

(11)

Central Administrative Tribunal
Principal Bench

O.A. No. 720 of 1998

New Delhi, dated this the 7th March, 2000

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

Jagdish Chander No. 80/N
S/o Shri Maha Singh,
R/o Vill. & P.O. Mehrana,
P.S. Jhajhar, Dist. Rohtak,
Haryana.

.. Applicant

(By Advocate: Shri Shankar Raju)

Versus

1. Union of India through
the Secretary,
Ministry of Home Affairs,
North Block, New Delhi.
2. Addl. Commissioner of Police,
Northern Range, Police Hqs.,
I.P. Estate, New Delhi.
3. Addl. Dy. Commissioner of Police,
North District,
Civil Lines,
Delhi-110009.

.. Respondents

(By Advocate: Shri Ashwini Bhardwaj proxy
counsel for Shri Rajan Sharma)

ORDER

HON'BLE MR. S.R. ADIGE

Applicant impugns the disciplinary authority's order dated 4.7.97 (Annexure A-1) summarily dismissing him from service under Article 311(1)(b) of the Constitution without holding a departmental enquiry, and the appellate authority's order dated 29.1.98 (Annexure A-2) rejecting the appeal.

2. The disciplinary authority's order reveals that applicant who was detailed for duty at P.S.

2

12

Civil Lines on 5.5.97, left his place of duty, without intimation/information to the competent authority, & went to the area of P.S. Dabri where he met one Shri Vinod. Along with the said Vinod he proceeded in a scooter without number plate and reached Dabri road where he illegally detained one Smt. Roshni who was going by rickshaw along with her brother Raja. He pulled Smt. Roshni from the rickshaw, molested her and threatened her. He told them that he was Head Constable Gulab of P.S. Dabri and showed them his identity card and insisted they come to P.S. Dabri. When they reached P.S. Dabri applicant went away telling them to come the next day. On Smt. Roshni's complaint a case FIR No. 284/97 u/s 341/323/354/419/34 IPC P.S. Dabri was registered. Applicant did not attend the briefing at P.S. Civil Lines and absented himself on his own on 9.5.97, upon which he was marked absent. He lodged a report vide D.D. entry No.45B dated 9.5.97 P.S. Civil Lines at 5.40 P.M. on telephone that he was ill and that the medical officer had advised him four days medical rest. On the other hand he submitted an application for anticipatory bail in the Court of Addl. Judge and another application for surrendering himself in the Court in the above mentioned criminal case. He appeared in the Sessions Court where the Inquiry Officer of the case was present who requested the Court for permission to interrogate applicant. Thereupon applicant was arrested and produced before the Court and was released on bail on the same day at about 3.45 P.M. After being released on bail,

2

applicant reached P.S. Civil Lines and lodged a report for further medical rest and left the P.S. without obtaining permission of the competent authority.

3. Holding that applicant's conduct amounted to criminal misconduct and it was not at all practicable to hold a regular departmental enquiry against such a manipulator, which could be done only at the risk of danger to the life or property of the complainant and other witnesses, and it would not be reasonable to expect the complainant to come forward to depose against him, the disciplinary authority by impugned order dated 4.7.97 dismissed applicant from service in exercise of the power under Article 311(1)(b) of the Constitution.

4. That order was upheld vide appellate order dated 29.1.98 in the course of which it was stated that during personal hearing he had submitted an affidavit purported to have been given by the complainant denying the allegation against him, which appeared to be evidence to the extent he would go to prevent witnesses, including the complainant from deposing against him.

5. We have heard applicant's counsel Shri Shankar Raju and respondents' proxy counsel Shri Ashwini Bharadwaj.

N

6. Shri Shankar Raju has contended that the dismissal of applicant by impugned orders without holding a regular departmental enquiry purportedly in exercise of the powers under Article 311(11)(b), ^{is} ~~are~~ illegal and arbitrary, in as much as the conditions precedent for exercising the power of dispensing with the enquiry are not present in this case. Reliance is placed on the Hon'ble Supreme Court's ruling in Union of India & Others Vs. Tulsi Ram Patel and connected cases 1985 (3) SCC 398; Satyavir Singh Vs. Union of India & Others and connected case 1986 SCC (L&S) Page 1; and Chief Security Officer Vs. S.R. Das 1991 SCC (L&S) 415.

