

Central Administrative Tribunal, Principal Bench, New Delhi

O.A.No.864/2004

New Delhi, this the 17th day of November, 2004

Hon'ble Mr.Justice V.S. Aggarwal, Chairman
Hon'ble Mr.S.K. Naik, Member(A)

Yashpal Singh,
S/o Shri Maha Singh,
R/o FC-20,
Teen Murti Police Compound,
New Delhi

....Applicant

(By Advocate: Shri Arun Bhardwaj)

Versus

1. Union of India,
Through the Commissioner of Police,
Police Headquarters,I.P.Estate,
New Delhi.
2. Joint Commissioner of Police,
New Delhi Range
3. Addl. Dy.Commissioner of Police,
East Distt.,New Delhi

....Respondents

(By Advocate: Shri Ram Kawar)

Order

Justice V.S. Aggarwal, Chairman

The applicant Yashpal Singh joined the Delhi Police as a Constable. By virtue of the present application, he seeks setting aside of the order dated 17.3.2003 passed by the disciplinary authority and of 23.3.2004 passed by the appellate authority. By virtue of these orders, the applicant was dismissed from service invoking Article 311



2

(2)(b) of the Constitution. He further seeks that he should be reinstated with consequential benefits.

2. It was asserted against the applicant that he alongwith Constable Rishi Pal was posted at Police Station Vivek Vihar on 4.3.2003. F.I.R.68/03 pertaining to offences punishable under Sections 384/419/411/34 Indian Penal Code was registered at Police Station Lahori Gate at the instance of one Patel Govind, who reported that on 4.3.2003 at 3.00PM while he was in his office, three persons posing to be from the Crime Branch had visited and made enquiries about his business. They asked him to put all the money in a bag and threatened to shoot him in case he did not follow their instructions. He complied with the directions and placed the money amounting to Rs.80,000/- in the bag which was snatched at pistol point. Constable Manoj Kumar had snatched the same. By the time the miscreants had stepped out, people had gathered outside on being alerted on telephone by an employee of Patel Govind. Consequently, Constable Manoj Kumar and his associate Som Pal were apprehended red handed at the spot with the amount mentioned above. Service pistol with five live cartridges was recovered from Constable Manoj Kumar. While Som Pal and Constable Manoj Kumar were handed over by the public to the local police, it was found that the third person had escaped. It was learnt to be the applicant i.e. Head Constable Yash Pal. One more complainant Prakash Patel came forward and informed that a similar incident had occurred with him on 8.2.2003. Four persons had come to his shop and extorted Rs.25,000/- from him. F.I.R. 70/03 with respect to offences punishable under Section 170/384/419/34 Indian Penal Code was registered. Accused Som Pal had been arrested in that matter. On interrogation, accused Som Pal disclosed that the applicant, Constable Rishi Pal and one Pramod were with him

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at the time of commission of crime. The applicant and others were placed under suspension and thereupon keeping in view the provisions of Section 311 (2)(b) of the Constitution, the applicant has been dismissed from service.

3. The petition has been contested.
4. We have heard the parties counsel and have seen the relevant record.
5. The disciplinary authority in the impugned order had recorded:

"The aforesaid misconduct of the defaulter police officials shows that they are a desperate character and a liability on the Delhi Police and their continuance in Delhi Police is hazardous to the public. The society expects a policeman to protect citizens from criminals and crime, but instead this they have been found to be a criminal themselves extorting money with impunity. Their act are not only immoral and reprehensible, but also reflect a grave misconduct of criminal nature by a police officer, a public servant entrusted with the responsibility of protecting the society. Such a misconduct by a police officer is bound to destroy the faith of people in the administration in general and police in particular. The involvement of HC Yash Pal No.166/E and Const. Rishi Pal No.1021/E in such a shameful and criminal act have eroded the faith of common people in police and their continuance in police force is likely to cause further irreparable loss to the functioning and credibility of Delhi Police. The defaulter have acted in a manner highly unbecoming of police officials and highly prejudicial to the safety and security of the citizens. They have also tarnished the image of Delhi Police. Not only they have indulged in a criminal act against a public person, whom as a police office they were entrusted to protect but have also breached the trust and confidence of fellow police officers for whn they have to gain the faith of the public.

