

Central Administrative Tribunal
Principal Bench

O.A. No. 180 of 1999

New Delhi, dated this the 8th AUGUST, 2001

(19)

HON'BLE MR. S.R. ADIGE, VICE CHAIRMAN (A).
HON'BLE DR. A. VEDAVALLI, MEMBER (J)

Narender Singh
(612/DAP) Ex Constable,
S/o Shri Joginder Singh,
R/o Vill. Makwal,
P.O. Khas,
District Armitsar, Punjab. . . Applicant

(By Advocate: Shri Shyam Babu)

Versus

1. Govt. of NCT of Delhi through
its Chief Secretary,
5, Sham Nath Marg,
Delhi.
2. Dy. Commissioner of Police,
1st Battalion, DAP,
Kingsway Camp, Delhi.
3. Addl. Commissioner of Police,
Now Jt. Commissioner of Police,
Armed Police,
Police Headquarters,
I.P. Estate,
New Delhi. . . Respondents

(By Advocate: Shri Ajesh Luthra)

ORDER

S.R. ADIGE, VC (A)

Applicant impugns the disciplinary authority's order dated 9.9.97 (Annexure A) dismissing applicant from service by invoking the provisions of Article 311 (2) (b) of the Constitution of India without holding a regular D.E., and the appellate authority's order dated 9.2.98 (Annexure B) rejecting the appeal. Applicant prays for reinstatement with all consequential benefits.

✓

(20)

2. Pleadings reveal that applicant was enrolled as a Constable in Delhi Police on 1.8.94. He was arrested in Case FIR No.334 dated 30.10.95 P.S. Mukherjee Nagar u/s 308/34 IPC. Later he was released on bail after spending 15 days in judicial custody. As a result of the same, he was placed under suspension, and a departmental enquiry was ordered on 8.11.95 (Annexure-C). Thereupon he filed OA No.889/96 praying that the aforesaid DE be kept pending till the disposal of aforesaid criminal case FIR No.334/95 dated 30.10.95. That OA was disposed of by order dated 23.7.96 (Annexure-G) with a direction to respondents that while the DE could proceed, respondents should not compel applicant to cross examine the witnesses or enter into his own defence till the disposal of the criminal case, lest it prejudice applicant's defence in the criminal case. After the disposal of the criminal case, respondents could decide in accordance with Rule 12 Delhi Police (Punishment & Appeal) Rules whether to proceed with the DE or not.

3. Later on, respondents reinstated applicant in service; without prejudice to the departmental proceedings and the criminal case pending against him.

4. FIR No.334/95 ended in applicant's discharge vide judgment dated 16.3.98 on the ground that only offence u/s 323/34 IPC was made out which being non-

✓

(21)

cognizable could not have been investigated by the police without court's permission.

5. From the impugned orders, it now transpires that during the pendency of the aforesaid criminal case and the departmental enquiry against him, FIR No. 717/97 u/s 409/457/380 IPC has been registered against applicant and other co-accused, in which applicant was arrested and remanded to custody for theft of two .38 bore revolvers and one .9 mm pistol which were found missing from the kot of Vijay Ghat/ 1st Battalion, DAP. The appellate authority's order reveals that on the intervening night of 22/23.6.97 applicant was a member of the Kot guard. All members of the kot guard and some of the kot staff used to stay in a tent pitched next to the kot. That night Constable Vijender Singh, Munshi of the kot was also sleeping in the tent. Applicant managed to steal the key of the kot which Constable Vijender Singh had kept under his pillow and committed theft of the 3 arms from the kot with the help of one Raju and others who were civilians. The impugned orders further reveal that applicant was interrogated by the team from Crime Branch, and during the interrogation he admitted having committed the theft of the above mentioned arms and ammunition along with his accomplices.

6. The disciplinary authority in his impugned order dated 4.9.97 concluded that it would not be reasonably practicable to hold a departmental enquiry against applicant for the following reasons.

✓

- (i) He was likely to remain in judicial custody for a long period of time.
- (ii) The other police personnel who were holding charge of the kot namely Hd. Constable Jaibir Singh; Const. Sushil Kumar; Const. Krishan Gopal and Const. Birender Singh who were also being proceeded with departmentally for the negligence were not likely to prove reliable witnesses against applicant.
- (iii) The co-accused with applicant namely Dhanraj, Raju, Jaswant Singh, Jaswinder, Harvinder and Deepak were not likely to give evidence in the DE against applicant.
- (iv) He had also been arrested in Case FIR No. 334 dated 30.10.95 u/s 308/34 IPC P.S. Kukherjee Nagar and was thus involved in not one but two serious criminal cases.

7. Echoing the aforesaid reason, the appellate authority in his impugned order dated 9.2.98 has observed that applicant has been involved in all those undesirable activities in the first three years of his service. Apart from his involvement in crimes, the daring which applicant has exhibited in committing theft of Government arms and the company of criminals which he keeps, would severely deter any witness from testifying against him and his accomplices in the course of the DE. In such a situation it is highly impossible that the complainant/witnesses would have enough courage to depose against him. Under these circumstances and in view of the grounds recorded by the disciplinary authority that it would not be reasonably practicable to hold a DE as the witnesses were unlikely to depose against the

applicant, the appellate authority has dismissed the appeal holding that the disciplinary authority had rightly invoked the provisions of Article 311 (2) (b) of the Constitution.

