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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI.

Regn. No. OA 2223/1990

Date of decision: 25.09.1992

Shri Nadish Kumar

...Applicant

Vs.

U.O.I. & Others

...Respondents

For the Applicant

...Shri B.S. Mainee,
Counsel

For the Respondents

...Shri V. Kaul,
Counsel

CORAM:

The Hon'ble Mr.P.K. Kartha, Vice Chairman(J)

The Hon'ble Mr.B.N. Dhoundiyal, Administrative Member

1. Whether Reporters of local papers may be allowed to see the Judgment? *Yes*

2. To be referred to the Reporters or not? *Yes*

JUDGMENT

(of the Bench delivered by Hon'ble
Shri P.K. Kartha, Vice Chairman(J))

The applicant who has worked as a Constable in the Delhi Police from 1.6.1986 is aggrieved by the impugned order of dismissal from service passed by the respondents under Article 311(ii)(b) of the Constitution. He has prayed for his reinstatement with full consequential benefits.

2. We have gone through the records of the case and have heard the learned counsel of both parties. The facts of the case in brief are that while posted at Police Station Kalkaji, the applicant was arrested in case FIR No.52 dated 12.2.1990 under section 376 IPC PS Kalkaji for committing rape on one

Renu Mandal resident of Alaknanda Jhuggi Camp. He was remanded to judicial custody till 26.02.1990. The allegation against the applicant is that on 11.2.1990, Head Constable Phool Singh and the applicant were on picket duty opposite Shivalik Apartments from 4 P.M. to 12 Midnight. At about 11 P.M. one Ashok Biswas resident of Alaknanda Jhuggi Camp also came there and reported that there was a quarrel between a lady and a man in the camp. The applicant asked Ashok Biswas and one Ram Chander, resident of the Jhuggi Camp who also came there to bring the quarrelling persons to the picket. They brought Lakhan, Babloo, Dev Nath and his sister-in-law, Renu Mandal who came from West Bengal only 5 days back to her sister's house. It was reported that Lakhan had come to beat her as she had beaten his child during day time. Head Constable Phool Singh asked the applicant to take them to the Police Station. In the mean time, Ashok pleaded to make compromise. When Head Constable Phool Singh was still talking to these persons, the applicant took Renu Mandal to a nearby booth which was under construction and had a 4 feet wall on three sides and raped her. When Renu Mandal went back, she narrated the story to her relatives. She stated that the applicant had threatened her and put his hand on her mouth while raping her.

3. The respondents did not hold any enquiry in accordance with the provisions of the Delhi Police(Punishment & Appeal)Rules, 1980. Instead, they have invoked the power under Article 311(2)(b) of the Constitution and passed the impugned order of dismissal from service on the applicant which is under challenge before us.

4. The impugned order states that the involvement of the applicant in the above stated case shows that he is "a depraved and desperate character". The involvement of the applicant in this criminal case is bound to destroy the

faith of the people in the administration of criminal justice system. This act on the part of the applicant is not only immoral and reprehensible but also a grave misconduct and an act of grave indiscipline as a public servant. He has acted in a manner unbecoming of a Police Officer. The impugned order proceeds to state that notwithstanding the fact that the criminal proceedings will take place against the applicant, a strict departmental view is called for against him under the conduct rules. The circumstances in which the power under Article 311(2)(b) of the Constitution have been ^a mentioned in the impugned order as under:-

^a "The circumstances of the case are, however, such that holding of an enquiry against him is not reasonably practical because it is not uncommon in such cases to find the complainant and the witnesses turning hostile due to fear of reprisals etc. Terrorising, threatening or intimidating the witnesses who will come forward to give evidence against him in the departmental enquiry are common tactics adopted by policemen. It calls for great courage to depose against ^a ordinary criminal. The task is much more difficult when the criminal happens to be involved in serious crime. The problem is even more acute when the criminal is in the robe of a policeman who may not only be convicted due to the deposition of a person but may lose his job. And, in such circumstances it is also much to expect an ordinary citizen to show the requisite courage. In the present case, this problem is very real due to the status of the hapless victim. She is a poor woman and the possibility of her being won over through threats or inducement cannot be considered remote. It will be too much to expect such hapless victim to show requisite resolve throughout the proceedings of the departmental enquiry against Ct. Nadish Kumar 1220/SD.

The victim is a native of West Bengal. It will be quite difficult to procure her presence while conducting the departmental enquiry proceedings".

4. The applicant has contended that he has been falsely implicated in the criminal case, that he and the complainant, Mrs. Renu Mandal were medically examined in AIIMS on 12.2.1990 but the medical report did not support the alleged offence of rape committed by him on Mrs. Renu Mandal. He has also contended that the reasons given by the respondents in the

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impugned order for dispensing with the enquiry are not tenable. The respondents did not make any effort to produce the witnesses or even otherwise hold an enquiry against the applicant. Unless and until the efforts are made to produce the witnesses, it cannot be taken for granted that no witness will appear against the charged officer merely because he belongs to the police force. In case the reasons given by the respondents are accepted, a police officer will never get a reasonable opportunity before a penalty is imposed on him and the disciplinary rules will become redundant in respect of them. The criminal case against the applicant is still pending and the observation that the victim is the native of West Bengal and it would be difficult to procure her presence for the purpose of departmental enquiry has no substance.

5. In our opinion, there is force in the contention raised by the applicant. In Jaswant Singh Vs. State of Punjab & Others, 1990(2) SCALE 1152, the Supreme Court had to deal with a similar case. It was observed that the subjective satisfaction recorded in the impugned order should be fortified by independent material to justify the dispensing with the enquiry envisaged by Article 311(2)(b) of the Constitution and that it cannot be rested solely on the ipse dixit of the concerned authority.

6. In Chief Security Officer Vs. S.R. Das, 1991(1) SCALE 47, the Supreme Court observed that the personal humiliation and insults likely to be suffered by the witnesses or even their family members might become targets of acts of violence, are not good grounds for dispensing with the enquiry.

7. In the light of the foregoing, we set aside and quash the impugned order of dismissal dated 12.2.1990 and direct that the applicant shall be reinstated as Constable with

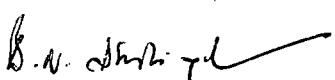


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full back wages preferably within a period of three months from the date of receipt of this order. The respondents will, however, be at liberty to hold departmental enquiry against the applicant under the relevant rules and in accordance with law.

There will be no order as to costs.


(B.N. DHOUNDIYAL)
MEMBER (A)

25.09.1992


(P.K. KARTHA)
VICE CHAIRMAN(J)

25.09.1992

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