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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL NEW DELHI

O.A. No. 625/92
T.A. No.

199

DATE OF DECISION 20-3-1997

Shri Krishan Kumar Petitioner

Sh. E.M. Sudarsana Natchippan Advocate for the Petitioner(s)

Versus

Delhi Admn. through Chief Respondent

Secretary & Ors.

Shri Surat Singh Advocate for the Respondent(s)

CORAM

The Hon'ble Mr.s Lakshmi Swaminathan, Member (J)

The Hon'ble Mr. R.K. Shouja, Member (A)

1. To be referred to the Reporter or not? *yes*
2. Whether it needs to be circulated to other Benches of the Tribunal? *X*

Lakshmi Swaminathan
(Smt. Lakshmi Swaminathan)

Member (J)

CENTRAL ADMINISTRATIVE TRIBUNAL: PRINCIPAL BENCH
NEW DELHI

OA No. 625/92

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New Delhi, this 20th day of March, 1997.

Hon'ble Smt. Lakshmi Swaminathan, Member (J)

Hon'ble Shri R.K. Ahooja, Member (A)

Shri Krishan Kumar
Ex. Const. No. 1290
s/o Shri Sahb Singh
r/o Village & P.O. Dichan Kalan,
P.S. Najafgarh, West District,
Delhi.

... Applicant
(By Advocate Sh. E.M. Sudarsana Natchippan)

Vs.

1. Delhi Administration
through its Chief Secretary,
Old Secretary, Delhi.
2. The Commissioner of Police,
Police Headquarters,
I.P. Estate, New Delhi. 2

... Respondents

(By Advocate Shri Surat Singh)

O R D E R (ORAL)

(Hon'ble Smt. Lakshmi Swaminathan, Member (J))

This application has been filed under Section 19 of the Administrative Tribunals Act, 1985 by the applicant being aggrieved by the order of dismissal dated 08.01.1992 passed by the respondents in exercise of the powers conferred by proviso (b) to Article 311(2) of the Constitution by dispensing with the disciplinary enquiry.

2. In the impugned dismissal order, it is mentioned that "the circumstances of the case ^{are} such that holding of an enquiry against the applicant is not reasonably practical because it is not uncommon in such cases to find the complainants and witnesses turning hostile due to fear of reprisals. It requires a lot of courage to be shown to depose against a criminal in the robes of a policeman, who may lose his job on their statements. It will be too much to expect ordinary citizens to show this much of courage."

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3. The learned counsel for the applicant has correctly relied on the judgments of the Hon'ble Supreme Court in Union of India v Tulsiram Patel (SLJ (1985) (2) SC P-145, A.K. Kaul & Ors v. UOI & Others (1995(4) SCC p-73) and Chandigarh Admn. UT Chandigarh v. Ajay Manchanda (1996(3) SCC P-753). The learned counsel submits that the reasons disclosed by the respondents in the impugned order for dispensing with the enquiry are not sufficient to show that it was not reasonably practical to hold an enquiry as provided under proviso (b) of Article 311(2) of the Constitution.

4. We have seen the reply filed by the respondents and have also heard the learned counsel for the respondents. The learned counsel for the respondents submits that this application is not maintainable as the applicant had not exhausted the available remedies as he had not filed any appeal against the impugned order before filing the Original Application in the Tribunal. This has been admitted by the learned counsel for the applicant. However, he submits that during the pendency of this application, the applicant had filed an appeal on 3.6.1994 but the same has not been disposed of. We do not find much force in the argument advanced by the learned counsel for the respondents that this application should, therefore, be dismissed on this ground alone.

5. The reasons given in the impugned order for dispensing with the enquiry can hardly be held to be sufficient, in the light of the judgments of the Hon'ble Supreme Court in Tulsiram Patel's case and Kaul's case (Supra). The reason given in the impugned order that the applicant being a Police Constable, it would require a lot of courage for the witnesses to depose against him in the criminal case, as the other person may lose his job on their statements is hardly noteworthy. Further, it is mentioned that it is too much to expect ordinary citizens to show this much of courage. This type of reasoning by the respon-

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dents is not only unsatisfactory but to be deprecated because it shows that the Police themselves, who are ~~in~~ a disciplined force are unable to maintain discipline or instill any confidence in the law and the citizens, for which they are responsible. If this reasoning is accepted, then we cannot expect any disciplinary enquiry to be conducted in accordance with the provisions of the Delhi Police Act, 1978, and the Rules made thereunder, in the case of any police official and the respondents will take recourse to the short cut method wrongly by resorting to the provisions of proviso (b) to Article 311(2) ^{of the Constitution}. The provisions of the Constitution are not meant to be taken lightly as has been done in this case but have to be resorted to in exceptional cases, and the present case is not one of them. The reasons given in the impugned dismissal order by their very nature have to be rejected.

6. In the facts and circumstances of the case and having regard to the judgements of the Hon'ble Supreme Court in Tulsiram Patel's case and Kaul's case (supra) as well as the observations in State of Punjab v. Dr. Harbans Singh Greasy (JT 1996(5) SC 403), the O.A. is entitled to succeed to the following extent:-

The impugned order dated 8.1.1992 is quashed and the applicant shall be reinstated in service immediately set aside and the matter is remitted to the disciplinary authority to take proper action in the disciplinary proceedings in accordance with law. Pending enquiry the delinquent official shall be deemed to be under suspension. Thereafter the competent authority to pass appropriate orders regarding the consequential benefits, including the intervening period from the date of dismissal to the date of reinstatement.

The O.A. is disposed of as above. No order as to costs.

R. S. Ahuja
(R. S. Ahuja)
Member (A)

Lakshmi Swaminathan
(Smt. Lakshmi Swaminathan)
Member (J)