

Central Administrative Tribunal
Principal Bench: New Delhi

(P)

OA No. 1391/97

New Delhi, this the 2nd day of December, 1997

Hon'ble Dr. Jose P. Verghese, Vice-Chairman(J)
Hon'ble Shri N. Sahu, Member (A)

Ex. Woman Inspector Kamla Devi No. D-2098
W/o Shri Prem Singh,
R/o Quarteer No. G-6, PS Chanakyapuri,
New Delhi-110 003.

Petitioner

(By Advocate: Shri Shanker Raju)

-Versus-

Union of India, through

1. The Secretary,
Ministry of Home Affairs,
North Block, New Delhi.
2. Commissioner of Police,
Police Headquarters, IP Estate,
New Delhi.
3. Addl. Commissioner of Police,
Police Headquarters, IP Estate,
New Delhi.
4. Dy. Commissioner of Police,
HQ (III), Police Headquarters,
IP Estate, New Delhi.

Respondentws

(By Advocate: Shri S.K. Gupta proxy for
Shri B.S. Gupta)

-Versus-

ORDER

Hon'ble Dr. Jose P. Verghese, Vice Chairman (J)

The petitioner in this case was dismissed from service under Article 311 2(b) of the Constitution of India by an order dated 21.8.1996 without holding any enquiry into the allegation that is alleged while working as woman inspector in Crime Against Women Cell, Nanakpura, which was dealing with the complaints made by one Smt. Urmit Kaur against her husband Paramjit Singh for alleged detention of her stridhan and cruelty and

-2-

(8)

demand of dowry. The aforesaid complaint was marked to the applicant and a settlement is said to have been arrived between the parties. After the compromise, the accused Shri Paramjit Singh complained to CBI that the applicant demanded a bribe of Rs. 10,000/- for sparing the arrest of his sister. In a trap conducted the said inspector was caught accepting the bribe of Rs. 10,000/- at Sarojini Nagar.

2. The order dated 21.8.1996 stated on the face of it the reason why the enquiry was not reasonably practicable to hold. To quote: "The facts and circumstances of the case are such that it would not be reasonably practicable to hold a departmental enquiry against W/Inspr. Kamla Devi, 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 person by the delinquent Inspector and in such a 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 a Police Officer of Inspector rank, who has greater capability of terrorizing these complaints/witnesses."

3. Aggrieved by the said order the petitioner filed the Memo of Appeal and no reply has been given against the said order. It was stated in the appeal that the respondents have made no attempt to hold an enquiry not even summoning the witnesses and the respondents have merely presumed that the enquiry is reasonably not

-3-

practicable with reference to the prior knowledge of the respondents in similar cases. The petitioner has filed the present OA seeking the relief of setting aside the order dated 21.8.1996 and direction to reinstate the petitioner and all consequential reliefs. After notice the respondents appeared and no reply was filed but proceeded to argue the matter so that the matter could be disposed of at the stage of admission. (9)

4. Learned counsel for the petitioner submitted that the right given under Article 311 is a valid right and the power given to the respondents under proviso 2(b) has not been validly exercised. The authorities have passed the impugned order in a mechanical manner without application of mind and based on no material. It was stated that the reason stated on the order does not indicate that the respondents have made any effort to call the complainant and the witnesses, no summons have been issued to any of the witnesses and the conclusion arrived at that the complainant and other witnesses would be put under constant threat to their persons by the delinquent Inspector is based on conjecture and not on any material. It was also urged that the conclusion arrived at by the disciplinary authority was not on the basis of any material available in the present case, rather it was based on the general knowledge of the disciplinary authority. It is further stated that the order passed is one, without application of mind as a stereo order and the reason stated on the face of the order has no bearing with the facts of the case and as such they are vague and irrelevant. The experience of the disciplinary authority in other similar cases is totally extraneous and

(10)

irrelevant as far as the present case is concerned. It was also urged that the criminal prosecution for the same offence has been launched and the same is bogus. Summons have already been issued by the Tribunal/Court. If it is reasonably not practicable for the complainant and other witnesses to depose in a criminal trial, that the same complainant and the witnesses cannot be said to be under constant fear and threat from the petitioner and the same is totally unfounded.

5. In reply to the said allegations it was stated that the offence alleged against the petitioner is a very serious one and the petitioner who was supposed to meticulously investigate the offence has abused the possession and such an act has not only tarnished the image of the police force and the faith of the ordinary citizen in the entire police force is badly shaken.

6. We have considered the arguments on both sides and we were of the firm opinion that the impugned order passed under Article 311(2)(b) is illegal and deserves to be set aside.

7. The impugned order on the face of it clearly shows that the decision arrived at, not to hold enquiry, is not based on any material relevant to the case, available before the disciplinary authority rather it was based on extraneous material viz., the past experience of the disciplinary authority in other cases. The Hon'ble Supreme Court in Jaswant Vs. State of Punjab 1991(1) SCC 362 (para 5) has stated that in order to apply the protection available under Proviso 2(b) of the said Article to the Order of dismissal, it is incumbent

(11)

on those who support the order to show that the satisfaction is based on certain objective facts, and is not the outcome of whim or caprice. It is an essential requirement that the decision of the disciplinary authority must have independent material to justify the dispensing with of the enquiry, envisaged under Article 311(2).

8. In Union of India Vs. Raddappa 1993(2) UJSC 568 (Para 5), it was held by the Hon'ble Supreme Court that where it is evident that there was no material to hold the enquiry and was not reasonably practicable, the disciplinary action in such cases will be set aside even though the illegal order has been affirmed in appeal or revision. We are satisfied that the impugned order has been passed, based on no relevant material, germane to the case and as such the impugned order as well as the order in appeal affirming the former are both illegal.

9. The second important requirement in accordance with the various decisions of the Hon'ble Supreme Court, to justify an order under Article 311(2) proviso 2(3), is that the authority empowered to dismiss, remove or reduce one's rank, must record his reasons in writing, for denying the liberty under Clause 2 before making an order of dismissal and the reasons thus recorded must, ex facie show that it was not reasonably practicable to hold a disciplinary enquiry and further the reason must not be vague, as in the present case. In view of the settled law in this regard, vide, Union of India Vs. Tulsi Ram Patel AIR 1985 SC 1416 (Para 133), Bakshi Vs. Union of India AIR 1987 SC 2100 (Para 8), Workmen Vs. Hindustan Steel, 1984 (Suppl.) SC 554 (Para

4) CSO Vs. Singasan, 1991(1) SCC 729 (Para 5), the impugned order as well as the appellate order dated 16.9.1996 and 31.1.1997 respectively are both illegal and quashed. The respondents are at liberty to hold an inquiry against the petitioner and in case the petitioner is absolved of the said inquiry or in case a decision is taken not to hold any inquiry, the petitioner will be entitled to all consequential benefits.

10. This OA is allowed to the extent stated above with no order as to costs.

N. Sahu

(N. Sahu)
Member (A)



(Dr. Jose P. Verghese)
Vice Chairman (J)

Mittal