

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

PRINCIPAL BENCH
NEW DELHI

13

O.A. No. 444/1993

Date of decision 10.7.1995

Hon'ble Shri N.V.Krishnan, Vice Chairman (A)
Hon'ble Smt.Lakshmi Swaminathan, Member (J)

Shri Kishan,
Ex-ASI, (2685/SD),
s/o Shri Ishwar Singh,
r/o Village & P.O. Jasbum,
P.S. Salhawas,
District Rohtak (Haryana)

... Applicant

(By Advocate Shri Shyam Babu)

Versus

1. Delhi Administration, Delhi through its Chief Secretary, 5, Sham Nath Marg, Delhi-110054
2. Addl. Deputy Commissioner of Police, South District, New Delhi
3. Addl. Commissioner of Police (Southern Range), Police Headquarters, I.P.Estate, New Delhi.

... Respondents

(By Advocate Ms Jyotsna Kaushik)

ORDER (ORAL)

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

The applicant, a former Assistant Sub-Inspector under the Delhi Police, was dismissed from service by the order dated 19.1.1993 (Annexure B) of the Additional Deputy Commissioner of Police, South District, the second respondent, ~~the second respondent~~ under clause (b) of the second proviso to Article 311(2) of the Constitution. It has been stated that it is not practicable to hold a departmental enquiry into the case. Hence, this O.A. has been filed.

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2. It is seen from Annexure B Order dated 19.1.1993 that the applicant is alleged to have been involved in an offence under 366/376 IPC on 15.1.1993. The medical examination was held on 15.1.1993 and the impugned order passed on 19.1.1993.

3. The reasons given for passing such an order are contained in para 4 of the order. That reads as follows:-

" And whereas the circumstances of the whole case are such that holding of a regular departmental enquiry against the defaulter A.S.I. will not be reasonably practicable as it is not uncommon in such cases to find the complainant and the witnesses turning hostile mainly due to fear of reprisals. Terrorising and intimidating of witnesses, coming forward to give evidence against the delinquent in the departmental enquiries are common tactics adopted by involved officials. It also calls for great courage to depose against such persons and the task becomes more acute and difficult when the delinquent is a Police Officer. In the present case the possibility of victim's being unduly pressurised and threatened can not be considered remote. It would indeed be too much to except from such a helpless victim to show requisite resolve throughout the open departmental proceedings against the defaulter A.S.I. The procedural delays and dilatory tactics normally adopted in such sensitive cases would hamper the expeditious finalisation of departmental proceedings which would again be a denial of justice to the victims."

4. A reply has been filed justifying the impugned order and stating that it was not found feasible to hold the departmental enquiry.

5. During the pendency of this O.A., admittedly, the applicant and another accused were tried for the offence, but the case came to/with the acquittal of both the accused.

6. In the circumstances, the learned counsel for the

applicant contends that the ~~impugned~~ order has been knocked the bottom out of the impugned order which cannot stand now and the applicant be reinstated with consequential benefits.

7. The learned counsel for the respondents, on the other hand, points out that the apprehension of the disciplinary authority, namely, that important witnesses would turn hostile, has been vindicated. The complainant has not identified the accused. In the circumstances she says that the order seems to be justified.

8. We have seen a number of cases wherein orders as at Annexure 'B' had been passed i.e. where police officials have been dismissed from service under clause (b) of the second proviso to Article 311(2) of the Constitution on similar grounds. We have consistently held in such cases that the above circumstances does not justify resort to Article 311(2) (b) of the Constitution. We repeat the same decision. Such an attitude to such cases indicates that perhaps, the Delhi Police is totally helpless in securing a conviction in a criminal court against the members of the Delhi Police against whom serious criminal charges have been preferred. That is the only conclusion that one can draw from the reasons given

in para 3 supra. If this is the problem it reflects badly on the Delhi Police inasmuch as that they are unable to infuse a sense of security in witnesses to enable them to come forward and depose against police officials in a Court.

9. Now that the trial court has acquitted the applicant of the charges, we are of the view that Annexure B order cannot stand any more. We, therefore, allow the O.A. and quash Annexure B order and direct the respondents to reinstate the applicant in service. We make it clear that this is without prejudice to the right of the respondents to proceed against the applicant by holding a regular enquiry in accordance with law. In case it is decided to institute such a disciplinary proceeding, it shall be commenced within a period of three months from the date of service of this order on the second respondent. In case proceedings are not commenced within this period, it shall be presumed that/intend to proceed against the applicant departmentally and accordingly, the second respondent shall pass an order regulating the absence from the date of dismissal upto the date of reinstatement, i.e. as to how it will be treated and what emoluments the applicant would get. In case disciplinary proceedings are commenced, such an order may be passed on the conclusion of these proceedings in accordance with law.

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

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