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CAT/1

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 1553/97

T.A. No.

199

DATE OF DECISION 24.3.98

Ex. Constable Jitender Kumar

Petitioner

Sh. Shankar Raju

Advocate for the Petitioner(s)

Versus

UOI and others

Respondent

Sh. Anoop Bagai

Advocate for the Respondent

CORAM

The Hon'ble Smt. Lakshmi Swaminathan, Member (J)

The Hon'ble Shri K. Muthukumar, Member (A)

1. To be referred to the Reporter or not? *YR*

2. Whether it needs to be circulated to other Benches of the Tribunal?

Lakshmi Swaminathan
(Smt. Lakshmi Swaminathan)
Member (J)

2
11
IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

O.A. No. 1553/1997

New Delhi this the 24th day of March, 1998.
Hon'ble Smt.Lakshmi Swaminathan, Member(J)
Hon'ble ShriK.Muthukumar, Member(A)

Ex. Constable Jitender Kumar
S/o Sh.Ramakant Tewari,
R/O Vill.Nanuva, P.S.Bumrraom,
Distt.Banknair.

..Applicant

(By Advocate Shri Shankar Raju)

Vs

1. Union of India, through
Secretary,
Ministry of Home Affairs,
North Block, New Delhi-1
2. Sr.Addl.Commissioner of Police,
Armed Police and Training
Police Head Quarters,
I.P.Estate, New Delhi.
3. Dy.Commissioner of Police,
2nd Bn.D.A.P.Kingsway Camp,
New Police Lines, New Delhi.

..Respondents

(By Advocate Sh.Anoop Bagai)

O R D E R (ORAL)

Hon'ble Smt.Lakshmi Swaminathan, Member (J)

The applicant who was working as Constable in Delhi Police, is aggrieved by ~~the~~ order passed by the respondents dated 7.1.97 dismissing him from service without holding a departmental enquiry under Article 311(2)(b) of the Constitution of India read with Delhi Police Act, 1978. The appeal filed by the applicant against this order has also been rejected by the appellate authority by order dated 8.5.1997.

2. The learned counsel for the applicant submits that at the time when the impugned dismissal order and appellate order were passed by the respondents, the applicant was under suspension. He submits that in the circumstances of the case, the respondents ^{should not} have dispensed holding of departmental proceedings in accordance with Delhi Police(Punishment and Appeal) Rules, 1980. He relies on the judgment of

this Tribunal in Smt. Shobha Chhabra Vs. UOI & Ors (OA No. 331/97) decided on 10.9.97 as modified on appeal by the Hon'ble Delhi High Court by order dated 19.1.1998.

3. The main ground taken by the respondents in their reply is that since there was a criminal case pending against the applicant and the applicant threatened the staff on duty at Chanakyapuri P.S. by pointing a pistol at them, it was not possible to hold a departmental enquiry. They have also stated that the applicant is guilty of grave criminal misconduct and hence the punishment of dismissal from service awarded to him under Article 311(2)(b) is legal and justified. They have also submitted that since he had threatened the witnesses, they had come to a decision that it was not reasonably practicable to hold a regular departmental enquiry and, therefore, the disciplinary authority had come to a decision to dispense with the enquiry under the aforesaid provisions of the Constitution.

4. In the facts and circumstances of the case, we find that the reasons given by the respondents for not holding the departmental enquiry are not sufficient justification for not complying with the Constitutional provisions and Rules to dispense with such an enquiry. The aforesaid ^{passed by the Tribunal/High Court} orders, in Shobha Chhabra's case are applicable to this case.

5. In the result the impugned orders dated 7.1.1997 and 8.5.1997 passed by the respondents are quashed and set aside. The applicant to be reinstated in service in accordance with the rules within one month from the date of receipt of a copy of this order. He shall continue under suspension. The respondents are at liberty to hold departmental enquiry against the applicant in accordance with the relevant rules. Thereafter after completion of the departmental

8

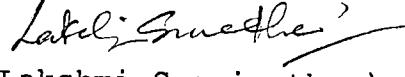
13

enquiry, they shall pass appropriate orders as to how the intervening period shall be treated, also in accordance with law/rules.

The O.A. is disposed of as above. No order as to costs.



(K. Muthukumar)
Member (A)



(Smt. Lakshmi Swaminathan)
Member (J)

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