7. These contentions are denied by Shri Bharadwaj.

8. We have considered the matter carefully.

9. In Tulsi Ram Patel's case (supra), the Hon'ble Supreme Court inter alia has observed

"The condition precedent for the application of Clause (b) of second provision is the satisfaction of the disciplinary authority that it is not reasonable practicable to hold the inquiry contemplated by Article 311(2). Whether it was practicable to hold the inquiry or not must be judged in the Part II-Scope of Clauses (a), (b) & (c) of Second Proviso to Article 311(2) context of whether it was reasonably to do so. It is not a total or absolute impracticability which is required by Clause (b). What is requisite is that the holding of the inquiry is not practicable in the opinion of a reasonable man taking a reasonable view of the prevailing situation. The reasonable practicability of holding an inquiry is a matter of assessment to be made by the disciplinary authority. Such

2

15

authority is generally on the spot and knows what is happening and is the best judge of the situation.

A disciplinary authority is not expected to dispense with the 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's 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."

10. Again in *Satyavir Singh Vs. Union of India & Others* and connected case 1986 SCC (L&S) Page 1, the Hon'ble Supreme Court inter alia has observed:

"XI. Clause (b) of the Second Proviso (55) There are two conditions precedent which must be satisfied before Clause (b) of the second proviso to Article 311(2) can be applied. These conditions are:

- (i) there must exist a situation which makes the holding of an inquiry contemplated by Article 311(2) not reasonably practicable, and
- (ii) the disciplinary authority should record in writing its reason for its satisfaction that it is not reasonably practicable to hold such inquiry.

(56) Whether it was practicable to hold the inquiry or not must be judged in the context of whether it was reasonably practicable to do so.

(57) It is not a total or absolute impracticability which is required by Clause (b) of the second proviso. What is requisite is that the holding of the inquiry is not practicable in the opinion of a reasonable man taking a reasonable view of the prevailing situation.

(57) The reasonable practicability of holding an inquiry is a matter of assessment to be made by the disciplinary authority and must be judged in the light

2

of the circumstances then prevailing. The disciplinary authority is generally on the spot and knows what is happening. It is because the disciplinary authority is the best judge of the prevailing situation that Clause (3) of Article 311 makes the decision of the disciplinary authority of this question final.

(59) It is not possible to enumerate the cases in which it would not be reasonably practicable to hold the inquiry. Illustrative cases would be

- (a) where a civil servant, 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
- (b) where the civil servant by himself or together with or through others threatens, intimidates and terrorizes the officer who is the disciplinary authority or members of his family so that he is afraid to hold the inquiry or direct it to be held, or
- (c) where an atmosphere of violence or of general indiscipline and insubordination prevails, it being immaterial whether the concerned civil servant is or is not a party to bringing about such a situation.

In all these cases, it must be remembered that numbers coerce and terrify while an individual may not.

(60) 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's case against the civil servant is weak and must fail."

11. The ruling in ^{S. R. Das's} ~~S. R. Das's~~ ~~case~~ ^{case} (supra) is also much to the same ^{fact}.

~

12. Applying the aforesaid rulings to the facts and circumstances of this case, it is clear that 59(b) and (c) above are not applicable in this case. Would 59(a) above, then be applicable? In our opinion it would also not be applicable because there is no independent supporting evidence to establish that applicant so terrorised, threatened or intimidated the complainant with fear of reprisal that she was prevented from giving evidence. In fact we find from the order of the Metropolitan Magistrate's order dated 9.1.98 (Pages 29-30 of the O.A.) that applicant was acquitted in the criminal case bearing FIR No. 284/97 in which Smt. Roshni appeared as PW-1, but did not support the prosecution case, although she was examined and was thereupon also subjected to cross-examination.