It is not possible to conduct a Departmental Enquiry and conclusively establish the allegations against the defaulters. After an act of such serious misconduct, if they are allowed to continue in the police force it would be detrimental to public interest. Besides, it is a common experience that terrorizing and intimidating the witnesses not to come forward to depose against the delinquents in the departmental enquiry has now become common tactics adopted by the involved police officials. It also calls for great courage and guts to depose against such a desperate person and the task becomes more acute and difficult when the delinquents are a police officials, who may lose their job on their statement/deposition. In the instant case the possibility of victim's

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being unduly pressurized and threatened also can never be ruled out. It would indeed be too much to expect from such hapless victim to show requisite resolve throughout the span of departmental proceedings against the defaulter police officials and then invite the wreath of such a Lot throughout their link.

Under these circumstances, I am of the view that HC Yash Pal No.166/E and Const. Rishi Pal No.1021/E have brought a bad memo to the entire police force and their retention in service would be prejudicial to public interest. In my opinion they are unfit to be retained in police force any more. Therefore, I, V.V. Chaudhary, Addl. Dy. Commissioner of Police, East Distt., Delhi deem it proper that HC Yash Pal No.166/E and Constable Rishi Pal No.1021/E be dismissed from the service with immediate effect under Article 311 (2) (b) of the Constitution of India. They will deposit all their government belongings i.e. Identity Card, C.S.H. Card and uniform articles with department forthwith. Their suspension period from 5.3.2000 to the date of issue of this order will be treated as period not spent on duty.”

The appeal filed by the applicant has since been dismissed.

6. The main submission made on behalf of the applicant has been that pertaining to both the registered matters, the State had submitted a report under Section 173 Code of Criminal Procedure and that the applicant has been discharged in both the cases. Thus according to the learned counsel, in face of this fact, there is no material against the applicant. When there is no such material against the applicant, invoking Article 311 (2) (b) of the Constitution will be totally contrary to law.

7. The copies of the orders have been placed on the record. In the matter of F.I.R. 68/03, the learned Metropolitan Magistrate had recorded:

“It is admitted case of prosecution that accused Yash Pal was arrested on 13.5.03 while the alleged incident took place on 4.3.03. After the arrest, the accused was produced in muffled face for TIP. During the TIP proceeding, the witness Patel Govind and Naresh Bhai Patel failed to identify the accused. However, after TIP the IO recorded the statement of said witnesses on 20.5.03 alleging that on 19.5.02 brother and relative of accused Yash Pal threatened them on phone if they identified the accused Yash Pal in the TIP then it will not be good for them and they had to face the dire consequences. It is alleged that due to the said threat both

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witnesses refused to identify the accused Yash Pal in the TIP proceeding. It is undisputed fact that in TIP proceeding the said witnesses had not made any submission before the ld. M.M. regarding any such threat. As per the record, witnesses failed to identify the accused persons in the judicial TIP. The prosecution is relied on the supplementary statement dt.20.5.03. But according to said supplementary statement, the witnesses had not identified the accused persons even before the police official. Assuming for the sake of argument that witnesses identified the accused persons before the IO by saying that accused was standing at serial number six. Even then it has no evidentiary value in the eye of law because it is well established principle of law that identification before police official has no evidentiary value. Moreover, it is undisputed fact that IO had taken the copy of proceeding for his own record. Thus, at time of recording the statement of complainant, IO knew the fact that accused Yash Pal occupied his position of serial number six. Thus, the statement of witnesses under section 161 Cr.P.C. dated 20.5.03 has no evidentiary value in the eyes of law. There is no other evidence on record which can connect the accused Yash Pal with the commission of alleged offence. Thus, in my opinion there is no lot of admissible evidence on record against accused Yash Pal Singh. Thus, I discharge accused Yash Pal Singh for all the offences punishable under section 170/392/384/419/411/34 IPC."

In face of the aforesaid reasoning, the applicant was discharged.

