

(11)

16.4.93

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

Date:

O.A.1282/92

Rajbir Singh .. Applicant

Vs.

Union of India and others.. Respondents

Mr.Shankar Raju .. Counsel for applicant

Mrs.Anjana Goshin .. Counsel for respondents

CORAM

Hon'ble Mr.S.P.Mukerji, Vice Chairman
and

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

Whether to be referred to the Reporter?

Whether reporters of the local papers may be
permitted to see the judgment?

O R D E R

(Hon'ble Mr.S.P.Mukerji, Vice Chairman)

In this application dated 9.5.92 the applicant a dismissed Constable of the Delhi Police has challenged the impugned order dated 30.4.92 at Annexure-I removing him from service under the proviso to Article 311(2)(b) of the Constitution, without holding an enquiry and has prayed that the respondents be directed to reinstate him in service with all consequential benefits.

2. According to the applicant while he was posted at Police Assistance Booth on 29.1.92 it was alleged that he had misbehaved with a woman and slapped her. She lodged a report on the same day. One Sub-Inspector investigated the report, according to which the aforesaid woman was medically examined and her

statements were recorded and nothing incriminating against the applicant was found. No criminal case was also registered against the applicant. The disciplinary authority referred the matter to the Vigilance Unit but the report of the Vigilance Officer was not made available to the applicant. The disciplinary authority after going through the said enquiry report of the Vigilance Inspector found that the Enquiry was not conducted in a professional manner and came to his own personal conclusion that the aforesaid woman was mentally unsound was raped by the applicant and another constable. Being firmly of the opinion that no one shall ^{to depose} forthcome/ against the Police Constables, he passed the impugned order without any enquiry under the Proviso to Article 311(2)(b) of the Constitution.

3. The applicant has taken the stand that the enquiry report submitted by the Sub-Inspector and the Vigilance Inspector indicate that there was no sexual exploitation of the woman but the disciplinary authority on his own personal presumption came to the conclusion that the woman had been raped by the applicant. He also came to the conclusion without any basis that it is not possible to conduct a regular disciplinary enquiry or criminal proceedings against the applicant as no one will come forward to give evidence against the applicant who is a Police Constable. He has referred to a number of rulings of the Tribunal and the Supreme Court to argue that the enquiry cannot be dispensed with by taking recourse to the Proviso to Article 311(2)(b) arbitrarily and without recording reasons or merely because witnesses may not be available.

4. In the reply affidavit the respondents had stated that the disciplinary authority dispensed with the enquiry because of the special circumstances as justice had to be done to a mentally unsound woman who had been raped by a Policeman on duty.

5. We have heard the arguments of the learned counsel for both the parties and gone through the documents carefully. The disciplinary authority dispensed with the enquiry with the following observations as indicated in the impugned order:

'I have gone through the enquiry report of the Insp. vig. who has done nothing to go in depth of the matter as was expected from him. He should have conducted enquiry in a professional manner. The facts were very clear but not coming out in open that his where he had been asked to act. I personally had been briefed by the SHO and also from their appearance in my office had come to know the facts that the lady who was mentally unsound had been raped by the two constables Rajbir Singh, 1358/NW/ and Raghubir Singh, 561/NW and the DDA Chowkidar taking benefit of her unsound mind. Since the default was on the part of Constables public men had come and disclosed to the SHO of the facts but were not ready to give anything in writing. The things were not manipulated by the Constables (defaulters) and the statements recorded (of the woman) only make mention of misbehaviour. Certainly, I have no doubt in my mind that these two Constables are guilty of raping a woman while on duty. It is a crime, as well as inhuman that a mental patient has been raped. I am sure that any case registered in this matter will not do any justice because no one shall be forthcoming to depose against the guilty who are policemen. We in the police are expected to protect the poor, helpless and woman. If we as Policemen start exploiting them then whom the people will look forward for help. I, therefore, am of the opinion that the guilty Consts. Rajbir Singh, 1358/NW and Raghubir Singh 561/NW are unfit to be retained in the police organisation & must be removed at once. Since it is not possible to undertake regular exercise of DE or Criminal proceedings against them due to special circumstances, I hereby order that Consts. Rajbir Singh, 1358/NW and Raghubir Singh, 561/NW be removed from service with immediate effect i.e., from the date of issue of this order under the Provision of Article 311(2)(b) of the Constitution of India.'

(14)

6. The above will show that the disciplinary authority himself seems to have dispensed with the enquiry not so much because the enquiry was not possible but because he wanted to make an example ^{a punishing} of ^a Police Constable ^h raping a mentally unsound woman while on duty. He came to the conclusion that the woman had been raped by his personal impression that she was of unsound mind and from the briefing he had got from the SHO and also from the appearance of the applicant. He also came to ^{the} unilateral conclusion that no witness will be forthcoming against the Police Constable. No medical report about the woman having been raped is available nor could be produced by the respondents despite opportunities given to them.

