

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

6

O.A.1757/92

Date of decision: 7.1.93

Jai Singh

Applicant.

versus

Union of India &
others

Respondents.

Sh.Shankar Raju

Counsel for the applicant.

Ms.Ashoka Jain

Counsel for the
respondents.

CORAM:

The Hon'ble Sh.Justice Ram Pal Singh, Vice
Chairman(J).

The Hon'ble Sh.I.P.Gupta, Member(A)

J U D G E M E N T (Oral)

The allegations against the applicant are that the applicant, who was a Constable in Delhi Police, was involved in a kidnapping for ransom. Under F.I.R.126/92 on 7.6.92 a case against him was registered under Section 365 of the Indian Penal Code in Sabzi Mandi Police Station. A case under Section 25/54 and 59 of the Arms Act was also registered against the applicant in Police Station Chawni District, Haryana. Hence, a departmental enquiry was proposed. The

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disciplinary authority passed impugned order that the holding of an enquiry, in the facts and circumstances of the case, is not possible ~~because~~ because there is apprehension from the side of the applicant of the pressure on the witnesses, who may turn hostile. Consequently the disciplinary authority proceeded under Article 311(2) proviso 2(b) of the Constitution of India. Thus after dispensing with the departmental enquiry the punishment of removal from service was imposed upon the applicant. This extraordinary constitutional provision has been provided where it is not reasonably possible to hold a departmental enquiry. The law on this point has been settled by the Apex Court in the case of Tulsi Ram (AIR 1985 S.C.p.1416) wherein thier lordships have observed:

"102. In this connection, it must be remembered that a servant is not wholly without any opportunity. Rules made under the proviso to Article 309 or under Acts referable to that Article generally provide for a right of appeal except in those cases where the order of dismissal, removal or reduction in rank is passed by the President or the

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Governor of a State because they being the highest Constitutional functionaries, there can be no higher authority to which an appeal can lie from an order passed by one of them. Thus where the second proviso applies, though there is no proper opportunity to a government servant to defend himself against the charges made against him, he has the opportunity to show in an appeal filed by him that the charges made against him are not true. This would be a sufficient compliance with the requirements of natural justice...."


3. Thus if the normal enquiry cannot be held and the disciplinary authority decides to proceed under article 311(2) proviso 2(b) of the Constitution of India then it is imperative that one chance/opportunity be provided to the applicant as a measure of observance of principles of natural justice. We, therefore, place reliance upon *Tulsi Ram (supra)* and direct that the applicant shall file an appeal within a period of 15 days from the date of communication of this judgement before the higher authority than the disciplinary authority who has passed the impugned order, annexure A-2

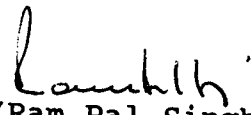
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(Dy. Commissioner of Police 5th Bn. DAP, Delhi).
The appeal shall be filed before the higher authority and they shall decide it within a period of three months after the appeal has been filed. The applicant may invoke the jurisdiction of this Tribunal, if he is aggrieved by the orders of the higher authority, under Section 19 of the Administrative Tribunals Act. With these directions the appeal is finally disposed of.


(I.P. Gupta)
Member (A)


(Ram Pal Singh)
Vice Chairman (J)