8. Learned counsel for the respondents has drawn our attention to the fact that it was brought to the notice of the learned Metropolitan Magistrate that there were some allegations that threat had been made by the applicant. The learned Court had taken note of the fact and directed an enquiry as to why the Investigating Officer did not take any action against the brother and relatives of the applicant pertaining to the said threat. The matter which cannot be ignored is that the applicant had been discharged by the Court on basis of the material evidence collected by the prosecution.

9. Same is the position in F.I.R. 70/03. Therein also, the learned Court recorded :

"Ld. defence counsel contended that no offence is made out against accused no.2 & 3 as there is no evidence on record to show prima facie that the said accused persons participated in the alleged incident. Ld. A.P.P. submitted that Investigating Officer recorded the supplementary statement of Prakash Patel, Jilani Bhai and Kirti Bhai. I have gone through the said statements. The

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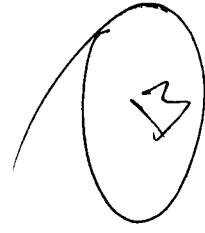
witnesses failed to identify the accused persons namely Yashpal and Rishipal during the judicial TIP and thereafter Investigating Officer recorded their statement alleging that they did not identify the accused persons as during the TIP proceedings they became perplexed and stated before the Investigating Officer at which place they were standing during the TIP proceedings. I have also gone through the TIP proceedings and from there it is clear that the witnesses did not make any complaint to the Ld. MM to the effect that they are under pressure from the any corner. Thus, no reliance can be placed on the statement of witnesses that they were under pressure at the time of participating the TIP. From the said statements, it appears that Investigating Officer made an attempt to nullify the judicial TIP proceedings by recording the said statements. If Investigating Officer was thinking that the witnesses failed to identify the accused persons due to any pressure, he should request for a fresh TIP proceeding but instead of moving the application for fresh TIP he preferred to adopt short cut method by recording their statement and made an attempt to nullify judicial TIP proceedings. In my opinion, the said statement has no evidential value in the eyes of law. Even the identification of accused before police has no evidential value and in this case even the said identification has not taken place before the police. There is no other evidence on record to show prima facie that accused no. 2 & 3 participated in the alleged incident.

In view of the aforesaid discussion, I am of the considered opinion that there is not sufficient evidence on record to make out a prima-facie case for the offence punishable under section 170/384/419/34 IPC against accused no. 2 & 3. Thus, I discharge both the accused persons namely Yashpal and Rishipal for the alleged offences."

In this process, the applicant was discharged from that F.I.R. also.

10. Under Section 239 of the Code of Criminal Procedure, if there is no evidence against the concerned person or there is no prima facie material, the Court can discharge the accused. In the present case, the applicant in fact has been so discharged. It shows that on basis of the material collected by the prosecution, there is no material to connect the applicant with the crime while taking even a prima facie view. In such a situation, the impugned orders which record that there is a misconduct pertaining to the abovesaid cases, can hardly be sustained qua the applicant.

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11. The impugned orders proceed on the premise that the applicant was involved in a heinous crime which is abhorrent. It also records that if a policeman who is charged with the sacred duty of upholding the rule of law himself indulges in such an act, faith of common man in the government authority is bound to be shattered and trust in the Police will be damaged. But once it has been recorded that there is no *prima facie* material against the applicant and our attention is not drawn to any other material collected to show that the applicant in fact was so connected with the crime, we are of the opinion that it would be improper to attract Article 311 (2) (b) of the Constitution in the peculiar facts of the present case.

12. Learned counsel for the applicant had further argued that in any event in the present case, provisions of Article 311(2)(b) could not be invoked. We are not expressing ourselves on the same. This is for the reason that the petition is being allowed for reasons to which we have referred to above. Finding on this issue may prejudice either the State or other co-delinquents.

13. Resultantly for the said reasons, we quash the impugned orders and direct that necessary further action including consequential benefits, if any, should be taken.

DKM
(S.K. Naik)

Member(A)

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V.S. Aggarwal
(V.S. Aggarwal)
Chairman