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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI.

O.A./~~T.A.~~ No. 1628 of 1991 Decided on: 31.1.1996

~~Shri Sunder Singh~~ ....Applicant(s)

(By Shri Shanker Raju Advocate)

Versus

U.O.I. & Others ....Respondent(s)

(By Shri Rajinder Pandita Advocate)

CORAM:

THE HON'BLE SHRI K. MUTHUKUMAR, MEMBER (A)

THE HON'BLE SHRI P. SURIYAPRAKASAM, MEMBER (J)

1. Whether to be referred to the Reporter or not? No

2. Whether to be circulated to the other Benches of the Tribunal?

(K. MUTHUKUMAR)
MEMBER (A)

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

O.A. No. 1628 of 1991

New Delhi this the 31st day of January, 1996

HON'BLE MR. K. MUTHUKUMAR, MEMBER (A)
HON'BLE MR. P. SURYAPRAKASAM, MEMBER (J)

Shri Sunder Singh
S/O Shri Khazan Singh,
R/o House No. 12,
Village Mahipalpur,
Post Office Mahipalpur,
New Delhi. ....Applicant

By Advocate Shri Shanker Raju

VERSUS

1. Union Territory of Delhi
through the Lt. Governor of Delhi,
Rajpur Road,
Delhi.

2. The Deputy Commissioner of
Police (West District),
Police Station Rajouri Garden,
New Delhi.

3. Additional Commissioner of Police
(Southern Range),
Delhi Police Head Quarters,
I.T.O.,
New Delhi. ...Respondents

By Advocate Shri Rajinder Pandita

ORDER

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

This application filed by an ex-constable of Delhi Police is directed against the order of the disciplnary authority dimissing the applicant from service and against the order of the appellate authority which had rejected the appeal against the order of punishment of dismissal.

2. The brief facts in this case are that the applicant was arrested on the basis of certain complaints levelled against him by one Ms. Bimal wife of Shri Gosain Lal in which she had alleged that the applicant alongwith another constable had on the night of 9th May, 1990 entered her house when her husband was present and after threatening the husband and directing him to leave the jhuggi, had raped her and thereafter on 14th May, 1990, the applicant again came near her at about 9.50 P.M. and held her blouse and on her resisting and rushing to her house, the applicant chased her and broke the door. The husband who was present at that time in the house raised an alarm and chased the applicant alongwith the help of some other persons. The applicant was caught and was thereafter arrested and an F.I.R. was filed against him u/s 376/354/506 of I.P.C. The applicant was placed under suspension with effect from 15.5.1990. Thereafter, by the impugned order, the respondent No.2 dismissed the applicant from service without conducting any enquiry under proviso (b) to Article 311(2) of the Constitution of India. An appeal against this impugned order dated 24.09.90 was also rejected by the appellate authority. Aggrieved by this, this application has been filed with a prayer to quash the impugned orders of punishment and to order reinstatement of the applicant in service with all consequential benefits.

3. The applicant alleges that his case does not fall under the provisions of Article 311(2)(b) and there were no grounds for dispensing with the departmental enquiry. Further, the applicant contends that he was also completely acquitted of the charges against him by the Additional Sessions Judge, Delhi. The applicant contends that the finding of the disciplinary authority that it was not reasonably practicable to hold an enquiry is based on conjectures and surmises and not on any evidence on record. The disciplinary authority had dispensed with the enquiry in a most arbitrary manner and had held that it was not reasonably practicable to hold the enquiry in the present case without assigning any valid reason. The applicant also contends that the reasons, as recoded by the disciplinary authority for coming to the conclusion that it was not reasonably practicable to hold an enquiry in this case, is no sufficient ground in law for arriving at such a conclusion and such an order invoking the provisions of second proviso (b) to Article 311(2) of the Constitution in this case was clearly an abuse of power by the respondents and the dispensation of the enquiry was not for any genuine legal reasons but only to avoid holding the enquiry and to deny with the mala fide intention, the legal right of the applicant to defend himself. The applicant also contends that under Rule 11(1) of the Delhi Police (Punishment & Appeal) Rules, 1980, where there is a judicial prosecution, the competent authority has to await

the judicial verdict given and may act accordingly. In this case although the respondents were aware that the criminal case of prosecution was in progress against the applicant, the respondent No.2 avoided without any cogent and compelling reasons the holding of an enquiry and without awaiting the judicial verdict had passed the impugned order of dismissal. The appellate order was also passed without proper application of mind and the appeal was rejected without due consideration of the merits of the appeal.

