CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

OA No. 2285/97

New Delhi, this the 21st day of July, 1998

HON'BLE SHRI T.N. BHAT, MEMBER (J)
HON'BLE SHRI S.P.BISWAS, MEMBER (A)

In the matter of:

I) Ex. Inspector Surender Pal Rana
No. D-1291, s/o Shri Baljeet Singh,
aged about 50 years, previously employed in
Delhi Police, R/o 419/E, East Babar Pur,
Shadara, Delhi-32. ..... Applicant
(By Advocate: Sh. Shankar Raju)

OA No. 2297/97

II) Ex. Inspr. (EX) Narender Singh Chauhan
No. D-1/792, S/o Shri Surat Singh Chauhan,
Previously employed in Delhi Police,
R/o H.No. 161-A, Vill-Dhaka,
P.S. Mukherjee Nagar,
Delhi-9. ..... Applicant
(By Advocate: Sh. Shankar Raju)

Vs.

1. Union of India
Through its Secretary,
Ministry of Home Affairs,
North Block,
New Delhi.

2. Commissioner of Police,
Police Head Quarters, I.P.Estate,
M.S.O.Building,
New Delhi.

3. Addl. Commissioner of Police,
New Delhi Range,
Police Head Quarters, I.P.Estate,
New Delhi. ..... Respondents
(By Advocate: Sh. Vijay Pandita)

O R D E R

delivered by Hon'ble Shri T.N.Bhat, Member (J)

This common judgement disposes of two O.As filed separately by two Ex-Inspectors of Delhi Police who have been dismissed from service by identical orders passed by one Shri Yudhvir Singh Dadwal, the

21.7.98.

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then Additional Commissioner of Police, New Delhi Range on 17.1.1997. The allegations against them were that on 12.1.1997 both of them alongwith a Head Constable and a Constable approached one Sant Ram, brought him to Police Station Kalyanpuri and demanded bribe from him for allowing him to continue the construction of some shops. It was further alleged that the Head Constable and the Constable were caught red handed on 13.1.1997 while they were accepting an amount of Rs. 50,000/- as the first instalment of the bribe money and a day later the applicants in these two OAs were also arrested by the Central Bureau of Investigation.

2. As already indicated, the orders of dismissal from service were issued on 17.1.1997. No enquiry was held before the passing of the dismissal orders and the disciplinary authority, namely, the Additional Commissioner of Police, held that "it would not be reasonably possible to hold a departmental enquiry". The only ground for holding this view is that "the complainant /public witnesses are unlikely to depose against" these Inspectors of Police "for fear of reprisals etc." It has further been stated in the dismissal order that the police is still looked upon with awe and an element of fear which fact cannot be overlooked while considering the question whether it would be "reasonably possible" to hold a departmental enquiry.

3. The appeals filed by the applicants came to be rejected by the Commissioner of Police by a common order passed on 2.9.1997. The applicants have assailed

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in their respective O.As not only the separate punishment orders dated 17.1.1997 but also the common appellate order dated 2.9.1997.

4. The main ground on the basis of which the impugned orders have been assailed is that there was no material before the disciplinary authority to dispense with holding of departmental enquiry and that the reasons given by the disciplinary authority are not valid. During the course of his arguments the learned counsel for the applicants cited before us a large number of judgements of the Apex Court and this Tribunal, including a recent judgement delivered by this Bench of the Tribunal on 6.7.1998 in O.A. 332 of 1997 (Ex Head Constable Shiv Chavan and others vs. U.O.I. and others) to support the argument that the decision of the disciplinary authority not to hold an enquiry should be based upon some objective facts and should not be an outcome of whim or caprice. It is strenuously argued by the learned counsel that extraneous considerations have influenced the disciplinary authority in the instant cases to dispense with regular departmental enquiry.

5. In reply, the learned counsel for the respondents would contend that adequate reasons having been given for dispensing with the enquiry in exercise of the discretionary powers under second proviso (b) to Sub Article (2) of Article 311 of the Constitution of India this Tribunal should not normally interfere.

