



**Central Administrative Tribunal
Principal Bench, New Delhi**

O.A. No.2867/2019

This the 16th day of October, 2020

(Through Video Conferencing)

**Hon'ble Mr. Justice L. Narasimha Reddy, Chairman
Hon'ble Ms. Aradhana Johri, Member (A)**

Jasmohinder Singh, Ex-Inspector,
No. D-1092 PIS No. 16950244,
Group 'C'
Aged about 49 years,
s/o Late Sh. Shamsheer Singh Chaudhary,
r/o Flat No. C-201, New Rajput Society,
Plot No. 23, Sector-12, Dwarka,
New Delhi.

...Applicant

(By Advocate: Mr. Anil Mittal)

VERSUS

1. Commissioner of Delhi Police,
Police Head Quarters,
I.P. Estate,
New Delhi-110002.
2. Joint Commissioner of Police,
Western Range,
Police Head Quarters
I.P. Estate
New Delhi-110002.

...Respondents

(By Advocate: Ms. Anupama Bansal & Ms. Esha Mazumdar)



ORDER (ORAL)

Justice L.Narasimha Reddy, Chairman

The applicant was appointed as Sub Inspector in Delhi Police on 10.05.1995. It is stated that he handled several important cases when he worked at various stations and was promoted in the year 2012 as Inspector. He is said to have headed the Special Staff Police of the South District in the year 2013 and has investigated several sensational cases including the one, of Deepak Bharadwaj. Dwaraka Police Station was said to have been selected as the best police station, during his tenure as Station House Officer. He has also furnished certain events said to have been accomplished by him. It is stated that when the applicant was working as Station House Officer, PS, Ranhola, Outer District Delhi, in May 2018, it was also selected as No.1 police station and the working was found to be upto the optimum.

The applicant contends that on 04.12.2018 when he was proceeding to join a meeting called by the DCP, at 2.50 p.m., he received a call from Assistant Sub Inspector Subey Singh to the effect that a police team from Chhattisgarh had come to Delhi to arrest a criminal, and to help the team, Head Constable Indu



Panwar was sent and during the course of the attempt to arrest, the local crowd gathered and assaulted Head Constable Indu Panwar. It is also stated that a complaint was lodged with the police station, Mourya Enclave, and that some persons were taken into custody. The applicant is said to have asked ASI Subey Singh to proceed to PS Mourya Enclave and to report, and instead of proceeding to that place, the ASI has come back to PS Ranhola and informed the applicant accordingly. The applicant is said to have proceeded to the police station to take stock of situation and noted that an entry was made about the arrival of Chhattisgarh police, to apprehend an accused.

2. On 05.12.2018 one Sneha Pradhan, wife of Pradeep Pradhan lodged a complaint in the police station Mourya Enclave alleging that the ASI Suby Singh, Head Constable Indu Panwar and Constable Ajay have illegally detained her husband and demanded illegal gratification. The applicant is said to have lodged an FIR against the three police officials on the same day and on 06.12.2018 the appointing authority is said to have placed him under suspension. According to the applicant, he participated in the investigation at various stages and surprisingly enough, on 03.03.2019 an item was published in the



news papers stating that the applicant was dismissed from service through order dated 06.03.2019 by the Joint Commissioner of Police, West Railways. He filed an appeal feeling aggrieved by the order of dismissal and complaining that it was not disposed of, he filed OA.1746/2019. The said OA was disposed of by this Tribunal on 30.05.2019 directing the respondents to decide the appeal dated 26.03.2019. Thereafter the appellate authority passed an order dated 03.09.2019 dismissing the same.

3. The applicant filed this OA challenging the order of dismissal from service dated 06.03.2019, as confirmed by the appellate authority. He contends that the Disciplinary Authority did not conduct any inquiry whatever and has dismissed him from service by invoking Article 311 (2) (b) of the Constitution of India. He further contends that even if the entire allegation made against him is taken as true, it is only to the effect that the alleged criminal, Pradeep Pradhan, was kept in the police custody beyond 24 hours and that the so called demand of amount for release of accused was by ASI, head constable and constable, named in the complaint submitted by Sneha Pradhan, and by no stretch of imagination, the applicant can be said to be guilty of



misconduct, warranting dismissal from service. Reliance is placed upon various decided cases.

