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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

9

O.A. No. 1758 of 1992 Decided on: 25.3.98

Harinder Singh & Ors. APPLICANT(S)
(By Advocate: Shri Shankar Raju)

VERSUS

Commissioner of Police & Anr. RESPONDENTS
(By Advocate: Shri Rajinder Pandita)

CORAM

HON'BLE MR. S.R. ADIGE, VICE CHAIRMAN (A)
HON'BLE DR. A. VEDAVALLI, MEMBER (J)

1. To be referred to the Reporter or not? YES
2. Whether to be circulated to other Benches of the Tribunal? NO.

S.R. Adige
(S.R. ADIGE)
VICE CHAIRMAN (A)

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A. No. 1758 of 1992

New Delhi, dated the 25-8-98 1998

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HON'BLE MR. S.R. ADIGE, VICE CHAIRMAN (A)
HON'BLE DR. A. VEDAVALLI, MEMBER (J)

1. Harminder Singh,
S/o Shri Malkiat Singh,
R/o House No.1/2235, Ram Nagar,
Ghandoli Road,
Shahdara, Delhi.
2. Sube Singh
S/o Shri Jage Ram,
R/o House No. 1148/W-27, West Ram Nagar,
Sonapat (Haryana)
3. Phool Singh,
S/o Shri Nathi Singh,
R/o Vill. & P.O. Gauaura,
Dist. Alwar,
Rajasthan. APPLICANTS
(By Advocate: Shri Shankar Raju)

VERSUS

1. Commissioner of Police, Delhi
Police Headquarters,
M.S.O. Building, I.P. Estate,
New Delhi.
2. Dy. Commissioner of Police,
New Delhi Dist., Parliament St.,
New Delhi. RESPONDENTS
(By Advocate: Shri Rajinder Pandita)

JUDGMENT

BY HON'BLE MR. S.R. ADIGE, VICE CHAIRMAN (A)

Applicants impugn respondents' order dated 8.5.92 (Ann. A-1) dismissing them from service and pray that they be deemed to be in service from the date of their dismissal with pay and allowances as admissible to them.

2. A perusal of the impugned order dated 8.5.92 reveals that a written complaint was received from many residents of Nangla Machi, Dev Nagar, Pragati Maidan, Ring Road, New Delhi through one Shri Raghubir Singh Kapoor against applicant No.2 ASI

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Sube Singh that he had falsely implicated one Nisar Ahmed in a criminal case at the instigation of one Salaudin. It was further alleged that when ASI Sube Singh did not find anything illegal against Nisar Ahmed, he set the latter's Jhuggi on fire and later on took away Nisar Ahmed although nothing was found from him. It is alleged that ASI Sube Singh accepted Rs.2,000/- from Smt. Shakila Begum W/o Nisar Ahmed in the presence of Prabhu Dayal and others on the assurance that he would release her husband and the money was arranged by her after mortgaging her ornaments.

3. The impugned order further states that the aforesaid complaint was enquired into by Shri R.K. Sharma, ACP/HQ (Vig.) which revealed that on 7.7.91 ASI Sube Singh along with other policemen conducted a search of the house of the said Nisar Ahmed, during the course of which a lighting Dibbi containing kerosene oil fall on the ground, and as a result fire was broken out in the Jhuggi. It is further stated that thereupon ASI Sube Singh along with other neighbours of the locality extinguished the fire. Upon hearing the news of the fire while returning to his Jhuggi, Nisar Ahmed was whisked away by ASI Sube Singh to Parliament Street, P.S. and kept in illegal detention there. After hearing the said news, the neighbours including Prabhu Dayal and others were said to have come to Parliament Street, P.S. and contacted ASI Sube Singh who demanded Rs.10,000/- from them for Nisar Ahmed's release but due to late hours they could