13. There is merit in applicant's contention that if the complainant appeared in the criminal case, relating to this very incident, there is no reason why she could not have been summoned in a regular departmental enquiry to be conducted against applicant.

14. We are aware that the cases referred to in 59(a), (b) and (c) above are illustrative and not exhaustive, but it is clear from the aforesaid rulings that the Hon'ble Supreme Court has cautioned against dispensing with the disciplinary enquiry lightly, and in the particular facts and circumstances of this case, we are not satisfied that there was sufficient cause for the

2

disciplinary authority to dispense with the disciplinary inquiry and resort to the summary procedure contained in Article 311(2)(b) of the Constitution. We are supported in our view by the Hon'ble Supreme Court's order dated 29.10.99 in SLP (C) no. 2107/99 Chhote Lal Vs. Union of India & Others relied upon by applicant's counsel.

15. Ex-Constable Chhote Lal was similarly dismissed from Delhi Police Service in exercise of powers under Article 311(2)(b) of the Constitution without holding a disciplinary enquiry. The allegations against him were that one Shri Sunil Bhatia made a complaint on 1.7.97 alleging that 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 whom was later identified to be Shri Chhote Lal. The complainant and his companion who were carrying two bottles of beer were threatened that they would be implicated in a case of selling beer in Haryana State 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 policemen insisted on balance payment of Rs.7,000/-. To that end a written declaration was taken that their scooter had been sold to one Jitender Singh for 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 Srinivaspuri P.S. This led to the arrest of Constable Shiv Raj and thereafter to

~

the arrest of applicant Chhote Lal from whom the receipt in respect of the scooter was recovered. Both these persons were sent to judicial custody.

16. Taking note of these facts the disciplinary authority in his impugned order recorded that the facts and circumstances of the case were such that it would not be reasonably practicable to hold a departmental enquiry against Ex-Constable Chhote Lal since it was certain that during the entire process of departmental proceedings the complainant and other witnesses would be put under constant fear of threat to these persons by the delinquent constable and his accomplice being members of the police force, and in such situation conducting of departmental proceeding would become virtually non-practicable.

17. Against the disciplinary authority's aforesaid order, Shri Chhote Lal filed O.A. No. 205/98 which, however, was dismissed by C.A.T., P.B. by its order dated 7.9.98. Against that order, Shri Chhote Lal filed CW-5541/98 in the Delhi High Court which was also dismissed on 30.10.98 but in SLP (C) no. 2107/99 the Hon'ble Supreme Court vide its order dated 29.10.99 set aside the Delhi High Court's order holding that the conditions precedent for exercising the power of dispensing with the enquiry were not present in that case, and hence the order of dismissal could not be sustained. Accordingly the dismissal order was set aside with liberty given to the departmental authority to hold an enquiry, if so desired, but backwages to Shri Chhote Lal were

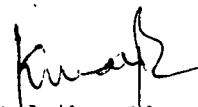
2


20

disallowed.

18. In our view in the light of the ratio of the Hon'ble Supreme Court's ruling in Chhote Lal, case (supra) read with Tulsiram Patel's case (supra) and Satyavir Singh's case (supra), the conditions precedent for exercising the power of dispensing with the enquiry are not present in this case, and the impugned orders, therefore, cannot be legally sustained.

19. This, O.A., therefore, succeeds and is allowed to the extent that the impugned orders dated 4.7.97 and 29.1.98 are quashed and set aside. Applicant should be reinstated in service within two months from the date of receipt of a copy of this order. The period between the date of applicant's dismissal and his date of reinstatement and such consequential benefits as will accrue to him as a result of his reinstatement shall be determined by respondents in accordance with rules, instructions and judicial pronouncements on the subject. It is, however, made clear that following the Hon'ble Supreme Court's ruling in Chhote Lal's case (supra) applicant shall not be entitled to backwages, in view of the nature of the charge against him. It will be open to respondents to proceed against applicant in accordance with law, if so advised. No costs.


(Kuldip Singh)
Member (J)


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

gk