

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

O.A No. 2429/2001
T.A No.

(X)

Date of Decision 12.2.2001

Jaipal Singh

..Petitioner

Shri Arun Bhardwaj
learned counsel through
proxycounsel Sh, Bhaskar
Bhardwaj

..Advocate for the petitioner(s)

Versus

UOI Through the ..Respondent
Commissioner of Police & Ors

Shri Devesh Singh, ..Advocate for the Respondents
learned counsel through
proxy counsel Sh, Amit Rathi

Coram:-

Hon'ble Smt. Lakshmi Swaminathan, Vice Chairman (J)
Hon'ble Shri M.P. Singh, Member (A)

1. To be referred to the Reporter or not? Yes
2. Whether it needs to be circulated to other Benches of the Tribunal? No

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

(8)

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

OA No 2429/2001

New Delhi this the 12th day of February, 2002

Hon'ble Smt.Lakshmi Swaminathan, Vice Chairman (J)
Hon'ble Shri M.P.Singh, Member (A)

Jaipal Singh
S/O Shri Chander Bhan,
Village and P.O.Khizarpur,
P.S.Ganaur, Distt.Sonipat.

..Applicant

(By Advocate Shri Arun Bhardwaj,
learned counsel through proxy
counsel Shri Bhaskar Bhardwaj)

VERSUS

1.Union of India through
Commissioner of Police,
Police Headquarters, I.P.Estate,
New Delhi.

2.Additional Commissioner of Police
Crime and Railways, Police
Headquarters, I.P.Estate,
New Delhi.

3.Deputy Commissioner of Police
Crime and Railways,
I.P.Estate, New Delhi.

..Respondents

(By Advocate Shri Devesh Singh,
learned counsel through proxy counsel
Shri Amit Rathi and Ms.Pareena
Swarup)

O R D E R (ORAL)

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

In this application the applicant has impugned the action of the respondents in passing the order dated 12.12.2000 dismissing him from service under Article 311 (2) (b) of the Constitution of India. He has also impugned the appellate authority's order which has confirmed the disciplinary authority's order on 24.7.2001 rejecting his appeal.

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2. From the disciplinary authority's order dated 12.12.2000, the following relevant paras are extracted:-

" on receiving a secret information regarding smuggling of smack, a raid was conducted by the team of Narcotics Branch, Delhi Police, on 7.11.2000 at Jelebiwala Chowk, Sultan Puri, Delhi. During the raid 500 gms smack was recovered and the three persons namely (i) Sunil Kumar S/O Bhir Singh r/o E-4/34, Sultan Puri, Delhi, (ii) Vinod Kumar S/O Bhagwati Prasad r/o E/3-350, Sultan Puri, Delhi and (iii) Ikram S/O Nawab Ali r/o Plot No. 17, Vikram Enclave, Shalimar Garden, Ghaziabad, UP were arrested. A case FIR No. 36/2000 u/s 21/29/61/85 NDPS Act was registered at P.S. Narcotics Branch and during their interrogation, the above accused persons revealed they were known to Const. Jaipal Singh No.21/DRP who is posted in Spl. Team, Adarsh Nagar, Crime Branch, and he had arranged the smack for them. On this statement Const. Jaipal Singh No.21/DRP was also arrested in the said case".

...."The above act of constable Jaipal Singh No.21/DRP clearly indicates his association with the criminals namely Sunil Kumar, Vinod Kumar and Ikram who were arrested in the above mentioned case. The investigation of the case revealed that the Constable was supplying smack to them for selling to the youngsters and he had also arranged shelters for them Const. Jaipal Singh who is a policeman should have arrested them but instead he himself has become associate/mixed up with the criminals and assisted them in their illegal activities. There is every point to apprehend that if the constable is allowed to continue in the police service, he would be able to influence the investigation of the case and would try to protect the accused persons whom he was patronizing. In such circumstances if a departmental enquiry into the misconduct of the constable is initiated the above accused would not come to depose against the constable during enquiry and as such it is not practicable possible to conduct a regular departmental enquiry against the constable".

