



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

O.A. No. 702/2019

This the 07th day of January, 2021

(Through Video Conferencing)

Hon'ble Mr. Justice L. Narasimha Reddy, Chairman
Hon'ble Mr. Mohd. Jamshed, Member (A)

Dharmender Singh Dangi, Age-49 years, Group B,
Post Inspector,
S/o Sh. Nafe Singh,
R/o D-4, Type – IV,
PS Rajouri Garden, Delhi.

... Applicant

(through Mr. Sachin Chauhan, Advocate)

Versus

1. Govt. of NCTD through,
The Chief Secretary,
Govt. of NCTD,
A-wing, 5th Floor,
Delhi Secretariat,
New Delhi – 110113.
2. The Commissioner of Police,
Police Headquarters, MSO Building,
I.P. Estate, New Delhi.
3. The Joint Commissioner of Police,
Western Range, Delhi,
Through the Commissioner of Police,
Police Headquarters, MSO Building,
I.P. Estate, New Delhi.

... Respondents

(through Mr. Sameer Sharma, Advocate)

ORDER (Oral)**Justice L. Narasimha Reddy, Chairman:**

The applicant herein was recruited as Sub Inspector in Delhi Police in the year 1991. He was promoted to the post of Inspector in 2007. In 2018, he was working in the West District (Vigilance), Delhi. The Disciplinary Authority (DA) i.e. the Joint Commissioner of Police, Western Range passed an order dated 16.05.2018 dismissing the applicant from service by invoking Article 311 (2) (b) of the Constitution of India. The allegation against the applicant was that one Mr. Ghar Singh @ Aakash Rao, r/o Jakarta, Indonesia wanted to obtain a passport to Canada and he lured one Mr. Amandeep Singh Rai of Ludhiana to arrange the same. The latter is said to have got in touch with one Harshveer Singh @ Suresh @ Harsh, Chandigarh and they called Ghar Singh to Delhi, along with money. The group is said to have travelled to Delhi alongwith one Mr. Paramjeet Singh of Ghaziabad and he, in turn, was in touch with Sub Inspector by name Naseeb Singh(Special Staff of East District).

2. It was alleged that on 24.08.2018, Nasib Singh and the applicant herein inspected the vehicle in which Ghar Singh and others were travelling with money and by posing themselves as raiding party of Crime Branch, they took away the entire money

after the raid. It was alleged that the vehicle in which the applicant travelled, was purchased in his name, and that it was fitted with a beacon light. By mentioning that, a case of fraud of very serious nature is established but it would be difficult to



conduct a departmental inquiry on account of the fact that the applicant may threaten the witnesses, the DA invoked the relevant provisions, and dismissed the applicant from service.

A statutory appeal preferred by the applicant to the Commissioner was rejected on 24.01.2019. This OA is filed challenging the order of dismissal, as confirmed with the appeal.

3. The applicant contends that there was absolutely no basis for invoking Article 311 (2) (b) in his case and the narration made in the impugned order is totally imaginary. He contends that there was no reference to any complaint from any circle, much less, to any seizure or confiscation, and that the order was passed just by referring to some imaginary facts. He placed reliance on certain judgments, passed by the Hon'ble Supreme Court. The applicant contends that extreme steps of dismissal from service cannot be taken unless the situation contemplated under Article 311 (2)(b) exists.

4. The respondents filed a detailed counter affidavit. According to them the acts and omissions on the part of the applicant are serious in nature and that he has misused his

position as Inspector. It is also stated that the entire episode is such that no independent witness would come forward to depose against the applicant, and that it would be difficult, if not impossible, to initiate and conclude disciplinary proceedings against him. It is stated that on account of the heinous act resorted to by the applicant, the reputation of the department has suffered seriously and left with no alternative, the extreme steps were taken.



5. We heard Mr. Sachin Chauhan, learned counsel for the applicant and Mr. Sameer Sharma, learned counsel for the respondents in detail.

6. The service of the applicant was terminated through the impugned order, by invoking Article 311 (2) (b). It is fairly well settled that Article 311 (1) and (2) accords adequate protection to a Civil Servant against any dismissal, removal or reduction in rank. Apart from the requirement under that provision and the principles of natural justice, the respective services have their own conduct rules which govern the disciplinary proceedings.

7. It is only in rare cases where the security of State is involved or the serious dereliction is noticed, but it is not possible to prove the same with the ordinary mechanism and the recourse can be taken to Article 311 (2)(b). In the instant case, the facts that gave rise to the passing of the impugned order are contained in two paragraphs. They read as under:-

“It is alleged against Inspr. (Exe), Dharmender Singh Dangi, No.D-I/551 (PIS No.16910045) (under suspension) that while posted as Inspr./Vigilance, West Distt., Delhi he was adversely noticed in the commission of an offence in case FIR No.147/2018, dated 29.04.2018 u/s 327/34 IPC, PS Paschim Vihar, Delhi registered onb the complaint of Sh. Amandeep Singh Rai S/o Sh. Sadhu Singh. In this case complainant had alleged that Rs. 15 Lakhs was taken away along with USD 1500 by some persons posing as Crime Branch staff.



