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30-7-92

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH: NEW DELHI

OA 1247/92

Date of decision:

Shri Mahi Pal Singh Vs. Commissioner of Police  
& Another

CORAM:

Hon'ble Shri J.P. Sharma, Member(J)

Hon'ble Shri N.K.Verma, Member(A)

For the applicant .. Shri Shankar Raju, Counsel

For the respondents.. Ms. Ashoka Jain, Counsel

JUDGEMENT

(Delivered by Hon'ble Member (J) Shri J.P.Sharma)

The applicant was originally enrolled as Constable in Delhi Police and was subsequently promoted to the rank of Head Constable in October, 1989. At the relevant time, the applicant was posted in Anti Auto Theft Squad in North-East District. On 17th March, 1992 at about 2.30 PM an information was received by Respondent No.2 that one person Darshan Lal has been admitted in an injured condition at Mohan Nursing Home, Jafrabad, unfit to give any statement. The said Darshan Lal was picked up by the Anti Auto Theft Squad on the night between 10th and 11th March, 1992. The relatives of the said Darshan Lal and his father Shri Prem Lal gave information that Shri Darshan Lal was tortured while in police custody and for fear of their own life and that of Darshan Lal having been criminally intimidated by the Anti Auto Theft Squad, they did not report the matter earlier. On their information Darshan Lal in an injured state was shifted to Jaya Prakash Narayan Hospital where the doctors attending on him found injuries on his both ankles and feet and the injured was kept under observation. On receipt of

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M.L.C., an FIR No.72/92 under section 342/323/34 IPC was registered at P.S.Welcome. A preliminary enquiry was also conducted by the Respondent No.2 where it was found that Darshan Lal was interrogated and tortured up by the Anti Auto Theft Squad staff comprising the applicant and other constables of AATS, i.e. Anand Prakash, Sunil Kumar and Neeraj Kumar on the night between 10th and 11th March, 1992 from his residence. Darshan Lal was confined, interrogated and tortured at various places including the rooms of AATS. Darshan Lal succumbed to his injuries subsequently in the hospital. On 17th March, 1992, the applicant alongwith other members of AATS referred to above were placed under suspension.

By the order dated 7th April, 1992 issued by the Respondent No.2, the applicant was dismissed from service under the provision of Article 311(II)(b) of the Constitution of India after dispensing with the enquiry.

In this application under Section 19, the applicant has assailed the aforesaid order of dismissal and prayed for quashing of the same directing the respondents to reinstate the applicant in service with all consequential benefits.

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The respondents contested this application opposed the quashing of relief prayed for on the ground that the applicant as Head Constable and a member of AATS tortured the said Darshan Lal in police custody to the extent that subsequently he succumbed to his injuries and died in the JPN Hospital. The applicant has been rightly dismissed under the provision of Article 311(II)(b) after the disciplinary authority has satisfied himself giving reasons thereof in not holding a departmental enquiry against the applicant. The involvement of the applicant belonging to a police squad is bound to erode the faith of common man in the administration of criminal justice. It is further observed in the order that the act of the applicant was ~~not only immoral~~ <sup>not only immoral</sup> ~~bit bkt unnirak~~ and reprehensive but also an act of grave indiscipline for being a public servant. It is further observed that the applicant has acted in a manner which is absolutely unbecoming of a police officer. Thus, the application is without merit.

We have heard the counsel for both the parties at length and perused the records.

6 The disciplinary <sup>authority</sup> has passed the following order:

"During the preliminary enquiry it was found that Shri Darshan Lal was picked up by the AATS staff comprising Head Constable Mahipal Singh, No.99/NE, Ct. Anand Parkash,

1324/NE, Ct. Sunil Kumar, 1352/NE and Ct. Neeraj Kumar, 134/NE, on the night between 10/11.3.1992 from his residence. He was confined/interrogated/tortured at various places including the AATS office. It also came to the notice that Ct. Anand Parkash Tyagi was the main person who committed brutalities on the deceased Shri Darshan Lal associated by HC Mahipal Singh and Shakti Singh, I/C AATS to take Shri Darshan Lal to GTB Hospital. Instead they took him to a private Nursing Home located in Jafrabad on 16.3.92.

"The involvement of HC Mahipal Singh, 99/NE, Ct. Anand Parkash, 1324/NE and Ct. Sunil Kumar, 1352/NE in the above mentioned case shows that they are deprave and desperate characters. The society expects Policemen to protect citizens from criminals and crimes. The involvements of the above 3 policemen in this crime (death in police custody) will erode the faith of common people in the the administration of criminal justice. The death of Shri Darshan Lal at the hands of the aforementioned HC/Cts. is not only immoral and reprehensible, but also an act of grave indiscipline being public servants. They have acted in a manner unbecoming of a Police Officer.

