against a hardened criminal in the guise of a policeman. It will be too much to expect an ordinary citizen to show such great courage. The police force has been entrusted with the responsibility to protect the citizens but Constable Satender Kumar, 1780/DAP did the opposite and robbed the innocent citizens travelling in the U.P. Roadways bus on the point of pistol. Hence he is not liable to be retained in the Police Force."

3. The same reasons are being agitated before us on

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behalf of the respondents so as to contend that in the facts of the case, it was not practicable to hold the enquiry and, therefore, the order as such is being justified.

4. We need not dwell into this controversy and also to the well known decision of the Supreme Court in the case of Union of India and others vs. Tulsiram Patel and others, AIR 1985 SC 1416. A Full Bench of this Tribunal had also considered the similar fact in the case of Jagdish vs. Union of India and others (O.A.1515/2001) decided on 7.2.2003. The conclusions drawn were:

"14. When such are the facts, can it be stated that the ingredients of Article 311 (2)(b) of the Constitution would be satisfied? In our considered opinion, the answer would be in the negative. The heinous nature of the offence is not the tilting factor. The disciplinary authority had recorded the reasons but once the reasons are scrutinised, they did not come up to the mark. It is not a case where the enquiry was not practicable. Merely because if the complainant and other witnesses had not supported the prosecution version in the court necessarily is not a ground to conclude that the departmental enquiry is not practicable. The merit or the conclusion thereto is not to be looked into at the thresh-hold. The heinous nature of the finding though could be considered but is not the sole factor. Consequently, the impugned order in the peculiar circumstances cannot be sustained because it was practicable to hold the enquiry moreso when there is little for us to conclude that there is no other material to state otherwise."

5. When the facts are examined on the touch-stone of the aforesaid, the net result would be that it cannot be termed that it was not reasonably practicable to hold the

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enquiry against the applicant.

6. At the risk of repetition, we may mention the fact that the applicant faced trial with respect to the above said First Information Report that was recorded in an appropriate court. He has been acquitted. Merely because if the complainant and other witnesses do not deem it necessary to support the version of the prosecution, it is not a ground to conclude that the disciplinary enquiry is not practicable. The merits of the conclusion as to what the witnesses may state, cannot be looked into at the threshold. Heinous nature of the crime also will not be a tilting factor. In face of the aforesaid, the reasons given by the disciplinary authority that it is not reasonably practicable to hold the enquiry merely on the ground which we have reproduced above that witnesses are not likely to support the case, they invariably turn hostile and the applicant is not a person of good character, will not stand scrutiny.

7. Resultantly, we allow the present application and quash the impugned orders. However, we make it clear that if deemed appropriate, the disciplinary authority may proceed with the enquiry in accordance with law.

  
( S.K. Malhotra )  
Member (A)

  
( V.S. Aggarwal )  
Chairman

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