

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.1550/1994

New Delhi, this 16th day of July, 1999

Hon'ble Shri A.V. Haridasan, VC(J)
Hon'ble Shri S.P.Biswas, Member(A)

Daya Nand (9196/DAP) (Ex-Constable)
Village Mubarakpur, PO Rani Khera
PS Sultanpuri, Delhi

.. Applicant

(By Shri Shyam Babu, Advocate, through Shri M.K.Gupta,
proxy)

versus

1. Commissioner of Police
8th Ban, Malviya Nagar
New Delhi

2. Addl. Commissioner of Police(AP & T)
Police Hqrs.,
IP Estate, New Delhi

.. Respondents

(By Shri Rajinder Pandita, Advocate)

ORDER(oral)

Hon'ble Shri A.V. Haridasan

Head Constable Daya Nand was, by order dated 17.9.92 of the first respondent, dismissed from service on an alleged misconduct of causing accident to vehicle No.DEG 4458 on 5.9.92 resulting in injuries to 13 passengers and loss to the vehicle, without holding any enquiry but taking recourse to provisions of Article 311(2)(b) of the Constitution. Aggrieved by this order, applicant filed an appeal to the second respondent, which was rejected. Applicant, aggrieved by dismissal from service, has filed this application impugning these two orders and praying that the respondents be directed to reinstate him in service and grant him all consequential benefits like seniority, promotion etc. Applicant has stated in the application that the accident being unavoidable he is not responsible for any loss or injuries. It is

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further alleged that action of the first respondent in dismissing the applicant from service without establishing his guilt and holding an enquiry as per rules is against the principles of natural justice, and provisions of Article 311(2) of the Constitution of India. There was no circumstance justifying the invocation of the provisions of Article 311(2)(b), alleges the applicant. (b)

2. Respondents resist the claim of the applicant. We have heard the learned counsel on either side. Shri Rajinder Pandita, learned counsel of the respondents argued that as is seen from the impugned order the applicant was an incorrigible person, whose retention in service would not be in public interest; that as the criminal case registered would take a long time for final decision, witnesses may not be available for holding a departmental enquiry thereafter and therefore under these circumstances, the disciplinary authority was justified in dispensing with the enquiry and dismissing him from service. We are not at all impressed with the argument of the learned counsel for the respondents. A decision to dismiss an employee for a misconduct without holding enquiry invoking the provisions of Article 311(2)(b) of the Constitution is not outside the purview of judicial review. If it is seen that the decision taken is arbitrary and without application of mind judicial intervention is warranted. A mere reading of paragraphs 4 and 5 of the impugned order make it clear that the decision to dismiss the applicant from service

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dispensing with the enquiry was taken arbitrarily capriciously and without any application of mind to the facts and relevant circumstances at all. The reason which prompted the first respondent to dispense with the enquiry taking recourse to Article 311(2) of the Constitution as stated in paras 4 and 5 of the impugned order reads thus:

"Whereas the circumstances under which this accident was caused have been looked into at length. The Const.(Dvr) Daya Nand, No.9196/DAP has been found clearly to be at fault. On mechanical inspection the govt. vehicle was found O.K. in respect of brakes, lights etc. The past record of the defaulter shows that he is an incorrigible type of person and had caused accidents too. A Criminal Case has been registered against him u/s 279/337 IPC vide FIR No.18 dated 5.9.92, P.S. Hauz Khas. This case may take a long time to reach its logical end and it is not possible to wait for a long time. Even, the injured belong to another force i.e. CISF. At times they may not be available for evidence because of their nature of job and all India jurisdiction. At this stage, it is not possible to hold a regular D.E. against the defaulter Const.(Dvr) because of the reasons mentioned above.

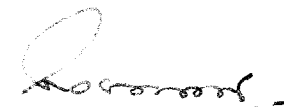
5. Hence, seeing no other alternative and satisfying with the default committed by Const., (Dvr) Daya Nand No.9196/DAP, I, Kewal Singh, Dy. Commissioner of Police, 8th Bn. DAP, New Delhi order that the said defaulter Const.(Dvr) Daya Nand No.9196/DAP be dismissed from the Delhi Police Force from the date of issue of this order under Article 311(ii)(b) of the Constitution of India."


3. We are of the considered view that the above stated reasons could not lead a reasonable person to come to the conclusion that it was not reasonably practicable to hold an enquiry. If the disciplinary authority thought that waiting till the finalisation of the criminal case would entail long delay there would not have been any difficulty for holding a departmental enquiry even before the decision of the criminal case. Even investigation

would take time during which the enquiry could have been completed. That witnesses belong to CISF having all India area of operation is also not at all a factor that could render the holding of an enquiry reasonably not practicable. We are of the considered view that the disciplinary authority in whom wide powers are conferred under Article 311(2)(b) of the Constitution and in the service rules has misused the power arbitrarily and adopted a short cut to deprive the applicant of his right to be heard before he is punished with dismissal as enshrined in Article 311(2) of the Constitution as also his right to ^{life} guaranteed in Article 21 of the Constitution.

4. The appellate authority also passed an order without application of mind.

5. In the light of the aforesaid discussion, this application is allowed and the impugned orders are ~~quashed~~² ~~and~~² set aside. We direct the respondents to reinstate the applicant in service forthwith with all consequent benefits including backwages. However, this order will not preclude the respondents from taking action against the applicant if they consider that his act or omission for which the impugned order was issued amounted to a misconduct, as per rules. No costs.


(S.P. Biswas)
Member(A)


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

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