"In fact one can feel the victims helplessness being member of scheduled castes community which has already been suppressed and deprived of its rights for ages. It will be too much to expect from such a hapless victim to show requisite resolve throughout the judicial/departmental proceedings against HC Mahipal Singh, 99/NE, Ct. Anand Parkash, 1324/NE and Ct. Sunil Kumar, 1352/NE."

Provisions of Article 311 of the Constitution under which the applicant has been dismissed from service are reproduced below:

"311 .... Provided further that this clause shall not apply:

2(b) Where an authority empowered to dismiss or remove a person or to reduce him in rank is satisfied that for some reason, to be recorded by that authority in writing, it is not reasonably practicable to hold such enquiry....."

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The challenge to the above order by the applicant is that there was no reasonable nexus between the impugned order of dismissal from service and the accusations against him in the criminal case. According to the learned counsel <sup>4</sup> for the applicant, it was ~~the~~ not the case where enquiry in accordance with the rules was reasonably impracticable. Thus the orders passed by the respondents are malafide and arbitrary and so the same be quashed. In order to invoke Article 311(II)(b), the following conditions must be satisfied:

(i) the authority which is empowered to dismiss applies its mind to,

(ii) There must be a decision of the authority empowered to dismiss and then the reasonableness of the decision will be immune from being challenged in a court of law.

(iii) the decision arrived at must be a reasonable one and the reasons recorded must ex facie show that it was not reasonably practicable to hold the disciplinary enquiry.

(iv) further, the power must be exercised bonafide having regard to the relevant considerations.

The contention of the learned counsel for the applicant is that the reasons given to the dismissal without enquiry are not substantial and can not be arrived at in the circumstances of present case. To enhance his argument, he has placed reliance on the authority of Jaswant Singh Vs. State of Punjab & Ors (1991 - 1 SCC 326) wherein the Hon'ble Supreme Court has held that in a case of dismissal dispensing with the

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departmental enquiry ordered by the appointing authority, it has to be shown that the satisfaction was based on objective assessment of facts. If there is no independent material justifying reliance of clause (b) of the second proviso to Article 311 the order of dismissal cannot be sustained. Reliance has also been placed on the authority of Chief Security Officer & Ors. Vs. S.R.Das (1991 - 1 SCC 729). In this case the enquiry was dispensed with because it was not considered feasible or desirable to procure witnesses of the Security/other railway employees since that would expose the witnesses and make them ineffective in future and if these witnesses were asked to appear and confronted at enquiry are likely to suffer personal humiliation and insults thereafter or even they and their family members may become target of acts of violence. The Hon'ble Supreme Court held that in the absence of sufficient material or good grounds for dispensing with the enquiry, the order of dismissal should be quashed. Reliance has also been placed on the decision passed by the Principal Bench of CAT in the case of Nadish Kumar Vs. UOI & Ors (OA 2223/90) decided on 25.9.92. The petitioner in this case was involved in a rape case and instead of proceeding with the enquiry, the appointing authority passed an order of dismissal. The Tribunal's quashing that order <sup>following the decision</sup> ~~does not challenge~~ the authority of the Hon'ble Supreme Court

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referred to above in the case of Jawant Singh Vs. State of Punjab, Chief Security Officer Vs. S.R.Das and other cases.

We have considered all the points and facts of the case.

The applicant was a Head Constable, posted in AATS and a preliminary enquiry conducted fairly show that the applicant alongwith other staff of AATS picked up the deceased Darshan Lal from his residence and he was tortured in police custody. He was tortured and injured and admitted to Mohan Nursing Home, Jafrabad, from where he was shifted to JPN Hospital where he was not in a position in giving any statement and injuries were noted on his person. He succumbed to his injuries. The respondents contend that the relatives of the deceased were not allowed to meet him and they were threatened from making reports to the higher authorities. It is therefore reasonably possible that the relatives wanted Darshan Lal to be released from the police custody and did not like to aggravate the matter which may end in further torture. The applicant belonging to the police force has a duty imposed on him to safeguard the security of lives and properties of the citizens.