(emphasis added)

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3. In the light of what has been stated above, the disciplinary authority has dismissed the applicant from service as Constable in Delhi Police with immediate effect under Article 311 (2) (b) of the Constitution of India. The suspension period of the applicant from 8.11.2000 has been treated as period not spent on duty.

4. The appellate authority by his order dated 24.7.2001 has come to a similar conclusion as the disciplinary authority that the above facts clearly indicate the indulgence of the applicant/Constable in "such heinous crime of drug smuggling and also association with criminals". The appellate authority has further stated as follows;-

"It is true that it was not reasonably practicable to hold departmental enquiry in this case where his associates were required to depose against him. In the given circumstances, these witnesses would not have deposed against their associates out of intimidation and threat. The plea of the appellant that Disciplinary authority had ignored the orders and circulation of the Commissioner of Police by not passing lengthy cogent reason is not correct. The disciplinary authority has applied his mind to the facts and circumstances of the case and also to the gravity of the situation and then passed the order".

5. It is not disputed by anyone that the alleged involvement of the applicant, if proved, in drug smuggling and also association with criminals is indeed a heinous crime especially being a Constable in Delhi Police for which, he does not indeed deserve to

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continue in that post. The main question raised by Shri Bhaskar Bhardwaj, learned proxy counsel for the applicant in the present application is whether on the reasoning given by the disciplinary authority which has been agreed to by the appellate authority the dismissal order is justified on the conclusion drawn by the respondents that it is not reasonably practicable to hold a Departmental enquiry. He has further submitted that "the disciplinary authority has neither considered the provisions of respondents own Circular dated 29.12.1993 wherein it has been stated that "the disciplinary authority is not expected to dispense with a disciplinary enquiry lightly or arbitrarily or out of ulterior motives or merely in order to avoid the holding of an enquiry or because the Department's case against the government servant is weak and must fail". Learned counsel has submitted that the Departmental enquiry has been dispensed with in the present case because the disciplinary authority apprehends that if the applicant is allowed to continue in the police service he would be able to influence the investigation of the case and would try to protect the accused persons whom he was patronizing. Learned counsel has submitted that while at present, the three accused persons in FIR 36/2000 under the NDPS Act have been let out on bail, the applicant who is one of the co-accused persons in the same criminal case is still in judicial custody i.e. at least till 5.2.2002. He further submits that in the meantime, the applicant has also filed a bail application before the Hon'ble Delhi High Court

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which is still pending. In the circumstances of the case, since the applicant has been arrested and placed in judicial custody, he has been suspended from service w.e.f. 8.11.2000, and there is no question of any apprehension that the applicant would be able to influence the investigation of the case or the witnesses or the conduct of the Departmental enquiry. He relies on Tribunal's order dated 14.12.2001 in **Ex.Constable Radhey Shyam Vs.UOI and Ors** (OA 1066/2001)(copy placed on record) and **Union of India Vs.Tulsiram Patel etc.** (AIR 1985 SC 1416) on the basis of which the aforesaid Circular has been issued by the respondents.

6. The respondents in their reply have merely reiterated the reasoning given by the disciplinary authority as well as the appellate authority for dispensing with the Departmental enquiry under Article 311 (2) (b) of the Constitution of India. According to them because of the nature of the crime which the accused and the applicant are alleged to be involved and the real apprehension that the applicant would influence the investigation and the witnesses, they had come to the correct conclusion that it was not reasonably practicable to hold a Departmental enquiry.

7. We have carefully considered the pleadings and the submissions made by the learned counsel for the parties. The reasons given in the impugned orders by the disciplinary authority as well as the appellate

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authority can hardly be considered as sufficient or in accordance with the provisions of Article 311 (2)(b) of the Constitution of India or a catena of judgements of the Hon'ble Supreme Court on this issue (See Tulsiram Patel's case (supra) and Satyavir Singh Vs.UOI (1986(SCC (L&S) 1) and Chief Security Officer & Ors.Vs.Singasan Rabi Das (AIR 1991 SC 1042). It is relevant to note that the disciplinary authority in his order has stated that "there is every point to apprehend that if the constable is allowed to continue in the police service, he would be able to influence the investigation of the case and would try to protect the accused persons whom he was patronizing". However, it is noted that the accused persons themselves had revealed that they were known to Constable Jaipal Singh/applicant who had arranged smack for them which shows that they have not hesitated to reveal his name and thereby get him into the present situation. Therefore, in the circumstances of the case the apprehension of the disciplinary authority that the applicant would "protect" the accused persons, does not appear to be reasonable and ~~besides~~ ^{besides} ~~it~~ ^{is} based on an apprehension only. It is also relevant to note that the applicant was placed under suspension w.e.f. 8.11.2002.

