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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI.

O.A./T.A. No. 227/1996

Decided on: 24/2/92

Shri Pratap Chandran T.Applicant(s)

(By Shri George Parackal Advocate)

Versus

U.O.I. and OthersRespondent(s)

(By Shri Amresh Mathur Advocate)

CORAM:

THE HON'BLE SHRI JUSTICE B.C. SAKSENA, VICE-CHAIRMAN

THE HON'BLE SHRI K. MUTHUKUMAR, MEMBER (A)

1. Whether to be referred to the Reporter or not? 48
2. Whether to be circulated to the other Benches of the Tribunal?

(K. MUTHUKUMAR)
MEMBER (A)

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

O.A. No. 227 of 1996

New Delhi this the 24th day of February, 1997

HON'BLE MR. JUSTICE B.C. SAKSENA, VICE-CHAIRMAN
HON'BLE MR. K. MUTHUKUMAR, MEMBER (A)

Shri Pratapa Chandran T.
Quarter No.7, Type-I,
P.S. Sadar Bazar,
Delhi.

...Applicant

By Advocate Shri George Paracken

Versus

Union of India through

1. The Deputy Commissioner of Police,
I.G.I. Airport,
New Delhi.

2. The Additional Commissioner of
Police (Operations),
Police Headquarters,
I.P. Estate,
New Delhi.

3. The Deputy Commissioner of Police HQ/III,
Office of the Commissioner of Police,
New Delhi.

...Respondents

By Advocate Shri Amresh Mathur

ORDER

Hon'ble Mr. K. Muthukumar Member (A)

The applicant was a Constable in the Delhi Police. He has filed this application under Section 19 of the Administrative Tribunals Act, 1985, against the impugned order of dismissal dated 31.8.1995, Annexure A-1 passed against him by the respondents. The applicant alleges that without giving him a reasonable opportunity to defend himself, he was awarded this punishment under Article 311(2)(b).

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of the Constitution of India and in violation of Rule 16 of the Delhi Police (Punishment & Appeal) Rules, 1980. He has, therefore, prayed for setting aside the punishment order as also the appellate order, which had rejected his appeal against the aforesaid order of the disciplinary authority and the applicant has prayed for his reinstatement. He has also prayed for the quashing of the order of the respondents dated 23.11.1995 directing him to vacate the Government accommodation held by him.

2. The facts briefly stated in this case are as follows. The applicant was deputed to disburse the salaries and donation money to another Constable Sudesh Kumar who was under treatment at the Madras Institute of Nephrology vide D.D. No.16 of 3.9.1994. Thereafter, the applicant did not report back and he was marked absent with effect from 12.10.1994. The respondents requested the Superintendent of Police, Trivendrum District to direct the said Constable to resume his duty, failing which he was informed that departmental action would be taken against him. They also deputed a Sub-Inspector and Constable to conduct an enquiry regarding his absence and these officials were reported to have contacted the father of the applicant and also the brother, who was a Constable in the Kerala Police at his native place at Kerala and their statements were also recorded. As per the statement, the applicant had gone home on 7/8.10.94 and had remained there for 4 to 5 days from where he left for Madras and from there, he was to proceed

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to Delhi. Thereafter, the respondents made further enquiry about his whereabouts and visited his Government quarter but he could not be located and the local police reported that applicant's second wife was residing at Delhi and first wife was residing at his native place. Thereafter, disciplinary proceedings were initiated against him and the Enquiry Officer reported that the applicant was absent since 12.10.1994 and was not available either at the Government quarter at Delhi or his permanent address at Trivendrum District Kerala and enquiries revealed that although he was present at the Kerala address since October, 1994, he did not report back for duty due to family problems and also did not answer the summons to turn up for the enquiry and it transpired after making enquiries that applicant, although was summoned by the Commissioner of Police, Trivandrum, he never turned up there also. It was also reported that the local police was informed by the members of the family that despite their best efforts, the applicant was not ready to go back to Delhi for resuming duty. Thereupon, the Enquiry Officer deputed another Constable to deliver the disciplinary enquiry order, summary of allegations, list of witnesses, list of documents relied upon and all other relevant material, to his permanent address at Kerala and when the applicant was not found present and when the Constable was told that he was not available there, the Constable recorded the statements of the applicant's wife, sister and brother

