

Central Administrative Tribunal
Principal Bench

O.A.No.1096/2001

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

New Delhi, this the 11th day of September, 2002

Shri Keshav Kumar
s/o Sh. Sahi Ram
r/o T-95, Gali No.4
Gautampuri
New Seelampur
Delhi.

..... Applicant

(By Advocate: Sh. Arun Bhardwaj)

Vs.

1. Union of India through
Commissioner of Police
P.H.Q.I.P.Estate
New Delhi.

2. Jt. Commissioner of Police
New Delhi Range
New Delhi.

3. Deputy Commissioner of Police
North East Distt.
Delhi.

... Respondents

(By Advocate: Sh. Ram Kanwar)

O R D E R(Oral)

By Shri Shanker Raju, M(J):

Heard both the learned counsel.

2. Applicant impugns respondents' order dated 30.5.1997 where on his alleged involvement in criminal case, after dispensing with the departmental inquiry, applicant was dismissed under Article 311(2)(b) of the Constitution of India. He also impugns appellate order dated 22.6.1999 upholding the punishment.

3. Applicant, who was posted in North East District, was implicated in FIR No.87 under Sections 21/61/85 NDPS Act, PS City Khanna, Distt. Ludhiana, Punjab on the allegation that 500 gms. heroin was

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recovered from his possession. He was placed under suspension on 26.5.1997 and the Deputy Commissioner of Police, disciplinary authority issued an order dated 30.5.1997 holding that the inquiry has not reasonably practicable as it would be difficult to proceed with the inquiry as there is likely hood of subverting of the departmental proceedings by the applicant, taking resort to the Article 311(2)(a) of the Constitution of India, applicant was dismissed from force.

4. Applicant preferred an appeal against the order of punishment, which was also rejected by an order dated 22.6.1999 by holding that false implications of the applicant is belied by the recovery of the huge quantity of heroin from his possession.

5. Meanwhile, Sessions Judge proceeded and by an order dated 12.2.2001 passed by the Sessions Judge, Ludhiana as the sample tested in Central Forensic Science Laboratory (in short as 'CFSL') which was recovered from the applicant, out of the recovery effected from applicant, was found not to be heroin but ~~not~~ sodium hydroxide chemical. As this chemical does not fall in the category of narcotic drugs and psychotropic substances, the SSP has recommended the cancellation of the FIR and accordingly the FIR was cancelled.

6. Shri Arun Bhardwaj, learned counsel appearing for the applicant, stated that resort of Article 311(2)(b) of the Constitution of India by the disciplinary authority was misuse of the

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constitutional provision and a short cut has been adopted to dispense with the inquiry, which was very much practicable and possible. It is further stated that the action is on the ipsi dixit of the authorities without any relevant material and ground of dispensing with the inquiry, it has been on presumption that the witnesses would not likely to come forward and the applicant would subvert the proceedings. In this view of the matter, it is stated that the action of the respondents cannot be countenanced in view of the following decisions of the Apex Court:

1. Union of India Vs. Tulsi Ram Patel, etc.,
AIR 1985 SC 1416.

2. Satyavir Singh Vs. Union of India.
1986 SCC (L&S) 1.

3. Chief Security Officer Vs. Singasan
Rabi Das, 1991 SCC (L&S) 415

7. It is further stated that as per the report of CFSL the material, which was allegedly found in possession of the applicant was not ~~was~~ in the category of narcotic drugs and psychotropic substances but ~~was~~ sodium hydroxide chemical. The very basis of action taken by the applicant is obliterated^{ed} and by cancellation of FIR the applicant stands at an higher footing than in the event of an acquittal from the criminal charge after the trial. By bringing our attention to the contents of the order passed by the disciplinary authority, it is stated that the reasons recorded are vague, based on presumption and subjective consideration has not been made by the disciplinary authority. It is further stated that no other grounds have been made to proceed the applicant in a departmental inquiry and only on flimsy ground,

this has been concluded that the applicant would subvert the departmental proceedings. It is further stated that the witnesses in the criminal case are police officers without summoning them it cannot be presumed that they would not come forward in the inquiry or in absence of any material that the applicant in any manner subverted the departmental proceedings, the action taken to dispense with the services of the applicant, because of the weak case, which cannot be countenanced in view of the Apex Court's decisions referred supra.

8. By referring to the appellate order, contended that the appellate authority has also not applied its mind to the contentions of the applicant and merely on the basis that the recovery was effected from the applicant, maintaining the punishment without going into the possibility of holding the inquiry even at the appellate stage which is mandated by the decision of the Apex Court in Tulsi Ram Patel's case supra. It is lastly stated that sufficient reasons have not been recorded to arrive at a finding by the authorities.