7. In the judgment dated 23.7.92 in O.A. 346/92 (Ram Mehar Vs. Commissioner of Police and another) a Division Bench of this Tribunal in regard to dispensing with the enquiry under the clause (b) to Second Proviso to Article 311(2) observed as follows:

"Further, in accordance with clause (3) of Article 311, the decision of the competent authority in the matter that it is reasonably practicable or not to hold such enquiry, as is referred to in clause (2) shall be final, but the provisions in clause (3) of Article 311 will not debar the court of law to look into whether the reasons for dispensing with the enquiry are based on independent material. In the material placed on record, we do not find that any effort or attempt was made to identify the witnesses and to procure their attendance for purposes of any departmental enquiry. The mere fact that a serious complaint has been made by a member of public against a police officer alleging intimidation etc. does not mean that the complaint should be accepted at the face value even without giving an opportunity to the officer complained against, to show cause against such a complaint."

(15)

"Even in the presence of Article 311(3) of the Constitution which provides that if any question arises whether it is reasonably practicable to give to a person an opportunity of showing cause under clause (2), the decision thereon of the authority empowered to dismiss him, shall be final, the Tribunal in the aforesaid two O.As held that the finality given to its decision is not binding upon the Court and the Court will consider the situation which made the authority to come to the conclusion that it was not reasonably practicable to hold the enquiry. The Tribunal referred to a few judgments of the Hon'ble Supreme Court also, including a very recent case of Chief Security Officer Vs. S.B. Das (1991(1) SCALE 47) in which the Hon'ble Supreme Court observed that the personal humiliation and insults likely to be suffered by the witnesses or even when their family members might become targets of acts of violence, are not good grounds for dispensing with the enquiry. Similarly in Jaswant Singh Vs. State of Punjab and Others (1990(2) SCALE 1152), which was also also referred to before the Tribunal in the cited cases, the Hon'ble Supreme Court observed that the subjective satisfaction recorded in the impugned order should be fortified by independent material to justify dispensing with the enquiry envisaged by Article 311(2) of the Constitution and that it cannot be rested solely on the ipso dixit of the concerned authority. Discussing the above authorities, amongst others, in its judgment dated 10.4.1992, a Bench of this Tribunal quashed the impugned order of dismissal in those O.As and directed that the applicants shall be reinstated as Constables with full back wages and that the respondents will be at liberty to hold departmental inquiry against those applicants under the relevant rules and in accordance with law."

8. Another Division Bench of the Tribunal in Shri Bishamber Singh Vs. Lt. Governor Delhi and others, 1992(2) SLJ CAT 113 observed as follows:

"2. The impugned order dated 3.12.1990 refers to FIR No. 379 dated 2.11.1989 under Section 376-B, 506/34 IPC, P.S.R.K. Puram, in which the applicant along with two others were the accused. The allegation against the accused was that they committed rape with one Smt. Nirmala Gupta on 1.11.89 in the Police Station Building. The disciplinary authority

stated that the circumstances of the case were such that holding an enquiry against them was 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 the witnesses who will come forward to give evidence against them in the D.E. are common tactics adopted by the policemen."

3. He have gone through the records of the case and have heard the learned counsel for both the parties. In our opinion, the reasons given for dispensing with the enquiry and invoking the provisions of Article 311(2) (b) of the Constitution are totally insufficient in law. Our view gains support from the recent decisions of the Supreme Court in Jaswant Singh Vs. State of Punjab and others, 1991(2) SCALE 1152 and Chief Security Officer and others Vs. Singesan Rabi Das, 1991(1) SCALE 47."

9. In the light of the aforesaid rulings and following the dictum laid down by the Hon'ble Supreme Court in Tulsi Ram Patel's case, AIR 1985 SC 1416, we allow this application to the extent of directing that the applicant should be allowed the remedy of filing an appeal against the impugned order and any delay caused in filing such an appeal shall also stand condoned. The applicant may prefer an appeal to the Commissioner of Police, Delhi within a period of 15 days from the date of communication of this order and thereafter the appellate authority (Commissioner of Police) should dispose of the appeal by a speaking order within three months from the date of receipt of the appeal after giving him of a personal hearing. The applicant will be at liberty to seek legal remedies, in accordance with law, and if so advised, if he feels aggrieved by the outcome of the appeal. There is no order as to costs.

J. P. Sharma
(J.P. Sharma)
J.M.

S. P. Mukerji
(S.P. Mukerji)
V.C.

16.4.93