4. The respondents have contested the averments of the applicant. It is submitted on behalf of the respondents that the applicant had acted in such a manner that was disgraceful to the department and the act was such which damaged the impage of the Police with the public and under the compelling circumstances the dismissal order was made, which was well within the confines of law. The respondents have also contended that the impugned order was passed without any malice against the applicant. In the preliminary remarks under the brief facts of the case, the respondents have more or less repeated the same reasoning for dispensing with the enquiry, as is mentioned in the impguned order.

5. The learned counsel for the applicant strenuously argued that the reasoning given in the impugned order for dispensing with the enquiry is totally untenable. The learned

counsel argued that if the case could be tried in the criminal court where the witnesses were examined, it stood to no reason why a criminal disciplinary enquiry could not have been conducted. The learned counsel urged that the respondent No.2 had more or less given his own personal opinion instead of showing how, for logical reasons, the enquiry could not be held. The disciplinary authority had stated that in the departmental enquiry witnesses would not come forward to give evidence against police officers because of fear, threat and intimidation. This could be not a good ground for holding that it was reasonably not practicable to hold the enquiry. The learned counsel heavily relied on Full Bench judgment in D.N. Singh and Others Vs. Union of India & Others, CAT (1989-1991) Vol.2 Page 1 and also the observations of their Lordships in Union of India and Another Vs. Tulsiram Patel, (1985) 3 SCC page 398. The learned counsel also relied on the judgments of the Tribunal in O.A. No. 2194 of 1994 - Ex.Constable Subhash Vs. The Lt. Governor of Delhi and Another and O.A. No. 1033 of 1993 - Shri Bijender Kumar Vs. U.O.I. & Others. The learned counsel further contended that even according to the department's own circular dated 8.11.1993, a copy of which was produced during the hearing before the Bench, it was held that in cases of rape or dacoity or any such heinous offence it was held that dismissal without holding departmental enquiry would be illegal because departmental enquiry could be

conveniently held and, therefore, the reasoning given even by the disciplinary authority in dispensing with the enquiry and bringing the case under proviso (b) to Article 311(2) of the Constitution was thoroughly not called for particularly in the light of the judgements cited by him.

6. The learned counsel for the respondents submitted that the provisons of proviso (b) to Article 311(2) had been fully complied with inasmuch as the authority empowered to dismiss had satsified himself that for the reasons which he had recorded in writing an enquiry could not be held and, therefore, the court or tribunal should not go into the sufficiency of these reasoning. He also contended that the fact that the criminal court as might have acquitted the applicant at a later stage, could not be a sufficient ground in favour of the applicant. The ultimate test, according to the learned counsel for the respondents is whether the disciplinary authority has satisfied himself for some reason to be recorded in writing that it is not reasonably practicable to hold such an enquiry or not. Once such a reason is recorded, the requirements of the provisions have been fulfilled and, therfore, contends that the impugned orders have been passed strictly in a legal manner and there is no infirmity at all and the applications derserves to be rejected.

7. We have heard the learned counsel for the parties and have carefully perused the record and also referred to the various decisions cited by the learned counsel for the applicant in this case.

