

27

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.1091/2001

New Delhi, this the 27th day of July, 2002

Hon'ble Shri Kuldip Singh, Member(J)
Hon'ble Shri M.P. Singh, Member(A)

1. Ashok Kumar (Ex. HC/AWO)
A-20-F Delhi Police Group Housing
Society, Mayur Vihar, Delhi
2. Gulab Singh (Ex. HC/AWO)
Vill. Dhar, PO Koat
PS Sadar, Distt. Mandi
Himachal Pradesh .. Applicants

(By Shri Shyam Babu, Advocate)

versus

1. Chief Secretary
Govt. of NCT of Delhi
5, Shamnath Marg, Delhi
2. Addl. Commissioner of Police
(PCR & Communication)
Police Hqrs., IP Estate, New Delhi
3. Dy. Commissioner of Police
(Communication)
Old Police Lines, Delhi .. Respondents

(By Shri Vijay Pandita, Advocate)

ORDER

Shri M.P. Singh, Member(A)

Applicants are before us challenging the order dated 16.5.2000 by which they have been dismissed from service with immediate effect as also the appellate order dated 13.6.2001 by which their appeals have been rejected. They are therefore seeking direction to quash and set aside these orders and to reinstate them in service with all consequential benefits.

2. Heard the learned counsel for the parties and perused the records.

3. Admitted facts of the case are that on 13.5.2000 at 12.05AM, an information was received through PCR that three persons had snatched Rs.3 lacs near Shipra Hotel,

28

Shakarpur. This information was recorded vide DD No.27-A and entrusted to SI Radhey Shyam for enquiry. On hearing this call on wireless set, ACP/Preet Vihar also reached the spot, conducted enquiry and recorded the statement of complainant Shri Dinesh Babu Gupta. Subsequently, a case vide FIR No.172/2000 u/s 328/420/120-B-IPC, PS Shakarpur was registered. During the course of investigation, the identity of applicant No.1, then working as Wireless Operator at PS Kamla Market was fixed as the person who had come to PS Shakarpur. Applicant No.1 was apprehended and an amount of Rs.10,000 was also recovered from his possession, while an amount of Rs.18000 was recovered from applicant No.2. On sustained interrogation, it transpired that both the applicants with some other police officials along with six other persons have hatched a well-planned criminal conspiracy to cheat the complainant. These persons were produced in the court of MM, Karkardooma Court on 15.5.2000 and the applicants with other accused persons had been sent to 14 days judicial remand. Observing that the misconduct of the applicants showed that they are of desperate character and a burden on Delhi Police and their continuance in Delhi Police was hazardous to the public and that holding of a regular departmental enquiry against them was not reasonably practicable as departmental proceedings would take a long time and it is not uncommon in such cases that the complaint and witness later on turn hostile mainly due to fear of reprisals and keeping in view the overall facts and circumstances of the case, the disciplinary authority vide its order dated 16.5.2000 imposed upon the applicants the penalty of dismissal from service, under Article 311(2)(b) of the Constitution of

India. Applicants' appeal against the dismissal order was rejected by the appellate authority vide its order dated 13.6.2001.

4. The main grounds taken by the learned counsel for the applicants during the course of the arguments are that there is no material available on record which could justify the satisfaction of the competent authority that it is not reasonably practicable to hold a departmental enquiry; and merely because the disciplinary proceedings will take long time, the DA is not justified at all in invoking the provisions of Article 311(2)(b) of the Constitution. The learned counsel has drawn our attention to the judgement of Delhi High Court dated 18.10.2001 in CWP No.61/2000 (Govt. of NCT Vs. Ram Sagar Singh) and the judgement of coordinate Bench of this Tribunal dated 30.4.2002 in OA 2631/2001 (Ram Niwas Vs. Govt. of NCT of Delhi) in support of his contentions.

5. On the other hand, the learned counsel for the respondents submitted that the complainant Shri Dinesh Babu Gupta informed that on 14.5.2000 night he received several threatening phone calls that he should not cooperate with the prosecution and in case he tried to harm the applicants, he would face dire consequences. Thus, the circumstances of the whole case were that holding of a regular departmental enquiry against the applicants was not found reasonably practicable as departmental proceedings take a long time and it was not uncommon in such cases that the complainant and witnesses are later on turned hostile mainly due to fear of reprisals. In this connection, he has drawn our

attention to the decisions of the apex court in UT, Chandigarh V. Mohinder Singh [JT 1997(2) SC 504] and in S.A.Sawant Vs. State of Maharashtra [(1986) 2 SCC 112] and also that of the Calcutta High Court in R.K.Tiwari Vs. UOI [1988(7) SLR 731] in support of his contentions.

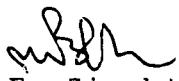
6. Even though we are in respectful agreement with the aforesaid decisions cited by the learned counsel for the respondents, the fact remains that the respondents have not produced any written statement duly signed by the complainant or any other material to the effect that the applicants had made the so called threatening phone calls to the complainant that he should not cooperative with the prosecution otherwise he would face dire consequences which would justify the action of the respondents not to hold an inquiry. It is also the fact that the criminal case against the applicants is still pending trial before the competent court of jurisdiction and if the witnesses (including the complainant who is stated to have received threatening calls from the applicants) can appear before the criminal court, we have no reason to believe the version of the respondents that the witnesses would not appear before the departmental enquiry due to fear of reprisal or that they would turn hostile. Therefore, in the absence of any valid material in the form of written statement from the complainant, the stand taken by the respondents to dispense with the inquiry, mainly on the ground that the complainant had received threatening calls from the applicants, before imposing the penalty of dismissal on the applicants, to our mind, does not appear to be justified.

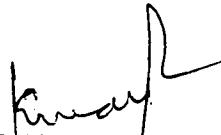
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7. In view of the aforesaid position, we are of the considered view that ends of justice would be duly met if we remit the case back to the disciplinary authority to conduct proper enquiry in accordance with law, rules and instructions on the subject and then pass appropriate orders. We do so accordingly.

8. As already pointed out by us that since the criminal case against the applicants is still pending before the competent court, we are not passing any orders with regard to reinstatement of the applicants in service. In other words, applicants would continue to be out of service till departmental enquiry proceedings are concluded and final orders are passed by the respondents.

9. OA is disposed of in the above terms. No costs.


(M.P. Singh)
Member(A)


(Kuldeep Singh)
Member(J)

/gtv/