8. On behalf of applicant Shri Shyam Babu has argued that the aforesaid grounds for dispensing with the DE. Under Article 311(2)(b) of the Constitution are based on the mere subjective satisfaction of the concerned authorities and in the absence of any independent objective material to lead the authorities to conclude that a disciplinary enquiry was not reasonably practicable, which would justify reliance on Article 311(2)(b), the impugned orders could not be sustained in law. Reliance in this connection were placed on the Hon'ble Supreme Court's rulings in Jaswant Singh Vs. State of Punjab (1991) 1 SCC 362; and Chief Security Officer & others Vs. S.R. Das (1991) 5 SC 117; and CAT, P.B. ruling in Naresh Kumar Vs. Commissioner of Police (1992) 7 SLR 177.

8. These contentions have been denied by respondents.

9. We have considered the matter carefully.

10. Of the 4 reasons which prevailed upon respondents to conclude that it was not reasonably practicable to hold an enquiry, reason (i) namely that applicant was likely to remain in judicial custody for a long period of time, is clearly not reason enough to dispense with the enquiry, more so in view of the fact that applicant was released from custody after 12 days. In any case the DE could have been initiated even if applicant remained in custody.

(2A)

Similarly reason (iv) namely that applicant was involved in criminal case could not be sufficient reason to dispense with the inquiry in this particular case.

11. We are then left with reasons (ii) and (iii). In regard to these reasons we note that no effort was made to summon the other police personnel, or the co-accused to give evidence in any DE instituted against applicant. In the rulings cited by Shri Shyam Babu, it is well settled that there must be independent objective material available before the Disc. Authority which will lead him to conclude that it is not reasonably practicable to hold an inquiry. No such independent objective material which had been placed before the disc. authority was shown to us during hearing and we are therefore compelled to conclude that the disc. authority's conclusions that the other police personnel were not likely to prove reliable witnesses, or that the co-accused were not likely to give evidence against applicant were based on his own ipso dext, and not on independent objective material which was placed before him.

12. There is however one feature of this case which commands attention. The disc. authority in his impugned order dated 9.9.97 has specifically stated that applicant admitted during interrogation by Crime Branch team to have committed theft of the arms and ammunitions along with his accomplices. This categorical assertion contained in the disciplinary authority's order has not been categorically denied by applicant in

✓

(25)

his statutory appeal to the Addl. Commissioner of Police dated 8.10.97 (Annexure-J). In relevant para (v) of that appeal applicant contends that he was forced to sign a confessional statement and goes on to add that a confessional statement made to a police officer cannot be considered in evidence. Again, the appellate authority in his impugned order dated 9.2.98 has specifically referred to applicant's confession regarding theft of the arms from the kot on the night of 22/23/6.97, which applicant does not specifically deny having made in the body of the OA. In the OA also applicant asserts that the confessional statement made by him to the investigation team is a confession made to a police officer which is not admissible in evidence under the Evidence Act, but there is no specific denial to such a statement having been made.

13. Would such a confessional statement even if made before the Crime Branch Team be sufficient to dispense with the DE? It is true that the rules of evidence as laid down in the Evidence Act which are binding in the conduct of a criminal proceedings are strictly speaking not applicable in a departmental proceedings, but even so in our view such a statement made by the applicant to the Crime Branch team, would not by itself be sufficient to dismiss applicant from service under Article 311(2)(b) of the Constitution, by dispensing with a regular DE. Article 311(2)(b) of the Constitution permits dispensing with an enquiry where in the opinion of the competent authority it is not reasonable practicable to hold an enquiry. Respondents' contention that applicant admitted during the course of

interrogation before the Crime Branch team to have committed theft of the arms and ammunition, cannot be said, a condition where it is not reasonably practicable to hold an enquiry. The reasons why respondents considered it not reasonably practicable to hold an enquiry are enumerated in para 6 above and we have already seen that those are not sufficient reasons to dispense with the DE, before imposing penalty of dismissal from service upon applicant. It would have been an entirely different matter if such a confessional statement had been made during the course of a regular DE itself.

14. In the result the impugned orders dismissing applicant from service under Article 311(2) of the Constitution without holding an inquiry cannot be sustained in law. They are accordingly quashed and set aside. This however does not imply that applicant will stand reinstated. Following the ruling of the Hon'ble Supreme Court in State of Punjab Vs. H.S. Greasy JT 1996(5) SC 403, the case is remanded to respondents who shall place applicant under suspension with effect from the date of receipt of a copy of this order, and conduct a regular departmental enquiry in accordance with the provisions of the ~~the~~ (sic) on the charge for which applicant has been dismissed from service. The enquiry will be completed as expeditiously as possible and preferably within 4 months from the date of receipt of a copy of this order. At the conclusion of the DE, the disciplinary authority will also determine the manner in which the period from applicant's dismissal from service, till the date of his suspension pursuant to these

① Delhi Police
(Punishment & Appeal)
Rules 1980

Being substituted before
Court's order dt 1/10/01.
(By Circular)
Ours
15/10.

(27)

directions is to be treated. No costs.

15. The OA succeeds and is allowed to the extent directed in para 14 above.

A.Vedavalli

(DR. A. VEDAVALLI)
MEMBER (J)

S.R. Adige

(S.R. ADIGE)
VICE CHAIRMAN (A).

/ug/