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not arrange the same. Next day i.e. 8.7.91 Smt. Shakila Begum W/o Nisam Ahmed managed to procure Rs.2,000/- after mortgaging her ornaments with one Shri Ramesh, a goldsmith and handed over the same to ASI Sube Singh in the presence of S/Shri Allah Bux, Bulaki and Prabhu Dayal and ASI Sube Singh is said to have promised to release Nisar Ahmed, but he did not do so. It is stated that on 10.7.91 ASI Sube Singh made a concocted story that he alongwith Applicants No.1 & 3 while on patrolling duty received a secret information at the spot that one person would come from Yamuna side and go towards Nangla Machi with illegal revolver and at 4.15 p.m. Nisar Ahmed reached near Pragati Maidan as per secret information and applicants apprehended him with a country made revolver and two rounds and accordingly a case under FIR No. 341/91 u/s 25/54/59 Arms Act was registered against him at Tilak Marg, P.S. and was put in the lock-up of Parliament Street P.S., but Siya Ram and Puran the two eye witnesses cited by the police in the said case against Nisar Ahmed clearly contradicted the said story of ASI Sube Singh.

4. The impugned order further goes on to state that in fact no such raid was conducted by ASI Sube Singh and others on 10.7.91 at 4.15 p.m. near Pragati Maidan and the entire story that he

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along with other two applicants had received secret information regarding the activities of Nisar Ahmed was concocted.

5. The impugned order goes on to state that during the enquiry it was found that the allegations against ASI Sube Singh for accepting Rs.2,000/- and against the other two applicants for falsely implicating Nisar Ahmed in the aforesaid criminal case were fully substantiated except the allegation that ASI Sube Singh had put the Jhuggi on fire.

6. The impugned order further states that the aforesaid acts of three applicants showed that they were desperate characters and their continuance in Police service was hazardous to public interest. Police was the protector of the citizens and the indulgence of Police officers in such offences destroy the faith of the people in the system. They had acted in a manner of unbecoming of Police officers and their act was highly prejudicial to the safety of the citizens.

7. The impugned order further reads that after assessing the above mentioned circumstances and considering all relevant factors the Disciplinary Authority had reached to the conclusion that it would not be reasonably practicable to hold a regular departmental enquiry because it was not

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uncommon in such cases to find the complainants and witnesses turning hostile due to fear of reprisals and it required a lot of courage to depose against an ordinary criminal and much more guts had to be shown to depose against criminal policemen and it would be too much to expect from ordinary citizens to show this much of courage. Accordingly keeping in view of the overall facts and circumstances of the case the Disciplinary Authority dismissed the three applicants from service by invoking Article 311(2)(b) of the Constitution.

8. Firstly, it has been contended that since the complaint against applicants was totally false, Respondents were not justified in dismissing them illegally and arbitrarily through exercise of power under Art. 311(2)(b) of the Constitution. Secondly, it is contended that Respondents have themselves clearly admitted in the impugned order itself that a preliminary enquiry was conducted by Shri R.K. Sharma, ACP/HQ (Vig.) and he had recorded the statements of the witnesses therein, and if the witnesses could depose against them in the preliminary enquiry, they could definitely depose against them during the regular departmental enquiry, and respondents had not recorded any reasons for dispensing with the regular departmental enquiry, and hence it was absolutely baseless to say that applicants were

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desperate characters and witnesses were unlikely to come forward to testify their statement was totally false and baseless. Thirdly, it is contended that applicants were alleged to have committed a cognizable offence with the public in connection with their official relations with the public and as such respondents were not competent to pass such order dismissing them from service by invoking the power under Art. 311(2)(b) with a view to short circuiting the regular departmental enquiry. Fourthly it has been emphasised that even if there was anything against applicants, a regular departmental enquiry as laid down under Rule 16 of the Delhi Police (P&A) Rules, 1980 was mandatory before awarding the extreme penalty of dismissal from service and the exercise under Article 311(2)(b) of the Constitution in the instant case was arbitrary, malafide, unbridled and uncanalised use of discretionary powers. Fifthly it has been urged that no such situation was arisen which rendered holding of enquiry not reasonably practicable, nor had the Disciplinary Authority recorded any reason in support of his subjective satisfaction in terms of Article 311(2)(b).

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9. Respondents in their reply have contested the O.A. They state that an independent enquiry was made by Shri R.K. Sharma which disclosed that the story of the case under FIR 341/91, u/s 25/54/59 Arms Act against Nisar Ahmed was concocted and was registered against an innocent poor person, to provide defence against their illegal action. It is stated that applicants had detained Nisar Ahmed in the police station, planted a false case and accepted Rs.2,000/- from his wife as illegal gratification. It is further contended that the enquiry conducted by Shri R.K.Sharma was complete and a detailed one, in which he examined more than 25 persons of the locality and had given his report on the basis of statements of these people, and there was no need to await further retention of applicants in the dept. and prolonging the matter by way of conducting the the departmental enquiry, in which considerable time was required to complete, and witnesses would resile from their statements due to the fear of police personnel and particularly as they happened to be very poor.