If the deceased was a suspect then in that case the applicant or other members of his squad have no right to take the law in their own hands

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Coming to the reasons given by the disciplinary authority, it is evident that a criminal offence has been committed against a hapless victim who could not go to the court against the members of the police force as he would constantly feel that he would be criminally tortured. However in such a case when the offence has taken place in a police custody and later on he succumbs to his injuries, then only the best witness would be the deceased himself. Circumstances existing there, it is in the minds of the appointing authority to come to a definite conclusion that the enquiry is not possible and the reasons given by the appointing authority is not to be ~~followed that~~ <sup>judged as an appellate authority</sup> as observed earlier, this court has only to see the reasonableness of the facts and circumstances the reasons <sup>given by the</sup> appointing authority/disciplinary authority which are not unreasonable could not be inferred by a prudent man. 6

In this regard we are fortified by the views expressed by the Hon'ble Supreme Court in the case of UOI & Anr. Vs. Tulsi Ram Patel. It has been held in that case that the second proviso to Article 311(2) expressly provides that audi alteram partem rule of natural justice shall not apply in the circumstances mentioned in the third clause of the proviso. The object underlying the second proviso is public policy, public interest and public good. When the principles of natural justice have been expressly excluded by the second proviso it cannot be imported by resorting to Article 14. Out of 4 cases mentioned in the above report, Tulsi Ram Patel was convicted under Section 332 of the IPC for causing head injury to his

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superior. He was compulsorily retired under clause (a) of second proviso to Article 311(2) and the service rule 19(1). In the second case, the respondent who was a member of the Central force as a result of which the members themselves became security risk. The respondents were dismissed from service without holding enquiry under clause (b) of Article 311(2)/Rule 37(b) of the CISF Rules. In the third case reported, certain Railway servants who were either dismissed or removed from service under Rule 14 of the Railway Servants Rules read with clause (b) of the second proviso to Article 311(2) for participating in an illegal strike. In the fourth case, the petitioners belonging to Madhya Pradesh Police and the Special Armed Forces indulged in violence demonstrating security risk. They were dismissed from service by applying clause c of second proviso. It was held in all the above cases in the majority judgement that the punishment imposed by the disciplinary authority was proper and justified. It has been further held that the condition precedent in the application of clause (b) of second proviso is the satisfaction of the disciplinary authority "that it is not reasonably practicable to hold" the enquiry contemplated by Article 311(2). Whether it was practicable to hold the enquiry or not must be judged in the context whether it was reasonable to practicably to do so. It is not totally or absolutely impracticable which is required by clause (b). What is requisite is

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that the holding of the enquiry is not practicable in the opinion of a reasonable man taking a reasonable view of the prevailing situation. The reasonable practicability of holding an enquiry is a manner of assesment to be made by the disciplinary authority. However, the disciplinary authority is not expected to dispense with the disciplinary enquiry lightly or arbitrarily or out of ulterior motives or merely in order to avoid to holding of enquiry or because the departmental case against the Government servant is weak.

A similar point case to be considered in the case of Satyavir (supra). In that case Satyavir and others, petitioners in the Writ Petition before the Delhi High Court were the employees of the Research and Analysis Wing (RAW) of the Cabinet Secretariat, Government of India. The employees when going from one floor to another in the new building where the office of the RAW was shifted, had to show their identity cards. This was resented by the employees and they demanded the withdrawal of the regulation and they demanded that the identification check should be made only at the time of entering the building. There was a protest. A number of staff members forced their entry into room of Director (CIS) and forced him as also the Assistant Director and Security Field Officer who were in the room to stand in the corner and did not allow them to move from the spot but kept them as hostages. The appellants who had taken

part in the disturbance were dismissed from service without holding any enquiry by applying to them Article 311(2) Second proviso C1(b) read with Rule 19 of the Rules. The Writ Petition was dismissed by the High Court and the Hon'ble Supreme Court held that Article 311(2) Second proviso clause (b) has been rightly applied and upheld the orders of dismissal passed against the appellants petitioners of that case. The reasons in that case were that the crucial and material evidence against the appellants will not be available in an enquiry because witnesses who could give such evidence are intimidated and would not come forward and the only evidence which would be available would only be peripheral and cannot relate to all the charges and that, therefore, leading only such evidence may be assailed in a court of law as being a mere farce of an enquiry and a deliberate attempt to keep back material witnesses, disciplinary authority would be justified in coming to the conclusion that an inquiry is not reasonably practicable.

The case of the applicant, when viewed in the circumstances of the case, it is clear that holding of further enquiry is not practicable at all. The witnesses of torture can not be procured and moreover a criminal trial would take its own time in coming to a conclusion. Such a person does not warrant to be retained in service and allowed to continue to work in the police force.

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In view of the above facts and circumstances, we do not find any force in the prayer of the applicant in quashing the impugned order and we therefore do not interfere with the same. The application is dismissed as devoid of merits. *Cos 5 on facts.*

*N.K.V.*

(N.K. VERMA) 30.7.1913  
MEMBER (A)

*J.P.S.*

(J.P. SHARMA)  
MEMBER (J)

*30.7.25*