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and also another Constable of the Kerala Police and delivered the summary of allegations with departmental enquiry order and all other material to the wife of the applicant. The Constable also conducted enquiry from the neighbours and he came to know that the applicant was living somewhere else with his second wife and has left his first wife and he would not go to Delhi nor was he interested in serving the Delhi Police.

3. In the above circumstances, the Enquiry Officer held that the applicant was not traceable at the given address and he was avoiding the disciplinary proceedings. In view of these circumstances, he concluded that it was not reasonably practicable to hold the enquiry against the applicant and examine the witnesses. On the basis of this finding of the Enquiry Officer and the charge of unauthorised absence, the disciplinary authority came to the conclusion that further proceedings of the disciplinary enquiry was not reasonably practicable in the absence of the defaulter constable and, therefore, the impugned order dismissing him from service was passed.

4. The applicant submits that he was mentally disturbed on the receipt of the dismissal order on 11.9.1995. He submitted his appeal and he alleges that he could not bring in the appeal the entire facts as he was not in a proper mental frame of mind. He submits that on seeing the Constable Sudesh Kumar at Madras where he had gone to disburse the salaries and donation money, he was very much affected mentally

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and he also had past history of mental disease and he was in Kerala Mental Health Centre for 433 days from 30.8.1991 and he was granted commuted leave by the respondents at that time and on seeing the sad condition of Constable Sudesh Kumar at Madras, he had his mental depression and he somehow managed to reach his home town near Trivandrum and he had his own family problems also which further affected his mental condition and after he regained his balance, he reached Delhi on 9.9.1995. He alleges that when the enquiry team visited his home at Trivandrum, the team was not informed of the full facts leading to his absence. He also alleges that his wife had not given any documents to him regarding the disciplinary proceedings. He, therefore, alleges that the respondents had not given him an opportunity to defend himself and without application of mind, they have passed this dismissal order and his appeal was also dismissed without due consideration of the facts of his case.

5. He has taken some other grounds also in the application. He alleges that although he was on official duty, he had to overstay because of his mental illness. The Enquiry Officer had also arrived at the finding ex-parte without examining the witnesses or legal documents against him. He was also not given show cause notice under Article 311(2) of the Constitution and he also alleges that an ex-parte order was passed without holding an enquiry under Rule 16 or Rule 18 of the Delhi Police (Punishment & Appeal) Rules, 1980. He also contends that there was no determination

that there was inordinate delay on the part of the applicant and the enquiry was instituted on 10.07.1995 and the notice for proceedings was given on 30.07.1995, which was allegedly given to the wife of the applicant and dismissal order was also passed on the next date, i.e., 31.7.1995 and all this shows non-application of mind and the respondents had acted in haste. He alleges that the respondents had no justification to come to the conclusion that he had absconded. He also relies on the decision of the Apex Court in Union of India Vs. Tulsi Ram Patel, AIR 1985 SC 1416 and contends that mere fact of his being not available for the enquiry, would not be sufficient ground to invoke the special provisions of Rule 17 and proviso (b) to Article 311(2) of the Constitution.