6. On consideration of the rival contentions we are inclined to accept the plea taken by the applicant's counsel, for a variety of reasons, the main reason being that the disciplinary authority had no material before him for coming to the conclusion that it was not reasonably practicable (and not 'reasonably possible' as stated in the impugned orders) to hold a departmental enquiry.

7. The disciplinary authority seems to believe that in all complaints against Police Officials a departmental enquiry would not be reasonably practicable, for the reason that police personnel are held in awe and are also a source of causing fear among the common people. We do not find this to be a relevant point for consideration for the purpose of deciding the question whether it would or would not be reasonably practicable to hold an enquiry.

8. We further notice that on identical grounds we had quashed the dismissal order challenged in OA No. 332/97 by our judgement dated 6.7.1998. This view finds further support from the judgement reported as (1998) 37 ATC 513 by which a dismissal order passed without holding an enquiry was quashed on the ground that the decision to dispense with the departmental enquiry was based on extraneous considerations.

9. A five judge Bench of the Hon'ble Supreme court has in its judgment in Union of India Vs. Tulsiram Patel (1985(2) SLJ 145) exhaustively dealt with the question regarding the scope of judicial

review of decisions taken under Second proviso to Article 311 (2) of the Constitution. In para 120 of the judgment the Apex Court has held that a disciplinary authority is not expected to dispense with a disciplinary inquiry lightly or arbitrarily or out of ulterior motives or merely in order to avoid the holding of an inquiry. More importantly, it is further held that the finality given to the decision of the disciplinary authority by Article 311(3) is not binding upon the court so far as its power of judicial review is considered and in such a case the court will strike down the order dispensing with the inquiry as also the order imposing penalty.

10. In a subsequent judgment delivered on 5.8.1993 in Union of India and Others vs. R.Reddapa and others, reported as (1993) 4 Supreme Court cases 269, the Apex Court upheld a judgment of the Hyderabad Bench of the Tribunal in OA Nos. 232 and 232 of 1987 and held that where there was no material on which any reasonable person could have come to the conclusion that holding of disciplinary inquiry was not reasonably practicable the court or Tribunal would be well within its jurisdiction to set aside an order based upon that erroneous conclusion.

11. When this judgment was in the process of production we noticed a recent judgment of a two judge Bench of the Hon'ble Supreme Court in the case of Chandigarh Administration and Others vs. Ex. S.I.Gurdit Singh, reported in Judgments Today 1998(4) Supreme Court 253. In this case, on facts, it was held

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that under Article 311(3) the decision of the competent authority is final, when such authority has decided that it was not reasonably practicable to hold departmental enquiry. However, on a careful reading of the judgment (supra) we find that in the case before the Apex Court it was established that the decision of the disciplinary authority was based upon some material. In that case a preliminary enquiry had been conducted by the Dy. S.P. and he had in his report stated in clear terms that the charged officer was "a terror in the area" and a very influential person and that no person would come forward to give a statement against him. This conclusion was further supported by the fact that in the criminal case on the same charge not a single witness had supported the prosecution. It was in these circumstances that the Apex Court held that the decision of the disciplinary authority dispensing with the enquiry was not liable to be interfered with by the Tribunal. The facts of the instant cases are clearly distinguishable. Here no attempt seems to have been made to explore the possibility or practicability of holding a disciplinary inquiry nor was even a preliminary inquiry held. The incident related to 12.1.1997, the applicants were allegedly arrested by the C.B.I. on 14.1.1997, they were placed under suspension by an order dated 17.1.1997 and simultaneously, on 17.1.1997 itself, the orders of their dismissal were issued.

12. For the foregoing reasons, we are convinced that the impugned orders of dismissal dated 17.1.1997 and the common appellate order dated 2.9.1997

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are unsustainable. The same are accordingly quashed and set aside. The respondents are, however, granted the liberty to hold departmental enquiry and to keep the applicants under suspension pending the enquiry, in which case they shall be paid subsistence allowance admissible under the rules. Both the OAs are disposed of in terms of the above order. No costs.

(S.P. BISWAS)
Member (A)

21.7.98.

(T.N. BHAT)
Member (J)

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