

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

O.A. No. 285/98

New Delhi this the 7 Day of September, 1998

Hon'ble Mr. Justice K.M. Agarwal, Chairman
Hon'ble Mr. R.K. Ahooja, Member (A)

Ex. Constable Chhote Lal,
No. 649/Security,
Resident of Qr. No. H-15,
Type I, Police Station Kalkaji,
New Dehi. ... Applicant

(By Advocate: Ms. Anupma Chandra proxy for Mrs. Avnish Ahlawat)

-Versus-

1. Union of India through, Governor of Delhi through, Commissioner of Police, Delhi., Police Headquarters, MSO Building, I.P. Estate, New Delhi.
2. Shri Ajay Agarwal, Sr. Add. Commissioner of Police, (Security and Traffic) MSO Building, I.P. Estate, New Delhi.
3. Shri Pradeep Srivastava, Dy. Comissioner of Police (Security), Ashoka Police Line, Delhi Police, New Delhi. Respondents

(By Advocate: Shri Deepak Bhardwaj
proxy of Shri Arun Bhardwaj)

ORDER

Hon'ble Shri R.K. Ahooja, Member (A)

The applicant is aggrieved by the order Annexure 'A' by which he has been dismissed from service as Constable in Delhi Police and the subsequent order rejecting his appeal. The main basis of challenging the impugned order of dismissal is that the same has been passed without proper enquiry, and without giving due opportunity and the exercise of powers under Article 311(2)(b) is unjustified and arbitrary.

2. The facts leading to the impugned order may be briefly recited.

3. One Shri Sunil Bhatia made a complaint on 4.7.1997 alleging that on 2.7.1997 while crossing Okhla Red Light, he and his friend were stopped by two persons, who claimed themselves to be from the Crime Branch. One of the two persons was later identified as applicant Chhote Lal (applicant hereinafter). The complainants and his companion who were carrying two bottles of beer were threatened that they would be implicated in a case of selling beer in the State of Haryana and were asked to pay Rs. 10,000/- to hush up the matter. Out of Rs. 10,000/-, a sum of Rs. 3,000/- was paid but the policeman insisted on balance payment of Rs.7,000/-. To that end a written declaration was taken that their scooter had been sold to one Shri Jitender Kumar for a sum of Rs. 6,000/- and the registration book of the scooter was also kept by the policemen with the direction to contact them with the money. Another Rs. 4,000/- was given on the same day but thereafter the complainant lodged the report in Police Station, Sriniwaspuri. This lead to the arrest of Constable Shiv Raj and thereafter to the arrest of the applicant Chhote Lal from whom the receipt in respect of the scooter was recovered. Both these two persons were sent to the judicial custody.

4. Taking note of these facts the disciplinary authority recorded the impugned order the operative part of which reads as follows:

"The facts and circumstances of the case are such that it would not be reasonably practicable to hold a departmental enquiry against Constable Chhote Lal, No. 649/Sec., since it is certain that during the entire process of departmental proceedings, the complainant and other witnesses would be put under constant fear of threat to their persons by the delinquent Constable and his accomplice being members of the police force and in such situation conducting of departmental proceedings would become virtually non-practicable. Instances are not uncommon where people have not dared to depose even against ordinary criminals, whereas in the instant case, the deposition of the complainant and witnesses would be against the police officers who have greater capability of terrorising the complainant and the other witnesses.

It would be extremely difficult for the complainant and witnesses to muster enough courage against the delinquent Constable due to fear of severe reprisal from him and his associate who is also a police official and as such, keeping in view the above reasons, I feel totally satisfied that it would not be reasonably practicable to hold a departmental enquiry against delinquent Constable Chhote Lal whose acts have clearly indicated criminal propensity on his part.

Keeping in view the overall facts and circumstances of the case, I, Pradeep Srivastava, Dy. Commissioner of Police, Security, New Delhi, hereby order that Constable Chhote Lal, No. 649/Sec. (PIS No. 28820502) is dismissed from the force with immediate effect under Article 311(2) (b) of the Constitution of India."

