

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

Original Application No.3062 of 1992

New Delhi, this the *6th* day of February, 1998.

Hon'ble Dr. Jose P. Verghese, Vice Chairman(J)
Hon'ble Mr. N. Sahu, Member(Admnv)

Shri Rajbir Singh (Ex-Constable
No.240/P) S/o Shri Kali Ram, R/o Vill &
P.O.Issapur, PS: Nazafgarh, New Delhi . - APPLICANT

(By Advocate - Shri B.S.Charya)

Versus

1. The Commissioner of Police, Delhi Police, Police Hqrs, M.S.O. Building, I.P.Estate, New Delhi.
2. The Dy.Commissioner of Police(IGI), Delhi Police, IGI Airport, New Delhi.
3. Union of India, Ministry of Home Affairs, Government of India, New Delhi (through its Secretary)

- RESPONDENTS

(By Advocate Shri Amresh Mathur)

O R D E R

By Mr. N. Sahu, Member(Admnv) -

The relief prayed for in this Original Application is directed against the order of dismissal dated 25.11.1991. Respondent no.2 earlier passed an order of dismissal dated 14.1.1991 without awaiting the final outcome of the trial in the Criminal Court and only on the basis of the order of penalty imposed by the Deputy Collector of Customs. An appeal filed against the said order of dismissal to the Additional Commissioner of Police was allowed and the applicant was reinstated in service. Departmental proceedings were instituted afresh and the impugned order was passed.

2. It is contended by the applicant that as per the provisions of Rule 11 and 12 of Delhi Police (Punishment and Appeal) Rules, 1980, the respondents have to await the final outcome of the criminal case before passing a final order under the departmental proceedings.

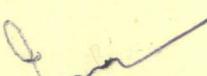
3. After notice, the respondents have stated that there was sufficient evidence on record to hold the applicant guilty. On 24.3.1988 the Customs Preventive Staff intercepted Shri Raj Kumar Bansal found carrying foreign currency -- U.S. dollars, Sterling Pounds along with Indian currency. Their aggregate value in Indian rupees was Rs. 4,55,437.50p. The suspect Shri Raj Kumar Bansal disclosed that these packets were handed over to him in the toilet in the lounge after security check by the applicant. During enquiry the applicant was identified by Shri Raj Kumar Bansal. On the same day he was arrested and was remanded to judicial custody. On 11.8.1988 he was detained under COFEPOSA Act, 1974 by the Delhi Administration. A penalty of Rs. 15,000/- was imposed on him under Section 112 of the Customs Act, by the Deputy Collector of Customs. He was eventually dismissed after receiving a wrong information that no appeal was filed. A Custom Court was not considered as a regular Court and, therefore, his appeal was accepted and he was reinstated in service. On the ground that the activities of the applicant were highly questionable, dangerous and sensitive; and as it was not "either feasible or expedient to call the witnesses who almost are out of Delhi and some of



them left their job", the Deputy Commissioner of Police, respondent no. 2 ^{again &} dismissed him from service without an enquiry. The only evidence relied upon was the order of the Deputy Collector of Customs and no further enquiry was conducted.

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4. The learned counsel for the respondents drew our attention to the interpretation given to the words "it is not reasonable or practicable to hold such enquiry" used in Article 311(ii)(b) of the Constitution of India, in the case of **Union of India Vs. Tulsiram Patel** (1985) 3 SCC 398 = 1985 SCC(L&S)672. The observations of the Hon'ble Supreme Court were that where the accused along with his associates threatens or intimidates witnesses who are going to give evidence against him with fear of reprisal, then that would constitute a case where it would not be reasonably practicable to hold an enquiry. In that very case, their Lordships held that the Court can examine the reasons recorded in the exercise of the power where an officer was removed from service under Article 311(ii) by applying clause (b). If the reasons are not irrelevant, the Court cannot sit in judgment. Their Lordships also directed that "the Court must put itself in the place of disciplinary authority to consider what in the then prevailing situation a reasonable man acting in a reasonable manner would have done".



5. We have given our anxious consideration to this case and heard both the counsel. The reasons recorded were not shown to us at all. We have no other option except to hold that the reasons as recorded in the order itself would be taken by us as the reasons recorded. In the order it is briefly mentioned as under -

"It is not feasible/expedient to call the witnesses, who almost are out of Delhi and some of them left their job, all the more if Mr. Raj Kumar and his associates are examined, in my view both will favour the Constable. But, it is abundantly clear that the charges levelled against the Const. by the Customs authority have been substantiated as evident in the order delivered by the Dy. Collector, Customs (Adj.) IGI, Airport vide his office order dated 6.3.90."

6. The persons who identified the applicant are Shri Raj Kumar Bansal, Shri Nathi Lal Gupta, and Shri Anil Kumar Bansal as the person who handed over the currency packets. We are unable to appreciate what difficulty there was for summoning these witnesses who are in India. The statement that if Shri Raj Kumar Bansal and his associates are summoned to give evidence, they would depose in favour of the applicant is not a valid ground for not holding an enquiry. It is not a case where a finding is recorded that the witnesses would be intimidated; that they would be under a threat of reprisal if they ever deposed against the applicant. We are not given a single reason as to how or why it is not reasonably practicable for the disciplinary authority to conduct an enquiry. All the three persons are Delhi residents who are passport holders having specific addresses. There can be no difficulty in

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summoning them. Secondly, there is no reason as to why the impugned order relied on the order of the Dy. Collector of Customs which terminated the applicant's services. As the customs authority was not considered as a Court the proceedings were not considered as judicial proceedings. In order to facilitate an objective enquiry, the present disciplinary authority has been entrusted with the task. His order is totally vitiated because he relied on the very order of the custom authority which was considered to be bad in law by the respondents themselves. We have not been shown any material to come to a reasonable conclusion that it was not reasonably practicable to hold an enquiry as contemplated by clause (ii) of Article 311 of the Constitution.

7. We, therefore, set aside the impugned order dated 25.11.1991 (Annexure -P-1) and direct the respondents to reinstate the applicant into service immediately. We, however, allow the respondents the liberty to conduct the enquiry afresh, if so advised after duly and properly summoning all witnesses material to the case. It is only after diligent efforts to summon and examine witnesses in accordance with law that any inference can be drawn. It is only when they find that the witnesses are not traceable or no longer available or evade the summons or when they impede the enquiry by threats and intimidation, that the competent authority can record the reasons which must transparently indicate that it would not be possible to hold an enquiry. Merely because there

is an apprehension that material witnesses might depose in favour of the applicant cannot be a valid ground for not conducting the enquiry. The respondents should decide whether to conduct an enquiry or not within six weeks from the date of receipt of a copy of this order. If they decide to conduct the enquiry, the enquiry should be completed within six months from that date. If the disciplinary authority comes to the conclusion that they would not conduct any further enquiry or if after the conclusion of the enquiry they find no material to punish the applicant then they shall decide in accordance with the rules corresponding to FR 54 as to whether and, if so, to what extent they would consider paying the back wages from the date of dismissal to date of reinstatement. Such order shall be passed and communicated to the applicant within four weeks of taking a decision on either count. The O.A. is accordingly disposed of. No costs.

N.Sahu
(N.Sahu)
Member (Admnv)

rkv.


(Dr. Jose P. Verghese)
Vice Chairman (J)