

CENTRAL ADMINISTRATIVE TRIBUNAL: PRINCIPAL BENCH

Original Application No. 2631 of 2001

New Delhi, this the 30th day of April, 2002

HON'BLE MR. V.K. MAJOTRA, MEMBER (A)
HON'BLE MR. KULDIP SINGH, MEMBER (JUDL)

Ram Niwas

(4/DRP)

S/o Shri Jai Marain

R/o Village & PO Silana

PS: Kharkahda District Sonapat,
Haryana.

-APPLICANT

(By Advocate: Shri Shyam Babu)

Versus

1. Government of NCT Delhi
Through its Chief Secretary,
"Players Building" I.P. Estate,
New Delhi.
2. Additional Commissioner of Police, Delhi,
Police Headquarters,
I.P. Estate, New Delhi.
3. Dy. Commissioner of Police
(Crime & Railways)
Police Headquarters, I.P. Estate,
New Delhi.

-RESPONDENTS

(By Advocate: Shri Ajesh Luthra)

ORDER (ORAL)

By Hon'ble Mr. Kuldip Singh, Member (Judl)

Vide impugned order dated 1.5.2000 the applicant, a Constable in Delhi Police was dismissed from service in a summary manner by invoking Article 311(2)(b) of the Constitution of India. The applicant had preferred an appeal against that order which was also dismissed by Additional Commissioner of Police vide his order dated 3.7.2001. The applicant assails both these orders on the ground that the same had been by the respondents in an arbitrary and unjust manner and is not based on any material available on record.

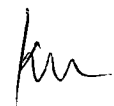
2. It is submitted that the order is based on

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surmises and conjectures to the effect that the complainant in this case due to fear of reappraisal will not give evidence in the departmental enquiry. The applicant submits that this opinion formed by the disciplinary authority is not substantiated by any material available on record so the impugned order cannot stand as the order is simply based on opinion of the disciplinary authority and that of the appellate authority is without any basis.

3. The respondents are contesting the OA. The respondents submitted that the applicant who was working as Constable in Delhi Police was involved in a heinous crime of committing kidnapping and robbery. The applicant along with his accomplices forced the complainant to sit in his maruti car and threatened him to keep his mouth shut otherwise he would be shot dead and the car kept on moving for 1 1/2 to 2 hours and ultimately after snatching Rs.6,97,000/- which was contained in the bag in possession of the complainant, was snatched by the applicant. Complainant on being thrown out of the car had noted the registration number of the car, informed the police immediately through a PCO located at Bhogal and during investigation, the applicant was arrested and was found to have been involved in kidnapping and robbery case.

4. It was also submitted that if a departmental enquiry was initiated against the policeman, the complainant would not depose due to fear that no-one would dare to depose against a policeman, who himself had



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robbed an innocent citizen with the fear of life and property. Thus it is submitted that by invoking Article 311(2)(b) of Constitution of India, the same is justified.

5. We have heard the learned counsel for the parties and gone through the records of the case.

6. The learned counsel appearing for the applicant submitted that the conclusion arrived at by the disciplinary authority that no witnesses would dare to depose against the applicant is unfounded and there is no indication in the order that there was any material on record to substantiate the opinion arrived at by the disciplinary authority. Thus this order cannot stand. To support his contention the learned counsel appearing for the applicant referred to a recent judgment in OA 151/2002 given by Court No.1 wherein the Court No.1 had referred to the law laid down in Chief Security Officer and Others Vs. Singasan Rabi Das reported in JT 1991 (5) SC 117. The court had also relied upon another case entitled as Satyavir Singh and Others & D.P. Vohra Vs. H.O.I. and Others wherein the court had set aside the orders.

7. The counsel for the applicant has also referred to another judgment given by Tribunal in Naresh Kumar and Another Vs. Commissioner of Police and Another reported in 1992 (22) ATC 208. Both these judgments say that the disciplinary authority while forming an opinion for dispensing with the enquiry had to assign reasons

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based on material, only then can dispense with the enquiry and can pass order of dismissal of service of the applicant.

8. The counsel for the applicant further submitted that in this case the disciplinary authority has not referred to any sound reason to dispense with the enquiry. The disciplinary authority had simply stated that the entire function of the police is based on public confidence and the delinquent official who had indulged in this robbery had tarnished the image of the police and if departmental enquiry is proceeded with, then no-one would appear against the delinquent official which according to the counsel for the applicant does not satisfy the provisions of Article 311(2) (b) because the satisfaction recorded by the disciplinary authority is based on philosophical ideas and not on any material available on record.

9. As against this, Shri Ajesh Luthra appearing for the respondents submitted that it is on record that a criminal case was registered against the applicant and the delinquent official is facing trial before the criminal court. Even the complaint has turned hostile before the criminal court, thus reasons recorded by the disciplinary authority had been substantially found to be correct as his apprehension that no-one would depose against the applicant has proved to be true during the criminal trial so the order passed by the disciplinary authority should not be interfered with.

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10. In our view the contentions, as raised by the learned counsel for the respondents has no merits because the basic test is that at the time of the passing of the impugned order the disciplinary authority has to satisfy from the material available on record whether there is any reason to dispense with the enquiry or not. To that extent the counsel for the respondents was unable to satisfy us as to what reasons existed at the time of the passing of the impugned order. The subsequent development which have taken place during the criminal trial cannot be taken to justify the order passed in the past by the disciplinary authority.

11. Thus, we are of the considered opinion that at the time of passing of the order, no material was available with the disciplinary authority to dispense with the enquiry. Hence we are of the considered opinion that the order passed by the disciplinary authority as well as by the appellate authority are liable to be quashed. The applicant is entitled to be reinstated.

12. Accordingly, we allow the OA and quash the impugned orders and direct the respondents to reinstate the applicant within one month from the date of receipt of a copy of this order.

13. However, we make it clear that the applicant shall not be entitled to the back wages for the intervening period since he has not performed his duties.