8. The main issue in this case is whether the disciplinary authority has sufficient ground or reason to hold that it not reasonably practicable to hold an enquiry in this case. For this purpose, it is necessary to refer to the operative part of the order giving the reasons for dispensing with the enquiry:-

> "Police is the protector of citizens and indulgence of policemen in such gruesome crimes will destroy the faith of the people in the system. His involvement is not only undesirable but also amounts to serious misconduct and indiscipline. He has acted in a manner unbecoming of a police officer which renders him absolutely unfit to be retained as a member of a disciplined force. The circumstances of the case are such that holding of an entry against Constable Sunder Singh No.1547/W is not reasonably practical because it is not uncommon in such cases to find the complainants and witnesses turning hostile due to fear of reprisals. Terrorising, threatening or intimidating thw witnesses who will come forward to give evidence against him in the departmental enquiry are common tactics adopted by the policemen. Their desperate and daring criminal mentality in indulging such a crime despite the presence of a number of members of public and the husband of the victim shows that they will indulge in any other criminal act for harming the witnesses and obstruct the holding of enquriy in a normal way. It requires tremendous courage to depose against any ordinary criminal. Much more guts are required to depose against a criminal in the robes of a policeman, who may loose their job on their statements. It will be too much to expect an ordinary citizen to show this much of courage. Such persons were merely ;being suspended with the result that they continued to remain in service, drawing 50% of their salary during the first three months and 75% of the salary thereafter, till they were eventually either dismissed or reinstated. They would in

such circumstances, also continue to enjoy various other perks like retaining their Government quarter or continuing to reside in the police barracks, availing of medical facilities etc."

9. On the basis of the above reason, the disciplinary authority had come to the conclusion that it was not be reasonably practicable to hold an enquiry under the circumstances. The Disciplinary Authority has also observed "that it would not be reasonably practicable to hold such enquiry under the circumstances while the nature of the incident calls for expeditious and immediate disciplinary action". In the light of this, the provisions of proviso (b) to Article 311(2) of the Constitution had been invoked in this case. In our view, shorn of the verbiage in the order the disciplinary authority had not recorded any tangible reason as to why it was not reasonably practicable to hold an enquiry. Merely stating that there is possibility of fear or threat of intimidation of witnesses who could not come forward to give evidence, would not be, in our view, sufficient reason for dispensing with the enquiry. Further, the disciplinary authority had given only certain general observations, as follows:-

> "It requires tremendous courage to depose against any ordinary criminal. Much more guts are required to depose against a criminal in the robes of a policeman who may loose their job on their statements. It will be too much to

expect an ordinary citizen to show this much of courage. Such persons were merely being suspended with the result that they continued to remain in service, drawing 50% of their salary during the first three months and 75% of their salary thereafter, till they were eventually either dismissed or reinstated. They would in such circumstances, also continue to enjoy various other perks like retaining their government quarter or continue to reside in the police barracks, availing of medical facilities etc."

10. These general observations do not spell out the reasons why an enquiry could not be held in this case. We cannot overlook the fact that in this case a criminal case was registered against the applicant and he was also tried in the criminal court which had acquitted him. If he could be tried in a criminal court where witnesses were examined, it is not clear why it should be presumed that witnesses in the departmental enquiry could not be forthcoming to give evidence and why they should shy away from such departmental proceedings. Afterall, these witnesses too will be subject to threat or intimidation even during the hearing of the criminal case. So in our view, the order of the disciplinary authority dispensing with the enquiry does not indicate that the authority had genuinely satsified himself about the reasons as to why it was not reasonably practicable to hold the enquiry. Such a genuine satisfaction is not in evidence in the impugned order. The order only betrays an anxiety to take immediate expeditious disciplinary action to dismiss the applicant under some general observations about the difficulty in holding departmental enquiry in such cases.

