

Central Administrative Tribunal
Principal Bench: New Delhi

(5)

OA No. 2371/99

New Delhi this the day of 7th April 2000

Hon'ble Mr. Justice Ashok Agarwal, Chairman
Hon'ble Mr. V.K. Majotra, Member (A)

Ex. Constable Shri Jasminde Singh
S/o Shri Ram Singh
R/o Village Karala,
Mohalla Satdhara Karala,
P.S. Sultan Puri, Delhi.

...Applicant

(By Advocate: Shri Ajesh Luthra)

Versus

1. Union of India
through its Secretary,
Ministry of Home Affairs,
North Block,
New Delhi-110 001.

2. The Commissioner of Police,
Police Headquarters,
MSO Building, I.P. Estate,
New Delhi.

4. The Dy.Commissioner of
Police, 6th Bn. DAP,
Delhi Police, Delhi.

3. The Addl. Commissioner of Police,
6th Bn. DAP,
Delhi Police, Delhi.

..Respondents

(Shri Ram Kumar, Departmental
representative)

ORDER (Oral)

By Mr. Justice Ashok Agarwal, Chairman

An order of dismissal from service passed against the applicant who was a Constable in Delhi Police is impugned in the present OA. Aforesaid order of dismissal has been issued under Article 311 (2) (b) of the Constitution of India without holding a departmental enquiry. It is inter-alia alleged that ~~the applicant~~ during interrogation of certain accused it was revealed that the applicant was involved with various accused in serious offences. For the purpose of dispensing with the enquiry and

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passing the impugned order of dismissal from service, the Dy. Commissioner of Police being the Disciplinary Authority has observed as under:-

"These instances clearly incidates the association of Constable Jasminder Singh with Bhoori gang and others. Constable Jasminder Singh who is a Policeman should have informed the concerned police station about the involvement of Bhoori and others in the heinous offences. Instead of doing his duty he assisted the criminals. The above information is revealed during the interrogation of various persons mainly the members of the Bhoori gang. None of these criminals are going to depose against the Constable Jasminder Singh if a departmental enquiry is conducted against him. In fact on the contrary continuation of Constable Jasminder Singh in the police force would be beneficial to Bhoori and others and therefore in no circumstances they would depose anything against constable Jasminder Singh. Hence it is not practicably possible to conduct a regual departmental enquiry against him.

The common citizens of Delhi have certain expectations from the members of police. The police is supposed to protect the life and property of the citizens and it would be quite painful for any person to know that a police officer who is supposed to protect and to take action against criminals is himself associated with the criminals. His continuation in the police force would be against the interest of criminals. The reasons why it is not practicably possible to hold a regular departmental enquiry has already been discussed in the previous para".

In our judgment, having regard to the allegations levelled against the applicant ^{and which} have been re-produced in details in para-1,2&3 of the impugned order and also reasons assigned for dispensing with the disciplinary enquiry, ~~we~~ find that the order of dismissal from service is just and proper. Reliance is placed on the decision of Union of India Vs. Tulsi Ram Patel (1985) 3 SCC 398. In para-130 of its judgment, the Supreme Court has observed as under:-

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"The condition precedent for the application of clause (b) is the satisfaction of the disciplinary authority that "it is not reasonably practicable to hold" the enquiry contemplated by clause (2) of Article 311. What is pertinent to note is that the words used are "not reasonably practicable" and not "impracticable". According to the Oxford English Dictionary, 'practicable' means "Capable of being put into practice, carried out in action, effected, accomplished, or done; feasible". Webster's Third New International Disctionary defines the word 'practicable' inter alia as meaning "possible to practice or perform: capable of being put into practicem done or accomplished: feasible". Further, the words used are not 'not practicable' but "not reasonably practicable". Webster's Third International Disctionary: defines the word 'reasonably' as "in a reasonable manner: to a fairly sufficient extent". Thus, whether it was practicable to hold the enquiry or not must be judged in the context of whether it was reasonably practicable to do so. It is not a total or absolute impracticability which is required by clause (b) . What is requisite that the holding of the enquiry is not practicable in the situation. It is not possible to enumerate the case in which it would not illustration may, however, be given. It would not be reasonably practicable to hold an enquiry where the government servasnt, particularly through or together with his associates, so terrorizes, threatens or intimidates witnesses who are going to give evidence against him with fear of reprisal as to prevent them from doing so or where the government servant by himself the officer who is disciplinary authority or members of his family so that he is afraid to hold the enquiry or direct it to be held. It would also not be reasonably practicable to hold the inquiry where an atmosphere of violence or of general indiscipline and insubordination prevails, and it is immaterial whether the concerned government servant is or is not a party to bringing about such an atmosphere. In this connection, we must bear in mind that numbers coerce and terrify while an individula may not. The reasonable practicability of holding an inquiry is a matter of

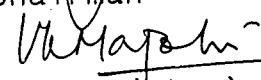
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assessment to be made by the disciplinary authority. Such authority is generally on the spot and knows what is happening. It is because the disciplinary authority is not expected to dispense with a disciplinary inquiry lightly or arbitrarily or out of ulterior motives or merely in order to avoid the holding of an inquiry or because the Department case against the government servant is weak and must fail. The finality given to the decision of the disciplinary authority by Article 311(3) is not binding upon the court so far as its power of judicial review is concerned and in such a case the court will strike down the order dispensing with the inquiry as also the order imposing penalty".

In our view, aforesaid decision and also the aforesaid observations, can be of no assistance to the applicant in the instant case for raising a contention that this is not a case where a disciplinary proceedings can justify dispensing with the enquiry.

Present OA in the circumstances is summarily dismissed.


(Ashok Agarwal)
Chairman


(V.K. Majotra)
Member (A)

cc.