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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.796/2001

New Delhi this the 4th day of January, 2002.

HON'BLE MR. S.R. ADIGE, VICE-CHAIRMAN (ADMNV)
HON'BLE MR. SHANKER RAJU, MEMBER (JUDICIAL)

Rakesh Kumar Ex. Constable No.1433/NW,
PIS No.28892556,
S/o Sh. Ram Partap,
C/o H.No.D-395 Sodh Nagar,
Palam Colony,
New Delhi.

-Applicant

(By Advocate - None)

-Versus-

1. Govt. of NCT & Others,
through: Commissioner of Police,
PHQ, I.T.O. New Delhi.
2. Joint Commissioner of Police,
PHQ, North Range, Delhi.
3. Deputy Commissioner of Police,
North West Distt. Delhi.

-Respondents

(By Advocate Mrs. Neelam Singh)

O R D E R

By Mr. Shanker Raju, Member (J):

This case is disposed of in terms of Rule-15 of the Central Administrative Tribunal (Procedure) Rules, 1987, in the absence of the counsel for the applicant, on the basis of the material available on record and after hearing the learned counsel for the respondents.

2. The applicant, a Constable in Delhi Police, was implicated in a criminal case FIR No.230/2000 under Sections 365/342/385/377/34 IPC alongwith another Constable and three other accused persons, on the allegation that they have allegedly abducted three persons (Bangladeshis) and detained them and further beaten them and also demanded illegal gratification for their release. It is further alleged that one of the police officials committed sodomy with one of the complainants.

3. The disciplinary authority by ^acommon order dated 17.7.2000 dismissed the applicant and other Constable by resorting to Article 311 (2) (b) of the Constitution of India and after dispensing with the enquiry as not reasonably practicable on the ground that the witnesses would be put under the constant fear by the applicant and it would not be easy to secure the presence of the witnesses during the course of the DE. On appeal, the appellate authority by an order dated 13.11.2000 maintained the order of dismissal. Both these orders are assailed in the present OA. The applicant in this OA stated that the disciplinary authority dispensed with the enquiry without any independent material other than the charge levelled in the criminal prosecution against the applicant without arriving at a subjective satisfaction. It is also stated that the power under Article 311 (2) (b) has been exercised by the disciplinary authority on its ipsi dixit lightly with a view to adopt a short-cut to dismiss the applicant. The reasons recorded are absolutely arbitrary and based on suspicion and surmises. According to him, if the criminal trial is possible and practicable on the basis of the same evidence and witnesses, including the complainant and the other police officials the enquiry was equally possible and was practicable. It is stated that the reasons recorded by the disciplinary authority that the witnesses would be under constant threat and pressure does not borne out from the record. There is no material like the complaint or the DD entry recorded by the witnesses as to their being threatened and put under fear by the applicant. As regards the ground that as the witnesses belong to Bangladesh, it would not be easy to secure their presence from time to time is concerned, the aforesaid finding is only on



presumption as no efforts have been made to call for the presence of the witnesses by sending them notices etc. It is further stated that as per the circular issued by the Commissioner of Police on 8.11.93, which is binding in case where a case is registered against the police official for a heinous offence like the present one the DE can be conveniently held and in such an eventuality the enquiry cannot be dispensed with arbitrarily. In this backdrop it is stated that the disciplinary authority was not competent to dispense with the enquiry. It is lastly contended that several contentions have been taken in the appeal but the appellate authority mechanically agreed^l with the findings of the DA and has not at all gone into the possibility of holding the enquiry even at the stage of appeal which is mandatory as held by the Constitutional Bench of the Apex Court in Union of India v. Tulsi Ram Patel, AIR 1985 SC 1416. It has also been brought to our notice that one Constable Radhey Shyam who was co-delinquent with the applicant and has been dismissed by a common order the dismissal has been set aside in OA by an order passed by a coordinate Bench on 14.12.2001 in OA-1066/2001.

4. On the other hand, the learned counsel for the respondents Mrs. Neelam Singh, strongly rebutting the contentions of the applicant stated that the orders passed both by the disciplinary authority as well as appellate authority are sustainable. According to her as the witnesses have lodged a complaint being threatened by the applicant the reasons recorded by the disciplinary authority to dispense with the enquiry on the ground that the witnesses would be put under constant fear as well as being Bangladeshi Nationals it would not be easy to secure

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their presence. The order of dismissal does not suffer from any legal infirmity. As regards the decision in Radhey Shyam's case (supra) it is stated that the decisions placed reliance therein are not applicable to the facts and circumstances of the case. It is also stated that the orders have been passed after due application of mind and relevant reasons have been recorded in its support.

5. We have carefully considered the pleadings and the contentions of the learned counsel for the respondents. In our considered view the respondents have utterly failed to persuade us to take a contrary ^{view} from what has been taken by the coordinate Bench in Radhey Shyam's case (supra). Being the co-defaulter and accused of the same misconduct the reasons recorded by the coordinate Bench are legal and valid and we respectfully follow the same. In a catena of decisions by the Apex Court including the decision in Satyaveer Singh v. Union of India, 1986 SCC (L&S) 1, in order to justify the action under Article 311 (2) (b) it has to be shown that the enquiry has not been lightly dispensed with and there are valid reasons to justify the action. The reasons recorded by the disciplinary authority in the instant case are not at all reasonable and relevant. Merely on presumption the enquiry has been dispensed with, without arriving at a subjective satisfaction.


6. As regards the reason regarding dispensing with the enquiry on account of threat to the witnesses we find no material on record to show that the witnesses have been called in the enquiry and were threatened by the

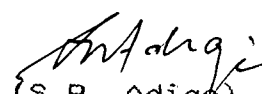
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applicant. Without following any process of calling the witnesses in the enquiry to depose the ground that it would not be easy to procure the presence of the complainant and the witnesses in the DE would be illogical and irrational. On one hand the respondents have instituted a criminal proceeding against the applicant on the basis of same evidence by recording their statement but yet the same evidence has not been found available to them in the DE. This cannot be countenanced. Yet another legal infirmity is that the disciplinary authority has not taken into consideration the circular issued by the Commissioner of Police on 8.11.93. This shows non-application of mind by the disciplinary authority.

7. The appellate authority has also passed a non-speaking order and has not at all gone into the possibility of holding a DE even at the stage of appeal. This goes contrary to the ratio of the Constitutional Bench decision in the case of Tulsi Ram Patel (supra).

8. In the result finding considerable force in the contentions of the applicant the impugned orders are not legally sustainable. The same are quashed and set aside. The respondents are directed to re-instate the applicant in service forthwith with all consequential benefits. However, it is open to the respondents, if so advised, to take proper disciplinary proceedings in accordance with law. The aforesaid directions shall be complied with by the respondents within a period of three months from the date of receipt of a copy of this order. No costs.


(Shanker Raju)
Member(J)


(S.R. Adige)
Vice-Chairman(A)