4. On behalf of the respondents a detailed counter affidavit is filed. It is stated that the applicant was found responsible for detaining one Pradeep Pradhan beyond 24 hours without presenting him before the court, and that there was also an allegation that at his instance the ASI, Head Constable and Constable made demand of ransom, for release of the arrested person. They contend that the position held by the applicant was such that, it would not be possible to procure any evidence and that the reputation of the entire organization was at stake. They contend that the Article 311 2 (b) was invoked in the case of the applicant, there being no other alternative.

5. We heard Mr.Anil Mittal, learned counsel for the applicant and Ms.Anupama Bansal and Ms.Esha Mazumdar, learned counsel for the respondents.

6. Whenever an employee, howsoever small or big, in any organization, is found to have resorted to any acts of misconduct or indiscipline, the known course of law is to initiate disciplinary proceedings. The specific acts of indiscipline, in the form of charges in a charge memo are alleged and depending upon the



reply of the employee, departmental inquiry is conducted. The Disciplinary Authority is vested with the power to impose the punishment which is proportionate to the acts of misconduct, held proved. Adequate protection is accorded to the employees under Article 311 of the Constitution of India. It is only in exceptional cases, particularly where issues such as security of State are involved, that the requirement to conduct departmental inquiry before imposing the punishment is dispensed with. Second proviso to Article 311 (2), however, carves out certain exceptions. It reads as under :

Article 311(2) in The Constitution Of India 1949

(2) No such person as aforesaid shall be dismissed or removed or reduced in rank except after an inquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges Provided that where it is proposed after such inquiry, to impose upon him any such penalty, such penalty may be imposed on the basis of the evidence adduced during such inquiry and it shall not be necessary to give such person any opportunity of making representation on the penalty proposed: Provided further that this clause shall not apply

(a) where a person is dismissed or removed or reduced in rank on the ground of conduct which has led to his conviction on a criminal charge; or

(b) where the authority empowered to dismiss or remove a person or to reduce him in rank is satisfied that for some reason, to be recorded by that authority in writing, it is not reasonably practicable to hold such inquiry; or

(c) where the President or the Governor, as the case may be, is satisfied that in the interest of the security of the State, it is not expedient to hold such inquiry



7. In certain Services Rules, Provisions, corresponding to this, are also incorporated.

8. The applicant herein was holding the post of Inspector in the Delhi Police. He mentioned various instances of his meritorious services. However, they would not be of much relevance in the present context. The question is whether, he has resorted to any acts warranting punishment. On 4th and 5th December, 2018, certain developments have been taken place, in the police station, where the applicant was working. A team of police, from Chhattisgarh is said to have arrived, when the applicant was not present in the station and the ASI Subey Singh is said to have assigned duty to the Head Constable, to accompany the team. The locals seem to have resisted the attempt to arrest the accused and that in turn, resulted in filing of a case. The wife of the person who was sought to be arrested made a complaint on 05.12.2018 alleging that the ASI, HC and the Constable of the PS demanded money for release of her husband. It is in that context, that the applicant was placed



under suspension on 06.12.2018. Instances of this nature are common almost in every police station. The very fact that the police team came from all the way from Chhattisgarh to apprehend a criminal would indicate the gravity. When the crime has such ramifications, the accused are bound to be over smart and well versed, even to put the police, on the back foot.

9. In case the applicant has resorted to any acts of misconduct and violated any provisions of law, there is a clear mechanism under the Delhi Police (Punishment and Appeal) Rules, 1980. As a matter of fact, a preliminary inquiry was instituted against the applicant under Rule 15 (1) of the said Rules on 08.02.2019. The procedure under the Delhi Rules is somewhat typical. The disciplinary proceedings virtually commence with the appointment of the inquiry officer and he frames the charges depending upon his satisfaction, in the preliminary enquiry. Thereafter, the accused employee is given opportunity, and the report is submitted by the inquiry officer. The DA takes the same into account and passes separate orders. The nature of allegations made against the applicant and the purport of the steps taken against him are indicated in the



preliminary paragraphs of the order dated 02.03.2019, they read as under :

ORDER

It is alleged against Inspr. Jasmohinder Singh, No. D/1092 (under suspension) that while posted as SHO/Ranhola, Outer Distt., Delhi, he was adversely noticed in the commission of an offence in case FIR No. 643/18, dated 5.12.2018 u/s 341/342/365/384/392/34 IPC, PS Maurya Enclave, Delhi which was registered on the complaint Of Smt. Sneha Pradhan w/o Pardeep Pradhan r/o D-29/1, Mahavir Vihar Colony Kanjhawla, Delhi. During the investigation of the case conducted by Crime branch Delhi, Section 7/13 POC Act was also invoked and Inspr. Jasmohinder Singh, No.D/1092 (under suspension) along with other accused persons has been charge sheeted in the above case after due procedure of law.

