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Central Administrative Tribunal, Principal Bench

Original Application No.2097 of 1996

New Delhi, this the 13th day of March, 2000

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

HC Babu Ram, S/o Shri Charan Das, No.175/NE
(PIS No.28780372), R/o B-2, Police Colony,
Bhajan Pura, Delhi-110094 - Applicant

(None for the applicant)

Versus

1. Govt. of National Capital Territory of
Delhi, Through Commissioner of Police,
MSO Building, I.P. Estate, New Delhi.
2. Dy. Commissioner of Police, North East
District, Seelampur, New Delhi. - Respondents

(By departmental representative HC Prem Singh)

O R D E R (Oral)

By V.K.Majotra, Member(Admnv) -

The applicant has assailed the order dated 13.9.1996 passed by the Deputy Commissioner of Police, North-East District, Delhi, respondent 2, dismissing the applicant with immediate effect under Article 311(2) (b) of the Constitution of India.

2. The brief facts of the case are that one Raj Kumar @ Raju was arrested on a secret information by the Special Staff of North-East District on 2.9.1996 with 100 gms of smack. He was booked under Section 21/61/85 of NDPS Act vide FIR No. 620/96 PS Gokal Puri. The accused Raju during interrogation had stated that he had received the packet of smack from Head Constable Babu Ram, the applicant, of Police Station Welcome on the same day for further sale. On this a raid was conducted on the applicant on 3.9.1996 and 350 gms smack was

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recovered from his possession. On his interrogation the applicant disclosed as under :

"A CASE vide FIR 69/94 under section 21/195 N D P S Act at Police Station Welcome was registered after a seizure of 500 gms smack from the possession of Vikram @ Doctor S/o Shri Shahmal R/o D-517, Gali No.16 Kachchi Colony, Ashok Nagar, Delhi. This quantity of smack was recovered from the accused while he was passing through the area of Police Station Welcome at 3.30 P.M. on 17.3.94 by Special Staff of North East District, Delhi. When this case was registered and the seizure was made, HC Babu Ram (the applicant) was Incharge of Malkhana of Police Station Welcome. The aforesaid quantity of smack was sealed by Special Staff in the presence of Sh. D.D.Nigam, Assistant Commissioner of Police (HQ) and the same was deposited in the Malkhana after taking out the requisite sample for chemical examination by C.F.S.L. Delhi. Later on C.F.S.L. Delhi reported that the material was containing 13.6% of Heroine. This case was chargesheeted on 26-5-95. As the main witness turned hostile, the accused Vikram was acquitted by the court of Shri T.D.Keshav ASJ on 26.10.1995. The case property was produced by HC Babu Ram, who was holding the charge of Malkhana in the court of Shri T.D.Keshav, ASJ on 5.10.95. The applicant managed to get the seal of Shri T.D.Keshav, ASJ, prepared and opened the packet containing smack, replaced the smack with chawkmitti and soil and sealed the same with the seal of Shri T.D.Keshav and Kept the quantity of the smack (500 grams) with himself. This new parcel was kept by the applicant in the malkhana of Police Station Welcome. In the month of January,1996 destruction order was passed by the court of Shri V.P.Khandpal. HC Babu Ram applicant took the new sample containing the soil and chawkmitti to District Nazar on different dates, however, the same was not received by District Nazar as there was already a large number of samples awaiting destruction. The contraband containing heroine was kept by the said HC in his own possession and on 02.09.1996, 100 grms was given to Raju for further sale".

Consequent upon the seizure of 350 gms smack from the applicant he was placed under suspension vide orders dated 3.9.1996 and a case vide FIR No.260/96 dated 2.9.1996 was registered at Police Station,Welcome

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against him. The disciplinary authority passed the impugned order dated 13.9.1996 stating that "[I]t would be extremely difficult to proceed against such a police officer in Departmental Enquiry because who has the audacity to change case property in court premises, use of seal of a Judge, he can very well subvert the departmental proceedings. Keeping in view the above reasons, I feel totally satisfied that it would not be reasonably practicable to hold the Departmental Enquiry against the delinquent HC Babu Ram, No.175/NE whose act is clearly indicating criminal propensity on his part". The applicant was dismissed from the force with immediate effect under Article 311(2)(b) of the Constitution.