9. On the other hand, respondents, in their reply controverted the contentions and Shri Ram Kanwar, learned counsel appearing on behalf of the respondents, stated that as the applicant was found in possession of heroin, which is a menace for the society, being a responsible Police Officer instead of preventing drug trafficking, he himself indulged in the same, as such it is dangerous to retain such a person in the force and the departmental inquiry would

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be difficult to proceed as he would subvert the disciplinary proceedings. It is further stated that the exercise of power under Article 311(2)(b) was justified and the order passed in appeal is a reasoned order. In nutshell, he defended both the orders, passed by the disciplinary authority as well as appellate authority.

10. We have carefully considered the rival contentions of both the parties and perused the material on record. In pursuance of the decision of the Apex Court, by a Constitutional Bench, in Tulsi Ram Patel's case supra, Government of India laid down guiding principles for dispensing with the inquiry on the basis of a decision in Satyavir Singh and Others (Civil Appeal No.242 of 1982 and CA No.576 of 1982) through OMs No.11012/11/85-Estt.(A) dated 11.11.1985 and 4.4.1986 wherein the following guide-lines have been laid down:

"6. There are two conditions precedent which must be satisfied before action under Clause (b) of second proviso is taken against a Government servant. These conditions are:-

(i) There must exist a situation which makes the holding of an inquiry contemplated by Art. 311(2) not reasonably practicable. What is required is that holding of 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 all the cases in which it would not be reasonably practicable to hold the inquiry. Illustrative cases would be:-

(a) Where a civil servant, through or together with his associates, terrorizes, threatens or intimidates witnesses who are likely to give evidence against him with fear of reprisal in order to prevent them from doing so; or

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(b) Where the civil servant by himself or with or through others threatens, intimidates and terrorizes the officer who is the Disciplinary Authority or members of his family so that the officer is afraid to hold the inquiry or direct it to be held; or

(c) Where an atmosphere of violence or of general indiscipline and insubordination prevails at the time the attempt to hold the inquiry is made.

The 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 civil servant is weak and is, therefore, bound to fail."

11. If one has regard to the decision in Tulsi Ram Patel's case, where judicial review in orders passed under Article 311(2)(b) is permissible, and if the order is found based on malafides and extraneous materials not relevant to the issue, the order is to be set-aside.

12. Keeping in view of the aforesaid dictum, if we peruse the reasons recorded by the disciplinary authority, we find that the only reason to do away with the inquiry is that the applicant being involved in a heinous crime of drug-trafficking and he could subvert the departmental proceedings. Nothing on record has been brought by the respondents to show that in what manner the applicant had subverted the departmental proceedings. In fact the respondents have not even ordered a disciplinary proceedings and also not called the witnesses by issuing summons. The action of subverting the disciplinary proceedings arises only when the same is ordered and by an overact. ^u the applicant is in any manner instrumental in subverting the same.

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13. In absence of any such material on record and the fact that the witnesses in the criminal case were the police officials, the grounds adduced to dispense with the inquiry are flimsy, unjustified, irrelevant and based on extraneous consideration and merely on surmises and presumptions. A disciplinary proceedings should not be dispensed with to adopt a short cut to dispense with the services of an employee as he has a right to be accorded reasonable opportunity before his dismissal. Though the reasons arrived under Article 311(2)(b) are final but yet judicial review is permissible. Moreover, the action of the disciplinary authority is founded on ipsi dixit and not ^{on} relevant and justifiable reasons.

14. Moreover, in view of the circular of Commissioner of Police dated 8.11.1993, which was reiterated subsequently in 1998, inquiry should not be dispensed with and can be held ~~Confidentially~~^W if an officer is involved in a heinous offence, like the present case. We find that the inquiry is dispensed with arbitrarily, or lightly or out of ulterior motives or merely in order to avoid holding of an inquiry or because the Department's case against the civil servant is weak, cannot be countenanced, in view of the decision of the Apex Court in Satyavir Singh's case supra as well as the guide-lines, formulated by the Government.

15. In so far as the appellate order is concerned, we find that the appellate authority has not applied its mind to the contentions of the

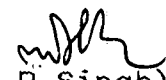
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applicant and merely reiterated the decision of the disciplinary authority only on recovery of heroin from the applicant.

16. In so far as the recovery is concerned, as the Sessions Judge, on the basis of CFSL's report, cancelled the FIR in view of the material not found the heroin and not covered in the category of narcotic drugs and psychotropic substances and being another chemical the applicant has been given a clean chit in the criminal case.

17. In the result and having regard to the reasons recorded above, the OA is allowed. The impugned orders are not legally sustainable and are accordingly set-aside. The respondents are directed to reinstate the applicant with all consequential benefits, within a period of three months from the date of receipt of a copy of this order. However, this shall not preclude the respondents, if so advised, to proceed against the applicant keeping in view ~~with~~ the order of the Sessions Court and in accordance with law. No costs.

S. Raju
(Shanker Raju)
Member (J)


(M.P. Singh)
Member (A)

Shyam/rao/