It is further alleged that after receipt of the information from DCP, Crime, regarding the details of misdemeanours and incriminating evidence received during the investigation of the above case against Inspr. Jasmohinder Singh, a preliminary enquiry was ordered under Rule 15(1) of Delhi Police (Punishment and Appeal) Rules, 1980 vide No.46062/P.Sec./WR (S1/A), dated 8.2.2019.


The preliminary enquiry report submitted by Addl.DCP-I/Outer Distt has been perused and after going through the documents and statements recorded by Crime branch which has investigated the case FIR No.643/18 dated 05.12.2018 u/s 341/342/365/384/392/34 IPC r/w 7/13 POC Act PS Maurya Enclave, it was observed from the



disclosure statements of accused ASI Sube Singh and HC Indu Panwar that in the intervening night of 02/03.12.2018 at 12.15 a.m. a DD entry vide No.4B was lodged at PS Ranhola through which Pradeep Pradhan was detained. Apart from this DD entry, the statements of Duty-Officer i.e. ASI Joginder Singh and DD writer HC Ashok Kumar also corroborated that Pradeep Pradhan and Rahul Panwar were detained at Police Station Ranhola. There are clear cut guidelines that a person cannot be detained for more than 24 hours and such person has to be released within 24 hours. An entry u/s 65 D.P. Act should be written in Daily Diary in case of detention of a person for less than 24 hours or legal action against such person has to be taken. But Pradeep Pradhan was detained for more than 24 hours, which was illegal confinement. It is prime duty of a SHO to peruse/read each and every entry being made in Daily Diary carefully on daily basis and if anything found significant that should be brought into the knowledge of senior officers immediately as the entire functioning of police department runs on the basis of Rojnamcha.

Secondly, it was found that while lodging DD entry No. 37B, dated 04.12.2018, there was a manipulation of time and it has been proved on the basis of statements of DD writer, Duty officer and Police officers of Chhattisgarh Police. Manipulation in Roznamcha can lead to collapse of entire police functioning.

From the above facts surfaced from the report of Addl DCP-I/Outer Distt, it has been observed that Sh Pradeep Pradhan was picked up by ASI Sube Singh, HC Indu Panwar and Const. Ajay with the consent of Inspr. Jasmohinder Singh, No. D/1092 (the then SHO/Ranhola). The total connivance of Inspr Jasmohinder Singh, No D/1092, is



further corroborated by the fact that after the misconduct of ASI Sube Singh, HC Indu Panwar and Const. Ajay became public on 04.12.2018 through PCR call received at PS Mourya Enclave, there were specific instructions by Insp Jasmohinder Singh, No D/1092 to DD writer HC Ashok Kumar to make DD Entry regarding the arrival of the Police officers of Chhattisgarh Police at 1405 hours when the actual time was around 1530/1600 hours. This was deliberately done to cover the illegal acts of ASI Sube Singh, HC Indu Panwar and Const Ajay who had gone to Pitampura to extort money from the relatives of Sh Pradeep Pradhan. This amply shows that Insp.Jasmohinder Singh, No.D/1092 (the then SHO/Ranhola) was in complete knowledge of illegal detention of Sh. Pradeep Pradhan and the extortion being done from his relatives subsequently. The connivance of Jasmohinder Singh in the above matter is thus confirmed by the statements of ASI Sube Singh and HC Indu Panwar and also the lodging of a false DD entry. The Crime Branch has already chargesheeted the accused persons including Insp. Jasmohinder Singh, No. D/1092 (the then SHO/Ranhola) on 02.02.2019.

10. What prompted the DA to take recourse to Article 311

(2)(b) is mentioned in the next four paragraphs :

In view of the facts revealed from the P.E. report, it has been observed that Insp. Jasmohinder Singh, No. D-1092 has committed a grave offence and serious misconduct. He has indulged himself in the most abominable act which is not expected from an officer of a uniformed force. The shameful act committed by him has not only tarnished the image and



brought disgrace to the organization but also demoralized other police officers/staff. It is a clear instance of law enforcer turning into a law breaker and thereby projected a very bad image of Delhi Police in the eyes of the General Public which tends to erode the faith in Police department. Hence it is an apt case where an exemplary punishment needs to be awarded to the Inspector so that it proves an eye opener in the eyes of the others.