3. According to the applicant the respondents have dismissed him from service arbitrarily, illegally, without application of mind and without any show cause notice. He has alleged that principles of natural justice have been given a go by and the respondents have dispensed with the enquiry on irrelevant grounds, without indicating the problems, if any, in conducting the enquiry. The applicant has not filed the statutory appeal declaring that there is no efficacious departmental remedy available with him against the impugned order and that delay in departmental remedy will result ~~him~~^{to} in irreparable loss and injury which cannot be set right. The applicant has sought quashing of the impugned order of 13.9.1996 and that the respondents be directed not to take any action against him in violation of the procedure.

4. The respondents in their return have taken a preliminary objection that the applicant has not filed any appeal against the dismissal order. The respondents have contended that the applicant has indulged in criminal act of misappropriating a court case property, that he has committed such an illegal act within the premises of the police station and within the court premises itself. According to the respondents it was extremely difficult to proceed against such a police officer in departmental enquiry because he has the audacity to change the case property and he can very well subvert the departmental proceedings. Thus, the competent authority has been totally satisfied that it would not be reasonably practicable to hold the departmental enquiry against the applicant whose act is indicative of criminal propensity on his part. He was dismissed under Article 311 (2)(b) of the Constitution of India. The respondents were of the view that if a Police Officer like the applicant can commit such an illegal act within the premises of the Police Station and the Court premises and from whom it is expected to protect the case property, it would be highly dangerous for the Force to retain such a person in service.

5. We have perused the material in the file. The applicant has drawn our attention to a decision of this Tribunal in the case of Naresh Kumar Vs. Commissioner of Police and another, 1992 (3) SLJ (CAT) 108. The applicants in that case were also removed from service without holding an enquiry. However, the facts of the instant case are distinguishable from those of Naresh Kumar (supra) inasmuch as whereas in that case no

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reasons why enquiry is not reasonably practicable were recorded, in the present case some reasons have indeed been assigned stating that it is "extremely difficult to proceed against such a police officer in Departmental Enquiry because who has the audacity to change case property in court premises, use of seal of a Judge, he can very well subvert the departmental proceedings." Pointing out the daring of the applicant the disciplinary authority expressed his total satisfaction apprehending that it would not be reasonably practicable to hold the departmental enquiry against the applicant.

6. While taking recourse to dismissal/ removal etc. of a civil servant under Article 311 (2)(b) of the Constitution, the competent authority is required to record in writing the reason why it is not reasonably practicable to hold such an enquiry. In the present impugned order the competent authority has given some sort of reasons why it is not reasonably practicable to hold the departmental enquiry against the applicant. In our view this is a very sketching^{-y} reason. The authority should have recorded in detail the reasons for his satisfaction why it is not reasonably practicable to hold the departmental enquiry. Just because there is an allegation against the applicant that he had changed the case property in court premises to come to a conclusion that he would certainly subvert the departmental proceedings, cannot be held to be plausible enough to dispense with the holding of the departmental enquiry and ^{resort to} ~~rendered~~ to the easiest course of dismissing the applicant under the provisions of Article 311 (2)(b) of the Constitution of India. In our view the facts and

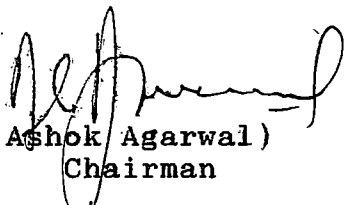
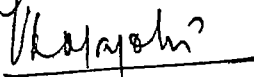
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circumstances of the instant case do not justify an order of dismissal from service under Article 311 (2)(b) of the Constitution of India.

7. We therefore, set aside the impugned order dated 13.9.1996 (Annexure-A-1) and direct the respondents to initiate departmental enquiry against the applicant within a period of three months from the date of receipt of a copy of this order, failing which to reinstate the applicant. The respondents are also directed to complete the enquiry expeditiously at the most within a period of six months from the date of initiation of the enquiry. No costs.


(Ashok Agarwal)
Chairman

(V.K. Majotra)
Member (Admnv)

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