2. During investigation, it was found that Ghar Singh @ Aakash Rao, a resident of Jakarta, Indonesia (originally from Vill. Bishna, Jammu) lured Amandeep Singh Rai of Ludhiana to arrange for visa for Canada. He then made them to get in touch with one Harshveer Singh @ Suresh @ Harsh (a resident of Zirakpur, Chandigarh) who called him to Delhi along with money. Another acquaintance of Harshveer Sngh, one Paramjeet Singh @ Happy (from Bhatinda currently living in Crossings Republic, Ghaziabad) then got in touch with SI Naseeb Singh (Special Staff of East Distt). These two then planned to conduct a fake raid when the client was called to show the money to the agent of Harshveer @ Suresh. On 24.8.2018, both police officials in connivance with others, posing as a raiding party of Crime Branch, stopped the vehicle near Radisson Blue Hotel, Paschim Vihar. While SI Naseeb Singh took away the victim after the raid, Inspr. Dharamender Singh Dangi remained on the spot and took away the cash from victim's vehicle. Later on, the cash was distributed among travel agents and police officials. “

Thereafter the DA proceeded to add four factors, namely;

- “1. White Ertiga car No.D11CZ 3373 used in the commission of offence was purchased on 18.4.2018 in the name of Inspr. Dharmender Singh Dangan on which he kept blue and red beacon and sticker of Delhi Police to pose as Delhi Police raiding team.
2. All the accused persons have corroboratd their communication and connivance with the Inspector to hatch the plan of robbery when their client would meet them along with the money.
3. As per FIR, Mandeep, the private person along with Amandeep were present in the vehicle. The vehicle of

the victim (Baleno car) was driven by Utkarsh Madan, his father Harsh Madan was also sitting in the vehicle. They have also identified that Inspector was present when the alleged police officials stopped them for fake raid. They had supported the same in the disclosure statements.

4. Technical evidences fully corroborate the criminal misconduct of the above mentioned police officials.”



On the basis of these facts, he proceeded to form the opinion that the applicant committed a shameful act and tarnished the image and brought disgrace to the organisation. Nowhere in the order, it was mentioned that it would be difficult or impossible to conduct the inquiry into the acts or omissions on the part of the applicant. The reason for invoking that provision was mentioned as under:-

“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. Dharmender Singh Dangi, No.D-I/551 as he is completely unfit for police service. Moreover, his further attention in the department after his involvement/arrest in the above mentioned case, is absolutely undesirable in the public interest, safety and security.”

9. The law in this regard is fairly well settled. In **Tarsem Singh v. State of Punjab and Others** (2006) 13 SCC 581, the Hon'ble Supreme Court deprecated the practice of indiscriminate invocation of Article 311 (2) (b) or analogous provision. Recently in **Jasmohinder Singh v. Commissioner of Delhi Police** (OA No.2867/2019 decided on 16.10.2020)

which is also in relation to Delhi Police this Tribunal observed *inter alia* as under:-



“11. Having instituted the preliminary inquiry under Rule 15, against the applicant, the DA has given up them halfway through, and recourse was taken to the 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.

10. Similar view was taken in **Neeraj Kumar v. Commissioner of Police** (2097/2019 decided on 01.11.2019). The observations made by the Hon'ble Supreme Court in **Tarsem Singh's** case (supra) were relied upon.



Article 311 (2) (b) is incorporated in part XIV of the Constitution of India, to tide certain extreme situations where it becomes necessary, in the interest of security of the nation, or where the person has resorted to certain act with a design ensuring that no evidence is available, but the result of fraud is evident.

11. Reverting the facts of the case, it is evident that no reference is made to any complaint whatever, much less, to seizure or confiscation. Even the origin of the episode is not mentioned. The persons named in the impugned order Ghar Singh @ Aakash Rao, Amandeep Singh Rai, Harshveer Singh @ Suresh @ Harsh, were in fact, attributed acts of fraud in the attempt to obtain a fraudulent passport. Nowhere it is mentioned that even the persons of such fraudulent background, have made any complaint. Once a person leaves his imagination to proceed, it can connect one thing to another, defying logic or reason. Such tendency can be condoned only when

every step is subject to scrutiny under the relevant provisions of law. Obviously for that reason, the conduct rules are framed, so that punishments are not imposed just on the basis of guess work or imagination.



12. No word is said by the respondents as to how it would not be possible to conduct an inquiry in the present episode. Conversely, if inquiry cannot be conducted, it can also be a reason, to doubt the veracity of the version presented against the applicant. The IO, in the disciplinary proceedings is given the latitude to record finding, not being regulated by any principles of evidence. Even if two views are possible either on the charges or as to the quantum of punishment decided by the DA, the Courts will permit that latitude. When such is the situation, the sacrosanct requirement under the law, namely, of conducting an inquiry before imposing the punishment cannot be sacrificed on the strength of imagination. Even now the inquiry can be conducted, and till such time the applicant can be continued under suspension.

13. We, therefore, allow the OA and set aside the impugned order. The applicant shall stand reinstated into service, but shall continue under suspension. It shall be open to the respondents to initiate disciplinary

proceedings by issuing a charge memo within a period of three months from the date of receipt of a copy of this order. In case no charge sheet or memo is issued within that time, the suspension of the applicant shall cease, and he shall be reinstated in service. However, he shall not be entitled to back wages. If the applicant is reinstated as above, the DA shall pass an order as to the manner in which the period of suspension shall be treated.



There shall be no order as to costs.

(Mohd. Jamshed)
Member (A)

(Justice L. Narasimha Reddy)
Chairman

Pj/sunil/vb/ankit/