

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

OA: 1310/91

New Delhi, this the 17th day of April'1995.

Hon'ble Shri A.V.Haridasan, Vice-Chairman (J)

Hon'ble Shri K. Muthukumar, Member (A)

Shri Vijay Singh
s/o Sh. Jage Ram,
R/o V.Punjab Khore,
Delhi-110081

.....Applicant.

By Advocate Shri D.C.Malik

Vs.

1. The Secretary,
Ministry of Home Affairs,
Govt. of India, New Delhi.
2. Chief Secretary, Delhi Administration
5 Sham Nath Marg, Delhi.
3. Commissioner of Police,
Delhi Police, Police Headquarters,
I.P. Estate, New Delhi.

.....Respondents.

By Advocate Shri Anoop Bagai

O R D E R (Oral)

Hon'ble Shri A.V.Haridasan, Vice-Chairman (J)

The applicant a Constable in the Delhi Police alongwith two others was charge-sheeted and tried before the Session Court for an offence of rape. The Additional Session Judge Delhi in Session case No. 213/89 found all the three accused not guilty and acquitted them. Soon after the judgement the applicant sent a representation to the Dy.Commissioner of Police on 25-3-1991 by Registered post requesting to reinstate him in service. Thereafter the applicant was removed from service by the order of Additional D.C.P. dated 27-3-1991 exercising Power under the Provisio (b) to the Article 311 (2) of the Constitution of India. Though he filed an appeal there was no response. Under these

circumstances the applicant has filed this application under Section-19 of the Administrative Tribunals Act praying that the impugned order may be quashed and the respondents be directed to reinstate him in service with consequential benefits.

2. The respondents in their reply seek to justify the impugned order on the ground that the acquittal of the applicant being purely on technical grounds the gravity of the misconduct committed by the applicant justified his removal from service under the Provision (b) of Article 311 (2) of the Constitution of India. Learned Counsel for the applicant argued that as the applicant was acquitted by the Session Court after a full trial it was not open for the disciplinary authority to take disciplinary action against him on the basis of the very same accusations, as such an action is expressly prohibited by Rule-12 of the Delhi Police (Discipline and Appeal) Rules 1980, and that even if it is assured that a disciplinary proceedings can be taken the action of the disciplinary authority is removing him from service ^{without} ~~as that~~ holding an enquiry when there was nothing to show that holding an enquiry was not reasonably practicable violates the safeguard contained in Article 311 (2) of the Constitution of India. Learned Counsel for the respondents argued that even if the Criminal Court acquits the police officials ^{of} the court or the Deputy Commissioner of Police is of the opinion that the acquittal was a result of the witnesses being won over, then a departmental enquiry can be held. ^{He} ~~The~~ further ^{argued} enquiry that, if the competent authority is of the opinion that holding an enquiry is not reasonably practicable, ^{he} this enquiry can be dispensed with as provided

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for in Provisio (b) to Article 311 (2) of the Constitution. As what was done in the case was as per Rules, ^{counsel} The ~~case~~ contends that there is no scope for judicial intervention.

3. It is true that even if the police official is acquitted by the Criminal Court, ^{the} of the court of Deputy Commissioner of Police is of the opinion that the witnesses have been won over a department enquiry can be held. But, can the action of the Deputy Commissioner of Police in dispensing with the enquiry in this case invoking Powers under Provisio (b) to Article 311 (2) of the Constitution ~~be~~ justified? Can it be said that it was reasonably not practicable to hold an enquiry in this case? We are of the considered view that the answers to these questions are in the negative. In the ^{unreported} inquiry and order the Deputy Commissioner of police has stated the following reasons for dispensing with the enquiry.

" The circumstances of the case are such that an enquiry against Constable Vijay Singh No. 1574/C is not considered reasonable/practicable, because in such cases it is either difficult to find and ask the complainant to come forward, or the witnesses turning hostile, due to fear of reprisals, terrorising, threatening or intimidating the witnesses for evidence against him in an enquiry. His desperate and criminal mentality in indulging in such shameful crimes shows that he may also indulge in any other criminal act for harming the witnesses and obstruct the holding of an enquiry in a normal way, when it requires tremendous courage to depose against any criminal, much more is required to do so against such criminals on the garb of policeman who may lose his job as then statements. To keep such a person under suspension and to allow him to continue to remain in service and draw subsistence allowance till he is either dismissed or re-instated. He would in such circumstances also continue to enjoy other perks like retaining his

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Govt. quarters, if any, or continue to reside in the Police barracks and also availing medical facilities etc".

4. The above extracted observations in the impugned order would clearly establish that on the basis of a mere surmise that the applicant might threaten witnesses the enquiry has been dispensed with. The Deputy Commissioner seems to think that since in such cases it is usual for witnesses not to come forward to give evidence for fear of threat in this case the same thing might happen and therefore he decided to dispense with the enquiry. Another reasons for dispensing with the enquiry is that it would be uneconomical to keep such person as the applicant under suspension and to pay ~~them~~ subsistence allowance till he is either dismissed or reinstated. Both these reasons are ^{highly un-} ~~helping the~~ reasonable and arbitrary. There is no finding that the applicant has resorted to terrorising the witnesses. It is only a presumption. In the ^{guise} of such presumption it is neither just nor permissible to deny to an official to ~~deny him~~ the constitutional guarantee enshrined in article 311 (2) of the Constitution. To say that it is uneconomical to keep such an officer under suspension paying him subsistence allowance is also not a supportable reason to throw him out of employment without following the Constitutional mandate. The decision to dispense with the enquiry should be taken by the competent authority only on ~~any~~ ^{an} ~~impartial~~ ^{objective} and proper application of mind to the entire facts and circumstances. Such an application of mind is conspicuously lacking in the impugned order. Therefore we are of the considered view that the impugned order is wholly illegal and unjustified.

5. In the conspectus of the facts and circumstances we set aside the impugned order dated 27-3-1991 and direct the respondents to reinstate the applicant in service forthwith

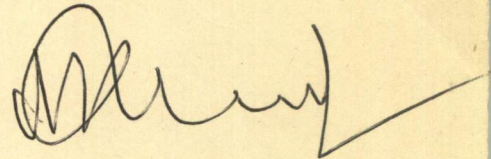
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with all consequential benefits including back wages
in accordance with the Rules and to pay him the arrears
of pay and allowances within a period of three months
from the date of communication of a copy of this order.

There is no order as to costs.



(K. MUTHUKUMAR)
Member (A)



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

cc.