

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A. NO. 223/1997

New Delhi this the 7th day of November, 1997.

HON'BLE DR. JOSE P. VERGHESE, VICE CHAIRMAN (J)

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

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1. Ex. Head Constable Vijender Singh No. 1872/C,
S/O Shri Harswaroop,
R/O Village Ghazipur,
Delhi-91.
2. Ex. Constable Jeet Ram No. 567/C,
S/O Shri Moti Lal,
previously employed in Delhi Police,
R/O Village Dhani Pura,
P.O. Barauli Char,
Distt. Bharatpur, Rajasthan.
3. Ex. Constable Surender Kumar No. 1539/C,
S/O Shri Rohtas Singh,
previously employed in Delhi Police,
R/O Vill. & P.O. Milap Nagar,
Vandhera, Roorkee, U.P.
4. Ex. Constable Manoj Kumar No. 517/C,
S/O Shri Dharampal Singh,
previously employed in Delhi Police,
R/O Vill. Ikladi, P.O. Ladpur,
Distt. Bulandshahar (UP). ... Applicants

(By Shri Shankar Raju, Advocate)

-Versus-

1. Union of India through
Secretary, Ministry of Home Affairs,
North Block,
New Delhi.
2. Addl. Commissioner of Police,
Northern Range,
Police Headquarters,
I.P. Estate, MSO Building,
New Delhi.
3. Dy. Commissioner of Police
(Central District),
Darya Ganj,
New Delhi-110002. ... Respondents

(By Shri Rajinder Pandita, Advocate)

O R D E R

Dr. Jose P. Verghese, VC(J)-

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The four petitioners in this case were dismissed from service without holding any enquiry under proviso (2) (b) to Article 311 of the Constitution of India on the allegation that after investigation by the respondents based on a complaint at the instance of one Mohd. Hadees of Sahibabad, Distt. Ghaziabad, that all the petitioners while posted on duty came to his locality at about 10.00 p.m. on 13.7.1996 and directed his son Musa and one Nand Lal to accompany them to Police Station. They had given a contact ~~phone~~ number to the complainant and demanded Rs.15,000 for release of Musa and Nand Lal. On the basis of the said complaint, the Additional SHO, Chandni Mahal made a search of the entire building and there was no trace of Musa and Nand Lal and the entire staff was lined up for Test Identification Parade (TIP) and it was alleged that all the petitioners slipped out of the said TIP. On the basis of the said complaint and on the basis of investigation report available with the respondents, all the four petitioners were dismissed from service without enquiry under proviso (2) (b) to Article 311 of the Constitution of India. The reason stated on the face of the order is reproduced herebelow :-

"The facts and circumstances of the case shows that Head Constable Vijender Singh, No. 1872/C, constables Jeet Ram, No. 567/C, Surender Singh, No. 1539/C and Manoj Kumar, No. 517/C have criminal propensity. They have terrorised the complainant in this case who was too scared to lodge a formal report to enable the police to register a case or conduct a regular departmental enquiry. It is

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certain that complainants and witnesses will not be in a position to muster enough courage to subsequently depose against the delinquents due to fear of severe reprisal from them. It is also evident from the fact that despite all the happenings in the foregoing paras, no follow up action is forthcoming from the complainant after initial complaint. As such it is not reasonably practicable to hold a regular departmental enquiry against the delinquent police men.

It is also certain that during the entire process of departmental proceedings, the complainant(s) and witnesses would be put under constant fear of threat to their persons and properties from the hands of the delinquent police personnel, and in such a situation, conducting of departmental enquiry is not considered practicable.

The instances are not uncommon where perole have not dared to depose even against ordinary criminals whereas in the instant case, the deposition by the complainant(s) would be against the police officers, thus acquiring terrorizing effect of much greater magnitude."

2. Aggrieved by the said order, the petitioners filed an appeal and the same was also dismissed by an order dated 7.1.1994. The petitioners have filed the present O.A. against both these orders of dismissal as well as the appellate order by which their appeal was rejected. After notice, the respondents stated that the orders of dismissal passed under the relevant provisions and the appellate order do give reasons for passing the said orders on the face of the same and as such, no kind of illegality has been committed at the instance of the respondents and as such, this O.A. deserves to be dismissed.

3. On behalf of the petitioners, on the other hand, it was stated that the right given under Article

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311 of the Constitution of India is a constitutional right and the power given to the respondents under proviso (2) (b) has not been validly exercised. The authorities have passed impugned order in a mechanical manner without any application of mind and based on no material. It was also stated that the reason given on the face of the order does not indicate that the respondents have made any effort to call the complainant and witnesses, nor any summons have been issued to them. Without doing so, the conclusion arrived at by the respondents that the complainant and other witnesses would be put under constant threat to their person by the delinquent petitioners is based on conjecture and is not based on any relevant material. The impugned order on the other hand, states that the complainant could not collect enough courage to make a formal complaint even though the entire investigation had been initiated on the basis of the complaint given to the police by the complainant himself. It was further urged that the conclusion arrived at by the disciplinary authority is nothing but a presumption as the same is not based on any material in the present case, rather the same is based on the general knowledge of the disciplinary authority. It was further stated that the order passed being one without application of mind and the reason stated on the face of the order does not have any bearing with the facts of the case and as such the same are irrelevant and vague. The experience of the disciplinary authority in other similar cases is totally extraneous and irrelevant as far as the

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present case is concerned. The finding of the disciplinary authority that it was not reasonably practicable for the complainant and other witnesses to depose against the petitioners, is not based on any material relevant to the case.

4. We have considered the rival contentions of the parties and are of the firm opinion that the impugned order passed under Article 311 (2) (b) is illegal and deserves to be set aside.

5. The impugned order on the face of it clearly shows that the decision arrived at, namely, not to hold enquiry is not based on any material relevant to the case, rather the same is based on extraneous materials, namely, 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 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).

6. In Union of India vs. Raddappa 1993 (2) UJSC 568 (para 5), it was held by the Hon'ble Supreme

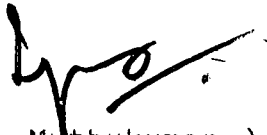
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court that where it is evident that there was no material to hold the enquiry and was not reasonably practicable, the disciplinary action in such cases will be set aside even though the illegal order has been affirmed in appeal or revision. We are 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.

7. The second important requirement in accordance with the various decisions of the Hon'ble Supreme Court, to justify an order under Article 311 proviso 2(b), 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. Tulsiram 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), and CSO vs. Singasan 1991 (1) SCC 729 (para 5), the impugned order dated 30.4.1996 and the appellate order dated 7.1.1997 are declared illegal and set aside. The The petitioners are entitled to all consequential

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benefits. It goes without saying that the respondents are at liberty to proceed against the petitioners in accordance with law. In these terms, this O.A. is allowed. No order as to costs.



(K. Muthukumar)
Member (A)



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

/as/