

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.1876/96

New Delhi this the 24th day of April, 2000.

Hon'ble Mr. Justice V. Rajagopala Reddy, Vice-Chairman
Hon'ble Mrs. Shanta Shastry, Member (Admnv).

1. Ex. Const. Mahabir Singh No.828/NW,
Son of Sh. Kedar Singh,
R/o Village & P.O. Sisana,
P.O. Kharkhoda,
Distt. Sonapat -Haryana.
2. Ex. Const. Mahabir Singh No.1158/NW,
Son of Sh. Perma Nand,
R/o Village & P.O. Jakhuli P.S. Rai,
Distt. Sonapat - Haryana.

(By Advocate Shri Shankar Raju)

-Versus-

1. Union of India through
its Secretary,
Ministry of Home Affairs,
North Block,
New Delhi.
2. The Addl. Commissioner of Police,
Northern Range, Police Headquarters,
M.S.O. Building,
I.P. Estate,
New Delhi.
3. The Addl. Dy. Commissioner of Police,
North-West Distt. P.S. Ashok Vihar,
Delhi-110052. ...Respondents

(By Advocate Shri George Paracken)

O R D E R (ORAL)

By Reddy, J.-

The applicants were working as Constables in the Delhi Police during the relevant point of time. On receiving the information by Sh. Chand Ram, MLA, the disciplinary authority reached the spot along with the SHO, Shalimar Bagh, Inspector P.S. Rana and S.H.O./SP Badli Inspector Ravi Shankar along with the complainant Shri Dharam Singh. At about 10.15 P.M. they reached the Police Picket Darya Pur. As soon as they reached the Police Picket they heard woman's screaming in the bushes. Immediately



(2)

Inspector Ravi Shankar and Inspector Rana rushed and caught hold of one person who was in underwear and who was identified as Constable Mahavir Singh Dahiya, applicant No.1 and the lady was identified as Smt. Omwati. Another person escaped into the dark. Later on, he was also identified as Constable Mahabir Singh Chauhan, applicant No.2. The lady was found in a very disturbed condition and was screaming and weeping. She told that the applicants have assaulted her husband and threatened him and told him to run away and later on both the applicants raped her for over six hours.

2. A preliminary enquiry was conducted into the entire episode. On the basis of the statement of Smt. Omwati a FIR was registered under Sections 342/323/354/506/376/34 IPC P.S. Narela on 25/26.11.94. A preliminary enquiry was also held. The applicants were found to have committed rape, as alleged. The medical report also suggested that rape was committed. The disciplinary authority, without following the procedure under the Delhi Police (Punishment & Appeal) Rules, 1980, taking the view that a detailed enquiry was not practicable and purporting to Act under Article 311 (ii) (b) of the Constitution, dismissed the applicants from service, by order dated 30.11.94. This order was challenged in appeal but was rejected by order dated 15.7.96. These orders are under challenge in this OA. It was also stated that the applicants are acquitted by the Criminal Court in the Session Case 68/96, by the Senior judge, Delhi by Judgement dated 17.05.1999.



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3. The learned counsel for the applicants Shri Shankar Raju submits that the applicants having been acquitted by the criminal court holding that there was no evidence in support of the prosecution, hence the applicants cannot be penalised in the departmental enquiry. It is also contended that the impugned order is vitiated, as there are no valid grounds for taking action under Article 311 (2) (b) of the Constitution.

4. The learned counsel for the respondents, Shri George Paracken contends that the action taken by the respondents is perfectly in order and is in accordance with Article 311 (2)(b) of the Constitution and it has also become final. It is also contended that the appropriate competent authority has given valid reasons for taking action under the above provision.

5. We have given careful consideration to the pleadings as well as arguments advanced by either side.

6. The disciplinary authority in the impugned order has stated, in support of his view for taking action under Article 311 (ii) (b) of the Constitution, as under:

"After considering all the facts and circumstances I am of firm view that it is not at all reasonably practicable to hold a regular Departmental Enquiry against these two constables because if they could have terrorised the lady while on duty and in the police picket and going to the extent of assaulting her husband for realising their illegal, immoral goal than I have reason to believe that they would resort to the same tactics during the DE and thereby terrorising the lady and her husband who are the only witness to the whole agony/ and will not stand to the brutal force of these two highly undesirable police personnel.

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Under the circumstances I am of the view that these two constables had brought a bad name to the entire police force and are black spots on the force and in my opinion they are not deserved to be retained in the police force any more. Therefore, I deem it proper that Const. Mahabir Singh Dahiya, No.828/NW and Const. Mahabir Singh Chauhan, No.1158/NW be dismissed from the force with immediate effect under Article 311 (ii)(B) of the Constitution of India."

7. In this case serious allegation of rape has been levelled against the applicants. It was alleged that the applicants were caught red-handed while committing the act of rape. Having given careful consideration to the facts of the case and the reasons given by the competent authority, it cannot be said that they are not valid and sufficient to take action under Article 311 (2) (b) of the Constitution. It was found that the prosecution being the only material witness in this case there was a possibility of her being terrorised by the applicants who were alleged to have terrorised her husband and made the lady to drink alcohol and to submit herself to their lust. The competent authority has taken into consideration the facts and circumstances of the case and has come to the conclusion that the holding of a detailed enquiry was not reasonably practicable. It is true that the applicants have been acquitted by the criminal court and they escaped the penalty under law in view of the fact, that the prosecutrix was obviously terrorised and was won over. Hence the case ended in an acquittal, as she was the material witness to support the charge framed. We are of the view that the acquittal of the applicants cannot be a ground to hold that the decision taken by the competent authority would per se be vitiated. Under Article 311 (2) (b) of the Constitution, the competent authority is empowered to take a decision depending upon the facts of the case to dispense with the detailed enquiry as

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per the service rules. In our view the order is founded upon sound reasoning by the competent authority and is in order.

8. In view of the above, there is no warrant to interfere with the impugned order. The O.A. is, therefore, dismissed. No costs.

Shanta
(SMT. SHANTA SHASTRY)
MEMBER (ADMV)

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

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