Though the facts surfaced during the preliminary enquiry, it has been observed that the facts and circumstances of the case were so serious that it will not be reasonably practicable to conduct a regular departmental enquiry against the inspector as there is reasonable belief that the witnesses may not come forward to depose against him owing to his influential position. It also calls for great courage to depose against a desperate person and the task becomes more acute and difficult where the police official could use his job to influence the statement/deposition of the witnesses. It is also highly probable that during the entire process of departmental enquiry proceedings the complainant and witnesses would be put under constant fear of threat to their person and property from the Inspector. Under these circumstances, I am personally satisfied that conducting a regular D.E. against the Inspector is not practicably possible. Further an extended departmental enquiry would only cause more traumas to the victims.

Therefore in order to send a clear message to such undesirable elements in the police force and to maintain discipline as well as to prevent recurrence of such incidents, it has become absolutely necessary to dismiss Inspr. Jasmohinder Singh, No. D-1092, as he is completely unfit for police service. Moreover, his further retention in the



department after his involvement/chargesheeted in the above mentioned case is absolutely undesirable in the public interest, safety and security.

Therefore, I, Madhup Tewari, Joint Commissioner of Police, Western Range, Delhi hereby order to dismiss Insp. Jasmohinder Singh, No.D-1092 (PIS No.16950244) from Delhi Police under Article 311(2)(b) of the Constitution of India with immediate effect. His suspension period from 06.12.2018 to the date of issue of this order is also decided as period not spent on duty for all intents and purposes and the same will not be regularised in any manner.

11. Having instituted the preliminary inquiry under Rule 15, against the applicant, the DA has given up them halfway through, and recourse was taken recourse to second provision to Article 311 (2). On the one hand the DA rested his conclusions about the alleged involvement of the applicant on the preliminary inquiry and on the other hand, he felt that the witnesses may not come forward to depose against the applicant owing to the position on the other hand. It is difficult to reconcile these two. Further, when the police administration is so strong, with quite large number of IPS officers, and other State Service Officers above the rank of Inspector, the statement made in the impugned order, that the witnesses may not be in a position to speak against the applicant, would indirectly suggest the weakness of the entire establishment. There are ways and methods to give



protection to the witnesses. Alternative mechanisms exist, to unearth the truth. We are convinced that the observation in the penultimate paragraph of the impugned order was made only as a ruse to take recourse to the second provision to Article 311 (2).

12. In medical terms, the mechanism provided for Article 311 (2) can be compared to a schedule 'H' drug. It is only when treatment with the drugs of other classifications does not yield the expected the results, that recourse is taken to schedule 'H' drug. The manufacturer administers a serious warning that it can be administered only by specialist, with proper supervision. Similarly the second proviso to Article 311 (2) can be pressed into service, only when the ordinary course of law has failed to bring a person, who has resorted to gross misconduct to book. Another aspect is that the nature of misconduct attributed to the employee must be such that it cannot be proved. The underlying objective is that the employee should not be permitted to take advantage of various protections accorded to him, under the law and, to escape from the responsibility, for the acts of misconduct which manifested themselves. This may include the cases of espionage, anti national activities, acts posing threat to the security of nation, leakage of sensitive state secrets and the like.




13. In the instant case, the allegation against the applicant, even if taken as true is that he was instrumental or responsible for detaining an accused, for a period exceeding 24 hours. The order is silent as to what is the time beyond 24 hours for which the accused was kept in detention. The second is that the three subordinates of the applicant have demanded money from the wife of the accused, i.e. the wife of the arrested person. She did not name the applicant. It is not even mentioned that the lady parted with any amount or that any part of that was recovered from the applicant. When cases in which the CBI or ACB, as the case may be, recovers huge amount of cash, that too from officers occupying highly senior positions are dealt with under the ordinary provisions of law, it is just unthinkable as to how it occurred to a Joint Commissioner of Delhi Police, to invoke the second proviso to Article 311 (2), against the applicant who was not even named by anyone and from whom no amount was recovered whatever. We are convinced that the DA has chosen the said as a shortcut and in the process, he has ignored the basic tenets of the service law.