10. We have heard Shri Shankar Raju for applicants and Shri Rajinder Pandita for respondents.

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11. Shri Shankar Raju has asserted that the exercise of power under Article 311(2)(b) in the instant case was with a view to short-circuiting the regular departmental enquiry was not legally sustainable. Reliance has been placed on the judgments in Ekrajul Khan vs. UOI & Ors. (1990) 13 ATC 456 and the judgment dated 10.4.92 in O.A. No.2856/91 Naresh Kumar & Anr. vs. UOI & Ors. and connected case (copy on record).

12. While the impugned order was no doubt passed by invoking the power under Art. 311(2)(b) of the Constitution, the order of dismissal was actually passed under Section 22 Delhi Police Act, which empowers the competent authority to inflict on any police officer of subordinate rank, any of the punishments listed therein, including the punishment of dismissal from service. Merely because mention of Section 22 Delhi Police Act has not been made in the impugned order dated 8.5.92 by itself does not make the impugned order bad in law. The impugned order is appealable under Rule 23 Delhi Police (P&A) Rules, but nothing has been shown to us to indicate that an appeal has been filed by any of the applicants. In UOI Vs. Tulsi Ram Patel 1985 (3) SCC 398 the Hon'ble Supreme Court has held

" A Govt. servant is not wholly without any opportunity. Rules made under Proviso to Article 309 or under referable to that Article generally provide for a right of appeal except in those cases where the order of dismissal, removal or



to come forward to depose against them, without



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reduction in rank is passed by the President or the Governor of a State. Thus, where the second proviso applies, though there is no prior opportunity to a Govt. servant to defend himself against the charges 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."

13. In Satyavir Singh & Ors. Vs. UOI & Ors. (1985) 4 SCC 257 the Hon'ble Supreme Court has observed

" The majority judgment in Tulsi Ram Patel's case (Supra) has however conferred upon the Civil servants who have been dismissed, or removed from service or reduced in rank by applying the second proviso to Art. 311(2) or an analogous service rule the right to a full and complete inquiry in an appeal or revision (emphasis supplied) unless a situation envisaged by the second proviso is prevailing at the time of the hearing of the appeal or revision petition. Even in such a case under the majority judgment the hearing of the appeal or revision petition is to be postponed for a reasonable length of time for the situation to become normal."

14. In E.Khan's Case (Supra) relied upon by Shri Shankar Raju himself, while intervening in the matter the Tribunal held that what the appellate authority was expected to do was to make a sincere and honest attempt to hold an enquiry.

15. In the instant case, merely because the Disciplinary Authority in the impugned order stated that applicants were desperate characters whose continuance in police service was hazardous to the public, and that witnesses were not likely to come forward to depose against them, without

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any effort being made to summon the witnesses, or even that the inquiry conducted by Shri R.K. Sharma, ACP/HQ(Vig.) was an exhaustive one and considerable time was required to complete a regular D.E., was not sufficient justification to dispense with holding a regular D.E. and resorting to the powers available under Art. 311(2)(b) of the Constitution.

16. However, that by itself would not warrant quashing of the impugned order dated 9.5.92 and reinstating applicants at this stage. Noting the aforesaid judgment cited above, which contemplate holding of an enquiry even at appellate stage we dispose of this O.A. with a direction that in the event applicants file an appeal against the impugned order dated 8.5.92 within two months from the date of receipt of this judgment, the delay in filing the same shall be condoned and the appellate authority will make a sincere and honest attempt to hold an enquiry in the manner prescribed by the rules, after affording full opportunity to the appellants to show that the

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charges against them are not true, and thereafter dispose of those appeals, in accordance with rules within four months from the date of their being filed.

17. This O.A. is disposed of in terms of Para 16 above. No costs.

A. Vedavalli
(DR. A. VEDAVALLI)
MEMBER (J)

S.R. Adige
(S.R. ADIGE)
VICE CHAIRMAN (A)

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