8. The Supreme Court in Satyavir Singh's case (supra) has held:-

" that the enquiry cannot be lightly dispensed with on the ipsi dixit of the disciplinary authority and can be only when it is not reasonably practicable to proceed with the departmental enquiry, when it is

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found that the witnesses and the complainants have been terrorised during the enquiry and are not ready to depose against the delinquent officials".

That is not the position in the present case. The dismissal order passed against the applicant dated 12.12.2000 is based on the information revealed by the accused persons in the criminal case against the applicant, which has led the respondents to pass the dismissal order. There is no doubt at all that if it is established that the applicant is associated with smack smuggling and / or he is associated with criminals, it is a heinous crime but in the facts and circumstances of the case there is no reason why the respondents should dispense with the Departmental enquiry based only on surmises and apprehensions.

9. The judgement of the Hon'ble Supreme Court in the case of Chief Security Officer & Ors Vs. Singasan Rabi Das relied upon by the applicant is also relevant. The Apex Court has held:-

"..In the present case the only reason given for dispensing with that enquiry was that it was considered not feasible or desirable to procure witnesses of the security/other Railway employees since this will expose these witnesses and make them ineffective in the future. It was stated further that if these witnesses were asked to appear at a confronted enquiry they were likely to suffer personal humiliation and insults and even their family members might become targets of acts of violence. In our view these reasons are totally insufficient in law. We fail to understand how if these witnesses appeared at a confronted enquiry, they are likely to suffer personal humiliation and insults. These are normal witnesses and they could not be said to be placed in any delicate or special position in which asking them to appear at a confronted enquiry would render them subject to any danger to which witnesses are not normally subjected and hence these grounds constitute no justification for dispensing with the enquiry .

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There is total absence of sufficient material or good grounds for dispensing with the enquiry".

(emphasis added)


10. While the appellate authority has stated that the disciplinary authority has applied his mind to the facts and circumstances of the case and also the gravity of the situation and the circular/ order dated 29.12.1993, we note that there is no mention at all of the Circular by the disciplinary authority in his order. Therefore, the presumption of the appellate authority on this ground cannot be sustained. In other words, it appears that both the disciplinary authority as well as the appellate authority in their orders have not considered the Circular issued to the respondents while dealing with the present case, and the criteria laid down by the Hon'ble Supreme Court in such matters for dispensing with the disciplinary enquiry while imposing the extreme punishment of dismissal from service.

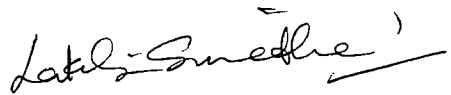
11. Taking into account the reasoning given by the disciplinary authority as well as the appellate authority in the impugned orders and the aforesaid judgements of the Hon'ble Supreme Court, we therefore, find ourselves unable to agree with the contentions of the learned proxy counsel for the respondents that the impugned orders are sustainable. In the facts and circumstances of the case, the decision of the respondents to dispense with the departmental enquiry against the applicant based on apprehensions and surmises cannot, therefore, be considered as justified. Accordingly, the impugned orders dated 12.12.2000 and 24.7.2001 are quashed and set aside. However, in the

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facts and circumstances of the case, liberty is given to the respondents to pass appropriate orders, keeping in view the observations made above and in accordance with the relevant rules and instructions. This shall be done within two months from the date of receipt of a copy of this order. No order as to costs.


(M.P. Singh)
Member (A)


(Smt. Lakshmi Swaminathan)
Vice Chairman (J)

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