14. Recently this Tribunal dealt with a similar case, in ***Neeraj Kumar Vs. Commissioner of Police in OA.2097/2019***



in its judgement dated 01.11.2019. There also, the preliminary inquiry was conducted under relevant provisions of law and thereafter the official was imposed punishment by invoking the second proviso to Article 311 (2) (b) of the Constitution of India. On part of the respondents, reliance was placed upon the judgement of the High Court of Delhi in **Pawan Kumar Vs. Govt. of NCT of Delhi** and **C.T.Mukesh Yadav Vs. Govt. of NCT of Delhi**. The applicant therein on the other hand relied upon the judgement of the Hon'ble Supreme Court in **Tarsem Singh Vs. State of Punjab and Ors. (2006) 13 SCC 581** and the judgement of Hon'ble High Court of Delhi in **Commissioner of Police & ors. Vs. Kaushal Singh** in W.P.(C) 11694/2018 that was a case in which trap was laid and money was recovered. After referring to the judgement of the Hon'ble Supreme Court in Tarsem Singh's case and discussing other judgements referred to above, the Tribunal held as under :

"14. In the instant case, the applicant was placed under suspension vide order dated 31.07.2018 due to his involvement in a criminal case and lodging of a FIR against him. Subsequently, preliminary enquiry was ordered. In the preliminary enquiry it was recommended that exemplary punishment should be given. It was also indicted that there is a possibility that no witness would come forward in view of the influential position held by the delinquent and, therefore, it would not be reasonably appropriate to



conduct regular DE. The DA noted the observations and dispensed with the enquiry and ordered dismissal of the applicant under Article 311 (2) (b) of the Constitution of India. The AA considered the appeal of the applicant and dismissed the same. In none of the orders, there is any mention of details of raid conducted by the CBI and any recovery of cash during this raid has also not been mentioned in the preliminary enquiry report. The apprehension that the applicant may influence the witnesses, due to which it was decided to dispense with the DE are merely based on surmise and conjectures. The criminal proceedings are pending in the Court wherein also witnesses would be produced and cross examined. The apprehension of the witnesses turning hostile in the DE is not tenable as no such instance had come to the notice or specifically mentioned during the preliminary enquiry.

15. Article 311 provides for protection to a public servant from indiscriminate actions by the employer. Any punishment can be imposed only after conducting inquiry. That cannot be dispensed with indiscriminately. It is only in rare cases such as where security of State is involved, that recourse can be taken to Article 311(2)(b) of the Constitution. In this case, the preliminary inquiry itself has virtually declared that the applicant is guilty of grave misconduct. At the same time, regular inquiry is dispensed with. The whole exercise is not only opposed to the law laid down by the Hon'ble Supreme Court, but also is a contradiction in terms.

16. In view of the Hon'ble Apex Court's judgments, the DE can be dispensed with only on the grounds which are robust, clear and substantial. We do not find any such ground or fact which has been brought on record. We are not commenting on acts and omissions alleged against the applicant. It is only about the denial of reasonable opportunity for presenting his case to the applicant in a DE and denial of natural justice."



15. The instant case, in our view, stands on a better footing in as much as neither a trap was laid nor anything was recovered from the applicant. Assuming that he was responsible for detaining an alleged criminal beyond one day, the police administration does not get the licence to dismiss its official. On the other hand if a situation of that nature emerged, the effort of the police would to protect its official, even while making efforts to secure the conviction of the arrested person. The respondents can very well initiate disciplinary proceedings, if they are of the view that the applicant has resorted to any acts of misconduct.

16. Therefore, we allow the OA and set aside the impugned order. The applicant shall be reinstated into service within six weeks from the date of receipt of a copy of the judgement. We leave it open to the respondents to initiate disciplinary proceedings against the applicant, if they so choose.

17. The decision as to the initiation of the disciplinary proceedings shall be taken within a period of two months from the date of receipt of a copy of this order. In case disciplinary proceedings are initiated, the manner in which the period between the date of dismissal from the date of reinstated is to be treated, shall be relegated to the stage of final orders to be



passed by the DA. If on the other hand it is decided not to initiate disciplinary proceedings or no decision is taken, within a period of two months, the applicant shall be paid 50% of the salary for the period during which he was out of service, on account of the impugned order.

There shall be no orders as to costs.

(Aradhana Johri)
Member (Admn.)

(Justice L.Narasimha Reddy)
Chairman

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