

5

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI.

Regn.No. CA-2089/91

Date of decision: 21.2.1992.

Constable Madhukar Applicant

Versus

Commissioner of Police Respondents
and Another

For the Applicant Shri Shankar Raju, Advocate

For the Respondents Miss Ashoka Jain, Advocate

CORAM:

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

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

The short point for consideration is whether the dismissal of the applicant under Article 311(2)(b) of the Constitution is legally tenable.

2. While working at Police Station, Civil Lines, as a Constable, the applicant proceeded on 5 days' medical rest on 22.6.1991. He was implicated in case FIR No.178/91

.....2....

dated 24.6.1991 under Section 392 I.P.C. at P.S. Khatauli, Distt. Muzaffar Nagar (U.P.) and a connected case FIR No.159/91 under Section 411 I.P.C. and under Section 25/54/59 Arms Act. He was arrested and remained in custody till 5.7.1991, when he was released on bail. According to him, thereafter, he had fallen ill and had undergone medical treatment. On 3.9.1991, he joined duty at P.S. Civil Lines.

3. The applicant was placed under suspension on 2.7.1991. On 7.9.1991, the respondents passed the following order whereby he was dismissed from service:-


"Const. Madhukar, No.390 (under suspension) while posted at P.S. Civil Lines involved in case FIR No.178/91 u/s 392 IPC P.S. Khatauli, Distt. Muzaffar Nagar, U.P. and case FIR No.159/91 u/s 25/54/59 Arms Act and 411 IPC P.S. Incholi, Distt. Meerut, U.P. Subsequently he was arrested on 26.6.91 by the local police of U.P. He was placed under suspension vide this office order No.3837-55/HAP-N dated 2.7.91 w.e.f. 26.6.91.

The involvement of Ct. Madhukar, No.390/N in a robbery and Arms Act despite being a policeman shows that he is a desperate character and hazardous to the public. Police is the protector of citizens and indulgence of policemen in crimes will destroy the faith of police in the system. Ct. Madhukar's involvement in criminal cases like robbery, is not only undesirable but also amounts to serious misconduct and indiscipline. He has acted in a manner unbecoming of a police officer.

The circumstances of the case are such that holding of an enquiry against Const. Madhukar, No.390/N 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. It requires tons courage to depose against an ordinary criminal. Much more guts have to be shown to depose against a criminal in the robes of a policeman who may lose his job on their statements. It will be too much to expect ordinary citizens to show this much of courage.

9

Keeping in view the overall facts and circumstances of the case, I, Bhim Sain Bassi, Dy. Commissioner of Police, North District, Delhi, therefore order that Ct. Madhukar, No.390/N be dismissed from the force with immediate effect under Article 311(ii)B of Constitution of India. His suspension period from 26.6.91 to the date of issue of this order will be treated as not spent on duty. He is not in occupation of Govt. quarter."

4. The applicant has challenged the aforesaid order on the grounds of non-application of mind and that it has been passed to short-circuit the holding of a regular enquiry. In Delhi Police, a departmental enquiry, if founded on the same facts on which a criminal case has been registered, is to be kept in abeyance till the final disposal of the criminal case.
5. The respondents have denied the above allegations in their counter-affidavit. According to them, the misconduct of the applicant was of a serious nature and required immediate disciplinary action against him. The reasons for not holding departmental enquiry against the applicant were sound and have been mentioned clearly in the punishment order. The facts and circumstances of the case are such and would show that there was no necessity to hold a departmental enquiry against the applicant. There is sufficient documentary evidence to prove his misconduct/offence.
6. We have carefully considered the matter. In Jaswant Singh Vs. State of Punjab and 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) of the Constitution and that it cannot be rested solely on the ipse dixit of the concerned authority.

7. 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.

8. In the light of the foregoing, we set aside and quash the impugned order of dismissal dated 9.9.1991 and direct that the applicant shall be reinstated as Constable with full back wages within a period of three months from the date of receipt of this order. The respondents will be at liberty to hold departmental enquiry against him under the relevant rules and in accordance with law.

D.K. Chakravorty
(D.K. Chakravorty)
Administrative Member

P.K. Kartha
(P.K. Kartha)
Vice-Chairman(Judl.)