

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 2507/93
T.A. No.

199

DATE OF DECISION 28.2.97

(9)

Shri Hari Parkash

Petitioner

Shri S.K. Bisaria

Advocate for the Petitioner(s)

Versus

Commissioner of Police & Ors.

Respondent

Sh. B.S. Gupta through proxy
counsel Shri S.K. Gupta

Advocate for the Respondent

CORAM

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

The Hon'ble Mr. R.K. Ahooja, 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?

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

Central Administrative Tribunal, Principal Bench

O.A.No.2507/93

Hon'ble Mrs. Lakshmi Swaminathan, Member(J)
Hon'ble Shri R.K.Ahooja, Member(A)

(10)

New Delhi, this 28th day of February, 1997

Hari Parkash
Ex. Constable No.653/W
s/o Shri Suraj Mal
r/o Village & P.O. Bawana
P.S.Narela
Delhi.

Applicant

(By Shri S.K.Bisaria, Advocate)

Vs.

1. Commissioner of Police
Police Headquarters
MSO Building
I P Estate
New Delhi.
2. Additional Commissioner of Police
Southern Range, I P Estate
Police Headquarters
New Delhi.
3. Additional Dy. Commissioner of Police
West Distt.
Rajouri Garden
New Delhi.

... Respondents

(By Shri S.K.Gupta, proxy of Shri B.S.Gupta, Advocate)

O R D E R (Oral)

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

The applicant who was working as a Constable in Delhi Police is aggrieved by the order dated 9.12.1992 ^{in appeal} dismissing him from service, which order has been upheld by the order passed by the Additional Commissioner of Police dated 16.9.1993.

2. In the impugned order dated 9.12.1992, it has been stated that the circumstances of the whole case are such that holding of a regular departmental inquiry against the defaulter constable is not reasonably practicable as departmental proceedings will take a long time and it is not uncommon in such cases that the complainant and witnesses

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are later on won over by ^{the} defaulter and they turn hostile, mainly due to fear of reprisals, etc. Therefore, the respondents have proceeded to pass the dismissal order under Article 311(2) proviso (b) of the Constitution of India. The respondents have submitted the original file pertaining to this case from which it is seen that in the note of 31.8.1992, a proposal had been made that departmental enquiry may be held against the applicant in respect of the FIR No.493 dated 1.7.1991 filed against the applicant by the Haryana Police. On this proposal the competent authority namely, the Additional DCP(West) has recorded as follows:

"Put up draft for dismissal under Article 311(2)(B)."

3. From the above records, it is clear that the respondents have failed to comply with the provisions of the Article 311(2) proviso (b) of the Constitution of India. No reasons have been recorded by the competent authority as to why he is satisfied that it is not reasonably practicable to hold such an enquiry. No doubt, some reasons have been recorded subsequently in the impugned order of dismissal dated 16.9.1993 but these appears to have been recorded as an afterthought only. Besides, it also shows non-application of mind by the disciplinary authority.

4. The reasons adduced in the impugned order by their very nature have also to be rejected, especially coming from an uniformed force like the Police Service; otherwise, no action at all can be taken against any Police official by way of departmental proceedings. The respondents have therefore, clearly violated the provisions of Article 311(2) proviso (b), in dispensing with the enquiry before passing the impugned dismissal order. In this view of the matter, *jl* the application is entitled to succeed.

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5. In the result, the OA is allowed to the extent that the impugned dismissal order dated 9.12.1992 and the appellate order dated 16.9.1993 are quashed and set-aside and the matter is remitted to the disciplinary authority to institute departmental proceedings against the applicant within one month from the date of receipt of a copy of this order and take further action, in accordance with law. Pending enquiry the delinquent to be deemed to be under suspension. Thereafter the respondents shall also pass an appropriate order regarding the consequential benefits, including the intervening period from the date of dismissal to the date of reinstatement at the conclusion of the enquiry.

6. OA is disposed of accordingly. No costs.

R.K. Ahuja
(R.K. AHOOJA)
MEMBER(A)

/SK/

Lakshmi Swaminathan
(MRS. LAKSHMI SWAMINATHAN)
MEMBER(J)