

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH : NEW DELHI

...

OA.401 of 1994

Dated New Delhi, this the 30th day of May, 1994

Hon'ble Shri J. P. Sharma, Member(J)
Hon'ble Shri B. K. Singh, Member(A)

Ex. Constable Narender Kumar No.2182/SD
S/o of Shri Mauji Ram
R/o Village Shaveli District Sonipat
HARYANA

... Applicant

By Advocate: Shri Shankar Raju

VERSUS

1. The Lt. Governor, Govt. of N.C.T.O.
(through Addl. Commissioner of
Police, Southern Range)
Police Headquarters, M.S.O. Building
NEW DELHI.

2. The Deputy Commissioner of Police
South District, Hauz Khas
NEW DELHI-110016

... Respondents

By Advocate: None

(Departmental Representative
Shri Swaroop Singh, SI)

O R D E R

(Oral)

Shri J. P. Sharma, Member(J)

By an order dated 10th June, 1993 applicant

Shri Narender Kumar along with another Shri Ashok Kumar

were dismissed from the services of police constable

under Article 311(2) (b) of the Constitution of India.

The allegation against the applicant has been that he
misbehaved with one Kumari Sunita Rani and that he also

outraged her modesty on 9.6.93 on the basis of which

FIR No.164/93 u/s 354 IPC, P.S. Okhla Indl. Area was

registered against him and another Ashok Kumar.

Against this order of dismissal the applicant preferred
an appeal which was also rejected by the order dated

14.9.93 by the Appellate Authority. The Disciplinary Authority has given reasons for dispensing with the departmental enquiry upheld by the Appellate Authority. In this application, the applicant has assailed these orders praying that same may be quashed as illegal and the applicant be reinstated in service w.e.f. 10.6.93 with all consequential benefits.

2. On notice, the respondents filed the reply.

In it, it is stated that the applicant Narender Kumar acted in such a depraved manner of outraging modesty of Km. Sunita Rani and as such on account of this moral turpitude, he cannot remain in the police service. It is also stated that the enquiry in the case was dispensed with as it was not possible to procure attendance of said Km. Sunita Rani and it is well known that coercion and cajolery often are practised by such delinquent to such an extent that the witness/victim refrain to depose against the person concerned.

3. We heard the counsel for the applicant as well as the Pairvi Officer who mainly relied on the reply filed by the respondents. No rejoinder has been filed.

By FIR No.164/93, a cognizable offence has been registered at the P.S. Okhla Industrial Area regarding this occurrence on 9.6.93 at about 3 P.M. On the basis of FIR, Charge Sheet has also been filed in the Criminal Court and the case is pending trial. It is contended by the learned counsel for the applicant that it was not a case where the enquiry is not possible in the circumstances of the case. Article 311(2) is an exception to general rule that a civil servant cannot be removed from service except after enquiry according to disciplinary rules. Under Sub Clause(3) of Article 311 where a question arises whether it is reasonably practicable to hold such an enquiry as is referred to Clause(2) above that the decision thereof of the authority empowered to dismiss or remove such person or reduced in rank shall be final. The learned counsel for the applicant has also referred to the case U.O.I. Vs. Tulsi Ram Patel(1985) 3 SCC p.398 the judicial review against an order passed under these provisions can take place only to the extent where the competent authority has given valid and cogent reasons for dispensing with the enquiry or not. If reasons are available on record, as per provisions of Sub Clause 3 of Article 311, the judicial review cannot

take place regarding the genuineness
of those reasons. We have therefore to judge the
validity of the order whether the reasons given by the
competent authority dispensing with the enquiry are
based on the findings on record. A number of cases
have since come before the Tribunal and the decision
has been taken on them. Not only this, the respondents
after passing of this order in June, 1993 and the
appeal order in September, 1993, have issued a
circular in November, 1993, a copy of which has been
filed by the applicant as Annexure A-8 of the application.
It is specifically mentioned that the police officers
involved in the cases of Rape or Dacoity or any such
heinous offence have been dismissed straightway under
Article 311(2)(b) despite of fact that criminal cases
have been registered. Such dismissals, without
holding Departmental Enquiries, are illegal because
in such cases Departmental Enquiries can be
conveniently held. It goes to show that the
competent authority's order is quite in contradiction
with the aforesaid circular issued by the Commissioner
of police. It is the guidelines for all the
Disciplinary authorities/Appellate authorities in
this matter.

4. The question in this case that the applicant was said to have indulged in a criminal case of extreme desperate and depravity and as such without holding a Departmental Enquiry, he can be punished. In the case of Satbir Singh Vs. U.O.I. decided by the Hon'ble Supreme Court subsequent to the decision of Tulsi Ram Patel, a number of cases were considered by various units of U.O.I. and the ratio of Tulsi Ram Patel constitutional Bench judgement was re-enforced.

However, it has been observed that if an enquiry can be held for any reason whatsoever even at the stage of appeal, then the delinquent be proceeded against with a Departmental Enquiry envisaged under the rules.

5. In this case, Km. Sunita Rani is a key witness and the reasons given for dispensing with the enquiry is that she was not available or shall be ~~WPO~~ over when the Departmental Enquiry commences against the applicant. However, she is also witness in the criminal case and under rule 12 of Delhi Police (Punishment & Appeal) Rules the fact of acquittal in the criminal case gives some vested right to the acquitted person who also stands charged for a mis-conduct in the Departmental Enquiry. The services of the applicant are dispensed with at this stage and

if ultimately he was acquitted in criminal court, the

damage done cannot be undone, and the applicant might have also exhausted the remedy by way of appeal.

6. The main question that arises is which shall be those type of cases which are covered under proviso to Article 311(2) of the constitution. These cases are of such a nature where irrespective of the misconduct alleged it is not reasonably practicable to hold a departmental enquiry either because of the Trade Union activities or because of such acts or omissions which will make the enquiry almost impossible. That situation shall not be in the present case.

7. The Pairvi Officer has rightly pointed out that the circular issued by the Commissioner of Police is of subsequent date and that was issued sometime in November, 1993.

8. In view of this, it shall be in the fitness of things that the orders passed by the Disciplinary/ Appellate authorities may again be reviewed by the competent authority in the light of their own circular of November, 1993 (Annexure A-8) bearing no. 25551-631/R-1 dated 8.11.93.

9. In view of the above facts and circumstances of

(9)

the case, the impugned orders passed by the Disciplinary/ Appellate authorities are set aside and quashed with the following directions to the respondents:

- (i) to consider the case of the applicant afresh in view of their own circular of 8.11.93 and pass the order according to law in consonance with Article 311(2) as well as Delhi Police(Punishment & Appeal)Rules, 1980;
- (ii) the applicant shall be restored to his original post at this stage before passing an order and shall be ultimately governed by the result of that order. The applicant is facing a criminal trial for alleged misconduct and therefore the respondents shall consider this fact also before restoring him to a position status-quo-ante.

10. The application is disposed of with the above direction to the respondents and if the applicant is still aggrieved, he may assail the final order.

Cost on parties.


(B. K. Vasingh)
Member (A)


(J. P. Sharma)
Member (J)

dbc