6. We have heard the learned counsel for the parties and have perused the records.

7. The applicant has himself admitted that he had mental depression and could not resume duty after his visit to Madras. From the facts narrated in the impugned order, we find that the respondents have taken all the steps that are practically possible to contact the applicant and direct him to join the disciplinary enquiry. They had even contacted the local police at Trivandrum. They had initially deputed a Sub-Inspector and a Constable regarding his absence, who went to his native place but came without any information about the applicant's whereabouts. After the disciplinary enquiry was started, the Enquiry

Officer also deputed another Constable to to his native place and the local police had also sent necessary communication to his residential address directing him to report to the local police also so as to convey the message that he should report back for duty and that he should participate in the enquiry. We note that all these efforts failed. It is an admitted position that the applicant had reached his home town after visiting Madras on official duty although he complains of mental depression. There is nothing to indicate that he was placed in such a circumstance that he could not ^{even} send a proper communication to his employer at Delhi either directly or through his relatives although he had stayed there for 4 to 5 days. After the receipt of the impugned order, he had returned to Delhi on 9.9.1995. He has averred that he had reached his home town and thereafter finding himself not in a position to stay there, left home and stayed with one of his friends at an Ashram

far away from his native place. There is nothing to indicate that he had made any efforts to contact his superiors at Delhi when he left his home. We find that the respondents have proceeded in accordance with Rule 18 of the Delhi Police (Punishment & Appeal) Rules, 1980, and the Enquiry Officer had conducted ex-parte proceedings when he was satisfied that the applicant could not be found inspite of the notice to attend the enquiry and the respondents were unaware of his whereabouts throughout. Before conducting such

ex-parte proceedings, the respondents also directed the applicant through his wife, whom the enquiry team met and handed over the proceedings of the enquiry, to attend the enquiry. Despite this, the applicant did not report for the enquiry. In the circumstances, the Enquiry Officer had concluded the proceedings ex-parte and held that it would not be practicably reasonable to hold any enquiry against him and examine the witnesses. The disciplinary authority has also examined the entire case and held that it was not reasonably practicable to hold the enquiry for the reasons in the facts and circumstances of the case and passed this impugned order. We have also seen the observations of the Apex Court in Satyavir Singh Vs. Union of India, AIR 1986 SC 555 which also refers to U.O.I. Vs. Tulsi Ram Patel and certain other cases. Before applying clause (b) of the second proviso to Article 311(2), there must exist a situation which makes the holding of an enquiry under Article 311(2) not reasonably practicable and the disciplinary authority should satisfy itself that it is not practicable to hold such an enquiry and also record its reasons. Their Lordships observed "the reasonable practicability of holding an enquiry is a matter of assessment to be made by the disciplinary authority and must be judged in the light 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 in the prevailing situation that clause (3) of Article 311

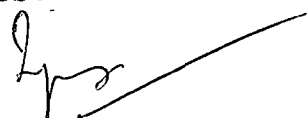
makes the decision of the disciplinary authority on (Para 58) this question final". Their Lordships further observed "that in considering the relevancy of the reasons given by the disciplinary authority, the court will not, however, sit in judgment over the reasons like a court of first appeal in order to decide whether or not the reasons are germane to clause (b) of the second proviso or an analogous service rule. The court must put itself in the place of the disciplinary authority and consider what in the then prevailing situation a reasonable man acting in a reasonable manner would have done. It will judge the matter in the light of the then prevailing situation and not as if the disciplinary authority was deciding the question whether the inquiry should be dispensed with or not in the cool and detached atmosphere of a court room, removed in time from the situation in question". (Para 108)


8. In the light of the above observations, we find that the disciplinary authority ^{has} genuinely recorded the facts and circumstances of the case and also the reasons why it was ^{not} practicable to hold an enquiry and thereafter has passed the impugned order. We do not find any illegality in the aforesaid order. There is also no allegation of mala fide in passing this order by the disciplinary authority.

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9. It is also not correct to contend that the order was passed in haste, as the impugned order was passed on 31.8.1995 after delivering the notice and other documents of the enquiry on 11.8.1995 at his residence in the home town.

10. In the conspectus of the above discussion, we do not find any good ground to interfere in the matter. Accordingly, this application is dismissed. In the circumstances, there shall be no order as to costs.


(K. MUTHUKUMAR)
MEMBER (A)


(B.C. SAKSENA)
VICE CHAIRMAN

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