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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

OA No. 2740/99

New Delhi this the 12th day of May 2000

HON'BLE MR. JUSTICE V. RAJAGOPALA REDDY, VC (J)
HON'BLE MR. V.K. MAJOTRA, MEMBER (A)

Constable Dharmpal
S/o Shri Ram Pat,
R/o Vill. & P.O. Mahzans,
P.S. Jhajhar, Distt. Rohtak (HR.)

...Applicant

(By Advocate: Shri T.N. Tripathi)

Versus

1. Dy. Commissioner of Police,
III Bn. D.A.P. New Delhi.

2. Addl. Commissioner of Police/A.P.
East Delhi.

3. Inspector Bir Singh
Inquiry Officer,
III Bn. DAP Delhi.

...Respondents

(By Advocate: Mrs. Meera Chhibber)

ORDER (Oral)

By Reddy, J.:-

The applicant who was a Constable in Delhi Police was dismissed from service invoking the power under Article 311 (2) (b) of the Constitution of India dispensing with any enquiry, by order dated 25.3.1998. Aggrieved by the said order of dismissal, without holding an enquiry, was illegal and the respondents should have held enquiry as per the Discipline and Appeal Rules, the applicant filed an appeal before the Appellate Authority. The Appellate Authority after considering the facts and circumstances of the case, quashed the order of dismissal and directed reinstatement and further directed the respondents to take disciplinary action against the applicant after holding a regular departmental enquiry, by its order dated 4.8.98. In accordance with that

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order, the impugned order was passed by the respondents, deciding to hold the regular departmental enquiry on the same charge.

2. This order is under challenge in this OA. Learned counsel for the applicant submits that the alleged acts of desertion from duties would not constitute misconduct under the rules. It is further contended when the Appellate Authority held that the Disciplinary Authority's order as bad in law, it is not open to the respondents to hold a fresh enquiry.

3. Learned counsel for the respondents, however, submits that as no enquiry has been held in the initial order when the applicant was dismissed invoking the power under Article 311 (2) (b) of the Constitution, respondents accordingly issued the impugned order to hold the enquiry. It is, therefore, submitted that this is not a fresh enquiry on the same allegations of misconduct.

4. We have given careful consideration of the pleadings and submissions made by either side.

5. It is seen that the applicant himself was aggrieved by the order of dismissal which was initially passed and hence filed an appeal. The appeal was allowed and the respondents were directed to hold a regular enquiry as per the rules applicable to the applicant. When such an action was being taken now by passing the impugned order to hold a regular enquiry, it cannot be said that the impugned order is irregular or illegal.

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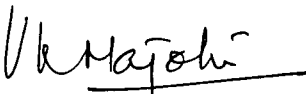
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There was no enquiry at all in the first instance as the action was taken under Sec. 311 (2) (b) of the Constitution. Hence as per the directions of the Appellate Authority, the present order was passed to hold a fresh enquiry. The contentions that the acts of desertion from service would not amount to misconduct is wholly incorrect.

6. In the circumstances we find that there is no force in the contention of the learned counsel. We do not find any merit in the OA.

7. The applicant makes a grievance about the enquiry officer. We will not go into that at this stage. It is however, open to him to make an application in this regard to the Disciplinary authority, who shall dispose of the same in accordance with Law.

8. The O.A. is devoid of any merits. It is accordingly dismissed subject to the above observations. No costs.


(V.K. MAJOTRA)
MEMBER (A)


(V. RAJAGOPALA REDDY)
VICE-CHAIRMAN (J)

cc.