CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

O.A.No.2194/1994

(A)

New Delhi this the 24th Day of April 1995

Hon'ble Mr. A.V. Haridasan, Vice Chairman (J)
Hon'ble Mr. K. Mukthukumar, Member (A)

Ex. Constable Subhash No. 7581/DAP,
son of Shri Kanwar Singh,
R/o Village & P.O. Naya Bans,
Delhi-110 082. ... Applicant

Vs.

1. The Lt. Governor of N.C.T. Delhi
(Through Commissioner of Police)
Police Headquarters, MSO Building,
I.P. Estate, New Delhi.

2. Additional Commissioner of Police,
Armed Forces & Training,
Police Headquarters, MSO Building,
New Delhi. ... Respondents

ORDER (Oral)

Hon'ble Mr. A.V. Haridasan, Vice Chairman (J)

The challenge in this application filed by Ex-constable Subhash of the Delhi Police is against the order dated 9.6.1992 of the Deputy Commissioner of Police dismissing him from service invoking the powers under Article 311(2)(b) of the Constitution of India without holding the departmental enquiry on his being implicated in a criminal case of rape in F.I.R. dated 3.6.1992. The applicant filed an appeal against that order which was dismissed by the ACP vide his order dated 26.10.1993. The applicant has assailed this order among other grounds on the ground that his dismissal from service without holding an enquiry and without awaiting for the result of the prosecution against him is violative of not only the provision of Delhi Police (Punishment and Appeal) Rules, but-

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also of the guarantee contained in Article 311(2) of the Constitution of India.

2. The respondents seek to justify the impugned action on the ground that the offence of which the applicant was charged was of a very grave nature and that it was not uncommon in such cases for the Police Officers to terrorise the witnesses ~~and~~ making holding of an enquiry reasonably not practicable.

3. Since the pleadings in this case are complete and as issue involved is quite simple the counsel on either side agreed that the case can be finally disposed of at the admission stage itself. Accordingly, we have perused the pleadings and the other materials available on record and have heard arguments of the Learned Counsel appearing on either side. The undisputed fact of the case is that the applicant was dismissed by the Deputy Commissioner of Police within a week from the date on which a case was registered against him for offences under Section 376/363 IPC. At the time when the applicant was dismissed from service under the proviso (b) to Article 311 (2) of the Constitution of India not even a chargesheet was filed against the applicant. The case was only under investigation. Though a charge sheet was laid in court after investigation the Session Court on trial found the applicant not guilty and acquitted him vide judgement dated 2.2.1994. Learned counsel for the applicant argued that the haste in which the Deputy Commissioner of Police dismissed the applicant from service by the impugned order without holding an enquiry even without wenting for the court to decide whether the applicant

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was guilty or not shows the arbitrariness of the authorities and that his opinion that holding an enquiry was reasonably not practicable is divoid of application of mind. We see considerable force in the argument. The haste shows by the Deputy Commissioner of Police in dismissing the applicant from service on merely registering on FIR against him without waiting for the result of investigation and prosecution against him is quite alarming and unusual. If the applicant was found guilty and convicted the Deputy Commissioner of Police could have dismissed him from service on a consideration of the circumstances which led to his conviction. Even if the applicant was acquitted if the court or the Deputy Commissioner of Police was of the opinion that the acquittal was as a result of the applicant wining over the witnesses, the Deputy Commissioner of Police would have held an enquiry against him and taken a decision according to the rules. It is pertinent to note that in this case ven the prosecutrix did not support the prosecution case and the applicant was acquitted by the Session Judge. Article 311(2) of the Constitution mandates that no member of the civil service shall be dismissed or removed or reduced in rank except after an enquiry in which he has been informed of the charges against him and given a reasonable opportunity to ~~the applicant in respect of the charges~~ defend him. However, proviso (b) of the Article 311(2) enables the ~~members of the~~ authority competent to dismiss or remove a person or to reduce him in rank ~~must apply his mind~~ to do so without holding an enquiry if he is satisfied that it is not reasonably practicalbe to hold such an enquiry. In this case can it be said that the Deputy Commissioner of Police was justified in holdingthat it was not reasonably practicable to hold an enquiry against the applicant? We are of the

considered view that the answer is in the negative. The Criminal Court had tried the applicant for the offence under Section 376 of the IPC. The prosecutrix though appeared and ~~tended~~ rendered evidence ~~offence~~ before the Session Judge did not implicate the applicant with the offence. There is no case that the applicant threatened the witnesses or that on account of the threatening or violence by the applicant or anybody on his behalf, it was not reasonably practicable to hold an enquiry. A mere reading of the order dated 9.6.1992 of the Deputy Commissioner of Police would show that there was no circumstance which would show that it was not reasonably practicable to hold an enquiry. It is worthwhile to quote the reasons stated by the Deputy Commissioner of Police for taking re-course to proviso (b) to Article 311(2) of the Constitution which reads as follows:

> "The circumstances of the case are such that holding of an enquiry against Constable Subhash,No. 7581/DAP is not reasonably practical because:
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> He is under detention and will not be available for expeditious D.E. proceedings.
>
> It is not uncommon in such cases that the complainants and witnesses turn hostile due to fear of reprisals. Terrerising threatening or intimidating the witnesses who will come forward to give evidence against him in the departmental enquiry are common tactics adopted by the defaulters. It requires tremendous courage to depose against any ordinary criminal, and much more guts are required to depose against a criminal who is also donning the police uniform, and stands to loose his job on their statement. It will be too much to except an ordinary citizen to show such great courage."

That the applicant was arrested and the opinion of the Deputy Commissioner of Police that it was not uncommon for defaultors to terrerise witnesses are not sufficient grounds to dispensate the enquiry because there was not even a suggestion that in this case the applicant either terrerised the witnesses

or created a circumstance which would render holding an enquiry reasonably practicable. If a Police Officer is to be dismissed from service merely for the reason that somebody has set the criminal law with motion against him and without giving him an opportunity to defend himself is a violation of the principles of natural justice enshried in Article 311(2) of the Constitution. Therefore, we are convinced with the decision of the Deputy Commissioner of Police that it was not reasonably practicable to hold an enquiry against the applicant in the circumstance of the case was an arbitrary one without application of mind and that the impugned order dated 9.6.1992 is absolutely unjust, illegal and unjustifiable. The appellate authority has also not applied his mind to the grounds raised by the applicant in his appeal of memo. Hence the Appellate Order also is devoid of application of mind. Under these circumstances we are of the considered view that the impugned orders are liable to be set aside.

5. In the conspectus of the facts and circumstances as discussed above, we set aside the impugned order of the DCP dated 9.6.1992 dismissing the applicant from service and also the appeallate order of the Additional Commissioner of Police dated 26.10.1993 dismissing his appeal and we direct the respondents to reinstate the applicant in service with all consequential benefits within a period of one months from the date of receiving this order. However, it is made clear that in case the DCP is of the considered view that acquittal of the applicant was a result of the applicants winning over the witnesses this order would not stand in the way of his proceeding

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against the applicant as provided in Rule 12 of the Delhi Police (Punishment and Appeal) Rules, 1980.

There is no order as to costs.

(K. Muthukumar)
Member(A)

(A.V. Haridasan)
Vice Chairman(J)

Mittal