5. We have heard Mrs. Avnish Ahlawat, Counsel for the applicant who argued that the disciplinary authority had given no basis for the conclusion and virtually no reasons that the departmental enquiry was not possible against the applicant. She submitted that the mere fact that the applicant was a Police Official could not by itself imply that witnesses would be terrorised and would be scared of appearing as witnesses in the enquiry proceedings. She pointed out that one of the main witnesses who is the complainant had no fear in

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approaching the Police Station for registering a case against the applicant and therefore it could not be said that though he would be willing to appear in the criminal proceedings, he would be too scared to appear in the disciplinary proceedings. Learned counsel in this context sought to rely on the case of Chief Security Officer and Ors. Vs. Singasan Rabi Das 1991(1) SCALE 47 and the observations of the Hon'ble Supreme Court regarding the case of Shri Kuldip Singh in Chandigarh Administration, Union Territory, Chandigarh & Ors. Vs. Ajay Manchanda etc. JT 1996 (4) S.C. 113. In the case of Chief Security Oficer Vs. Singasan Rabi Das (Supra), the Hon'ble Supreme Court found that the reasons given for dispensing with the enquiry were totally irrelevant and totally insufficient in law since there was no basis for the conclusion that witnesses appearing in the confronted enquiry were likely to suffer personal humiliation and insults and even their family members might become targets of acts of violence. In Chandigarh Administration Vs. Ajay Manchanda, the Hon'ble Supreme Court while dealing with the case of Kuldip Singh found that no one had ever stated either that they were intimidated or threatened by the respondents. On that basis the order of dispensing with the enquiry was struck down. Mrs. Avnish Ahlawat argued that in the present case also there is no allegation that the main witnesses who are the complainants had stated that any threat was held out of them by the applicant; in these circumstances the conclusion of the disciplinary authority was wholly made up of surmises and conjunctures.

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6. We have carefully considered the above mentioned arguments. The Hon'ble Supreme Court in Chandigarh Administrtrtion and Ors. Vs. Sub Inspector Gurdit Singh JT 1997 (4) SC 253. and Union Territory Chandigarh Vs. Mohinder Singh JT 1992(2) SC 504 had pointed out that Clause 3 of Article 311 declares that where a question arises whether it is practicably reasonable to hold an enquiry as contemplated by Clause 2, the decision of the authority empowered to dismiss such person shall be final on the question. In Chandigarh Administration Vs. Ajay Manchanda (Supra), it was concluded that this does not mean that the scope of judicial review was excluded altogether, if this decision is founded on malice or extraneous matters there is then no satisfaction as the basis of the decision. Applying this dictum what has to be seen in the present case is whether the satisfaction of the disciplinary authority that a disciplinary enquiry was impracticable had some basis or it was the result of malice or extraneous consideration. The learned counsel for the applicant would have made us conclude that the very fact that the impugned order was issued on 8.7.1997 when the complaint was made in the Police Station on 4.7.1997 is indicative of non application of mind and therefore malafide in law. Further more, according to the learned counsel, there was no preliminary enquiry as had formed the basis of satisfaction of the disciplinary authority in the case of ex S.I Gurdit Singh (Supra) and Mohinder Singh (Supra). We are, however, unable to accept this argument. In the present case the facts were available to the disciplinary authority. The determination with which the applicant and his consort in crime had pursued their victims is

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quite apparent from the way in which they detained one of them, got a receipt for the so called sale of a scooter, withheld Cellular Phone of the complainant and went to the extent of handing over a Pager for keeping in close contact for the recovery of balance amount of the illegal gratification. Members of the Police Force who accost members of public by the road side threatening them of dire consequences and relentlessly pursue them in order to extract money from them are in no way different from desperadoes and criminals committing highway robberies. Promptitude in decision making is not indicative of malice as the learned counsel would have us believe; on the contrary it appears to us to be an instance on the part of disciplinary authority of a diligent discharge of duty. We find, therefore that the circumstances of the case and the conduct of the applicant do provide sufficient ground for the satisfaction of the disciplinary authority for taking a decision under Clause 3 of Article 311 to dispense with the normal enquiry.

7. It is true that no preliminary enquiry was conducted, which brought out that there was an attempt by the applicant to terrorise the possible witnesses. We are of the view that once prime facie the conduct of the applicant and his colleague in crime showed them to be of desperate character, additional enquiry could have had only a supplemental value in decision making. The absence of such an enquiry cannot form the basis of intervention in judicial review in respect of exercise of powers under Art. 311(2) (b).

8. In the light of the above discussion, we
dismiss this O.A. There is no order as to costs.

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(K.M. Agarwal)
Chairman

R.K. Ahooja
(R.K. Ahooja)
Member(A)

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