11. The learned counsel for the applicant has pertinently brought out the contents of the circular issued by the respondents themselves vide their letter dated 8.11.1993. In fact, the above circular/letter has been issued in pursuance of the judgment of the courts and tribunals. It is relevant to reproduce the operative part of the Circular:-

> ".....From the above it is clear that a Civil sertant is not to be dismissed, removed or reduced in ranks summarily under Article 311(2)(b) of the Constitution but after holding regular departmental enquiry against him. No dobut the above provision confers the power of infliction of above penalties on the disciplinary authority but while doing so circumstances will have to be mentioned in order to show as to how it was not reasonably practicable to hold the departmental action. In a number of authorities the Court/Tribunal have evaluated the reasons given by the disciplinary authority to see if really it was impracticable to hold the enquiry and found those reasons are idifferent and vague. Reliance may be placed in the judgment of the Hon'ble Supreme Court of India in the case of Tulsi Ram Patel AIR 1985 SCP/1416. Power under Article 311(2)(b) is not be used as a short cut.
>
> The Police Officer involved in the case of Rape or Dacoity or any such heinous offence have been dismissed straightaway under Article 311(2) (b) despite of fact that criminal cases have been registered. Such dismissal, without holding D.Es., are illegal because in such cases D.E. can be conveniently held.
>
> It is once again emphasised that the Disciplinary Authority should not take resort to Article 311(2)(b) lightly but only in those cases where it is not reasonably practicable to hold the enquiry. Wheever the disciplinary authority comes to the conclusion that 'it is not reasonably practicable to hold an enquiry' he must record at length cogent and legally tenable reasons for coming to such conclusion. In the absence of valid reasons, duly reduced in writing, no such order of dismissal etc. with resort to Article 311(2) (b) can be sustained in law".

12. The above circular has been issued subsequent to the impugned orders in the present case. This does not, however, absolve the respondents from the necessity of recording valid and reasonable circumstances which led them to the conclusion that it was reasonably not practicable to hold an enquiry in such cases. It is relevant to refer to the succinct observation of his Lordship, Justice A.M. Ahmadi, as he then was, in Jaswant Singh Vs. State of Punjab and Others, 1990(2) SCALE page 1152. His Lordship observed as follows:-

"Our attention was not drawn to any material existing on the date of the impugned order in support of the allegation contained in paragraph 3 thereof that the appellant had thrown threats that he and his companions will not allow holding of any departmental enquiry against him and that they would not hesitate to cause physical injury to the witnesses as well as the enquiry officer if any such attempt was made. It was incumbent on the respondents to disclose to the Court the material in existence at the date of the passing of the impugned order in support of the subjective satisfaction recorded by respondent No.3 in the impugned order. Clause (b) of the second proviso to Article 311(2) can be invoked only when the authority is satisfied from the material placed before him that it is not reasonably practicable to hold a departmental enquiry. This is clear from the following observation at p.270 of Tulsi Ram's case:

'A disciplinary authority is not expected to dispense with a disciplinary enquiry lightly or arbitrarily or out of ulterior motives or merely in order to avoid the holding of an inquiry or because the Department's case against the government servant is weak and must fail'.

The decision to dispense with the departmental enquiry cannot, therefore, be rested solely on the ipse dixit of the concerned authority. When the satisfaction of the concerned authority is questioned in a court of law, it is incumbent on those who support the order to show

that the satisfaction is based on certain objective facts and is not outcome of the whim or caprice of the concerned officer".

13. In the light of the above discussion, we are of the considered view that the disciplinary authority has not shown how it was not reasonably practicable to hold an enquiry in this case, and, therefore, the order is an arbitrary one and without application of mind and, therefore, the impugned order cannot be sustained. The appellate authority has also not applied his mind but has merely said that he has carefully considered the points raised by the appellants but none of them has any force, without giving reasons therefor and, therefore, the order of the appellate authority also is liable to be set aside. We accordingly set aside the impugned order on the ground that the respondents' resorting to clause (b) of the proviso to Article 311(2) of the Constitution to dispense with the enquiry is unjustified. We set aside the appellate order also rejecting the appeal of the applicant against such dismissal and we direct the respondents to reinstate the applicant in service with all consequential benefits within a period of one month from the date of this order. We, however, make it clear that this order will not

act as a bar for initiating any disciplinary action against the applicant, in accordance with law.

There shall be no order as to costs.

(P. SURYAPRAKASAM)
MEMBER (J)

(K. MUTHUKUMAR)
MEMBER (A)

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