Central Administrative Tribunal
Principal Bench: New Delhi

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OA No. 29/97 & MA 531/98
&
OA No. 30/97 & MA 530/98

New Delhi, this the 28th day of April, 1998

Hon'ble Shri T.N. Bhat, Member (J)
Hon'ble Shri S.P.Biswas, Member (A)

(8)

OA No. 29/97

Jitender Pal Singh s/o Sh. Nepal Singh,
R/o 110-A, Kavita Colony,
Nangloi, Delhi. ...Applicant

(By Advocate: Ms Anupama Chandna proxy for Mrs.Avnish Ahlawat)

Versus

Union of India through:

1. Lt. Governor of Delhi through
Commissioner of Police, Delhi,
Police Headquarters,
MSO Building, IP Estate,
New Delhi.

2. Shri Maxwell Pareira,
Additional Commissioner of Police,
South Range,Delhi Police,
New Delhi.

3. Shri Deepak Mishra,
Deputy Commissioner of Police,
West District, Delhi Police,
New Delhi. ....Respondents

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

OA No. 30/97

Virender Kumar s/o Shri Ram Avtar,
R/o B-508, Dabua Colony, NIT
Faridabad,Haryana. ...Applicant

(By Advocate: Ms Anupama Chandna proxy for Mrs.Avnish Ahlawat)

Versus

Union of India through:

1. Lt. Governor of Delhi through
Commissioner of Police, Delhi,
Police Headquarters,
MSO Building, IP Estate,
New Delhi.

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2. Shri Maxwell Pareira,
Additional Commissioner of Police,
South Range,Delhi Police,
New Delhi.

3. Shri Deepak Mishra,
Deputy Commissioner of Police,
West District, Delhi Police,
New Delhi.

....Respondents

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

O R D E R (ORAL)

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

We have heard the learned counsel on either side for final disposal of these OAs, which are being taken up together because the questions involved in the O.As are identical.

The learned proxy counsel for the applicant draws our attention to the judgement order dated 3.9.1997 in OA No. 2441/96 (Sugan Chand & another Vs. Additional Commissioner of Police & another). It is contended by the learned counsel that the aforesaid judgement squarely covers the facts of the instant cases, as the applicants in the aforesaid OA had also been dismissed from service by a common order alongwith the appliants in both these OAs, viz., OA 29/97 and OA 30/97.

These OAs have been filed by Jitender Pal Singh and Virender Singh respectively, assailing the order dated 3.9.1995 issued by the Deputy Commissioner of Police (West), New Delhi by which the present appliants as also the applicants in OA No. 2441/96 were dismissed from service under Article 311(2) (b) of the Constitution of India when it was held by the disciplinary authority that it would not be reasonably practicable to hold a

departmental enquiry. The only ground stated for not holding a regular departmental enquiry was that departmental proceedings would take a long time and it was also not uncommon in such cases that the complainants and witnesses are later on won over and they turn hostile, mostly due to fear of reprisal etc. It was further stated in the impugned order of dismissal from service that terrorising and intimidating the witnesses not to come forward to depose against the delinquents in the departmental proceedings have become common tactics adopted by the involved delinquents and that it also calls for great courage and conviction to depose against such persons and the task becomes more acute and difficult when the delinquents are police officials.

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We notice that the self same order dated 3.9.1995 was challenged by the other two Constables, namely, Sugan Chand and N.B.Surbase in the aforesaid OA No. 2441/96 and this Tribunal by the judgement dated 3.9.1997 quashed the order of dismissal from service holding that the reasons given by the respondents in the impugned order can hardly be taken to be sufficient or relevant reasons for invoking the power under Article 311(2)(b) of the Constitution of India to dispense with the departmental enquiry. As in the aforesaid case so in the instant cases, the learned counsel for the respondents was not able to successfully distinquish the facts of the instant OAs with those in OA No. 281/92 in the case of Om Pal Singh vs. Commissioner of Police decided on 17.7.1996 followed by the decision in Naresh Kumar and another vs.Commissioner of Police reported in 1992 (7) SLR 177).

In view of the above the impugned order, which has been quashed in OA No. 2441/96 qua the applicants in that OA shoud, in our considered view, not be allowed to continue in respect of the applicants in the instant OAs and has to be quashed qua the applicants in these OAs as well.

In the event, both these OAs are allowed and the impugned order whereby the applicants in these OAs have been dismissed from service, is quashed and the respondents are directed to re-instate the applicants, namely, Jitender Pal Singh and Virender Singh forthwith. However, we make it clear that the applicants shall not be entitled to any back wages for the period they remained out of service i.e. from the date of dismissal to the date of their reinstatement, and it would be open to the respondents to hold a regular enquiry in accordance with law and to take a decision as to how the intervening period from the date of dismissal of the applicants should be treated.

With the above order, both these OAs are allowed, but without any order as to costs.

(S.P.Biswas)
Member (A)

28.4.98
(T.N.Bhat)
Member (J)

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