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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH N/DELHI

O.A. No. 1141/93

New Delhi this the 11th Day of November, 1993

The Hon'ble Mr. N.V. Krishnan, V.C. (A)
The Hon'ble Mr. B.S. Hegde, Member (J)

Raghubir Singh
S/o Sh. Swaroop Singh,
Resident of Village Shahpur
P.S. Nangal Teju, P.S. Bawal,
Distt. Rewari, Haryana

... Applicant

(By Advocate Sh. Shanker Raju)

Versus

1. Delhi Administration
through Addl. Commissioner of Police
(Northern Range)
Police Headquarters, MSO Building,
I.P. Estate, New Delhi.
2. The Deputy Commissioner of Police,
North West District, Ashok Vihar,
Delhi-110052

.... Respondents

(By Advocate Sh. M.K. Giri)

O R D E R (ORAL)

/Hon'ble Sh. N.V. Krishnan, Vice Chairman (A)

The applicant is aggrieved by the annexure A-1 order dated 30-4-92 passed by the Deputy Commissioner of Police (North West District, Delhi) removing the applicant from service without enquiry in exercise the power under clause (b) to the proviso to Article 311(2) of the Constitution of India on the ground that witnesses cannot be expected to depose against the applicant.

2. Appeal was filed by the applicant which has been dismissed by the Annexure A-4 order of the Additional Commissioner of Police dated 30-4-93 (1st respondent)

3. It is contended by the applicant that there was no ground, whatsoever, to resort to clause (b) of the proviso to Article 311(2) and dispense with the enquiry. He draws our attention to the Annexure A-1 impugned order which brings out that the applicant misbehaved with one Smt. Sushila on 29.1.92 in as much as, instead of helping her to find out her way to her house, he raped her and misbehaved with her. Para 3 of the order further alleges that the complainant lady was mentally unsound and had been raped by the applicant along with another constable. The annexure A-1 orders concludes as follows:-

"It is a crime, as well as in-human 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 policeman 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 and 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."

4. Learned counsel for the applicant submits that in appeal it has been held that charge of sexual harrassment has not been established. The appellate authority, however, held that the applicant had slapped the complainant. Relying on the authority of the Supreme Court Judgement in Union of India V/s Tulsi Ram Patel" 1985(2) SLJ SC 1416, the Appellate Authority also held that an enquiry was not possible and that, therefore, the penalty given to the applicant was justified and the appeal was dismissed. The main ground for holding this is the fact that the complainant had been sent back to her residence in Pratapgarh in U.P. and that it was not possible to expect that she will come back to Delhi for departmental enquiry.

5. In reply to a query, Sh. M.K.Giri, learned counsel for the respondents submits that he has no record to establish either that the complainant was of unsound mind or that any medical examination had been conducted to find out whether she was raped or not. He states that the Appellate Authority has concluded in para 3 of his order that the woman had been sent back to her residence in Pratap Garh in U.P. and it was not possible to expect that she will come back to Delhi for departmental enquiry. He submits that this is a sufficient ground to dispense with the departmental enquiry, relying on the decision of Tulsi Ram Patel case.

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6. We are unable to agree. The mere fact that the Complainant resides at some other place at a distance is not an adequate ground to resort to the extraordinary power under proviso (b) to article 311(2) which is a serious matter and deprives an employee of the rights and protection given to him under Article 311(2). The authority has the same powers as a Civil Court to summon witnesses and enforce their attendance, if authorized by the Central Government under section 4 of the Departmental Enquiries (Enforcement of Attendance of witnesses and Production of Documents) Act, 1972.

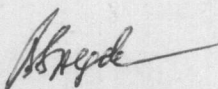
It is also possible, in an extraordinary situation, to examine the complainant at her place of residence, permitting the delinquent also to be present on that date, so that he can also cross examine her. It is for the administration to find out how best the complainant can be examined in such circumstances. That apart, it is also to be emphasized that in a departmental enquiry, decision is rendered on basis of probability rather than on proof beyond reasonable doubt. If there are circumstantial evidence, perhaps, it may not even be necessary to examine the complainant in special circumstances, though we do not wish to decide this issue.

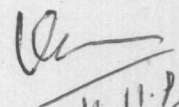
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7. In the circumstances, we are satisfied that this is not a case where the resort to a penalty under proviso clause(b) to Article 311(2) is justified. Accordingly, we quash the impugned Annexure A-1 and Annexure A-4 orders of the Disciplinary and Appellate authorities respectively.

8. We make it clear that this will not stand in the way of the disciplinary authority from initiating a departmental enquiry if he so advised.


(B.S. Hegde)
Member(J)


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(N.V. Krishnan)
Vice Chairman(A)