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CENTRAL ADMINISTRATIVE TRIBUNAL:PRINCIPAL BENCH

O.A.No.1018/93

New Delhi, this the 7th day of December, 1998

HON'BLE SMT. LAKSHMI SWAMINATHAN, MEMBER(J)  
HON'BLE MR. N. SAHU, MEMBER(A)

Ex. Constable Jai Singh No. 4909/DAP  
son of Shri Dhir Singh, aged about 24 years,  
previously employed in 8th BN. DAP Delhi Police  
R/o Village Jasur Kheri P.S. Bahadurgarh,  
District Rohtak (Haryana) ....Applicant

(By Advocate: Shri Shankar Raju)

Versus

1. Delhi Administration  
(through Addl. Commissioner of Police (AP&T),  
Police Headquarters, M.S.O. Building,  
I.P. Estate, New Delhi.)
2. Dy. Commissioner of Police,  
5th BN. DAP Kingsway Camp,  
Delhi. .... Respondents

(By Advocate: Shri Vijay Pandita)

O R D E R (ORAL)

HON'BLE SMT. LAKSHMI SWAMINATHAN, MEMBER(J)

The applicant who was working as a Constable in Delhi Police, is aggrieved by the order passed by the respondents on 15.6.92, dismissing him from service with immediate effect under proviso (b) of Article 311(2) of the Constitution of India. Appeal filed by the applicant against the dismissal order has also been dismissed by the appellate authority vide order dated 23.3.93.

2. The applicant has challenged the validity of the dismissal order on a number of grounds. Shri Shankar Raju, learned counsel for the applicant has submitted that the respondents have not given any reasons as to why it was not possible to hold a departmental inquiry against the applicant and merely stating that it is not uncommon in such cases to find the complainants and witnesses turning hostile due to

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fear of reprisals, is not sufficient for dispensing with the valuable right of the applicant. In the impugned order dated 15.6.92, the respondents have stated that the applicant had been involved in criminal cases despite being a policeman which shows that he is a desperate character and is a hazard to the interests of the public. It has been stated that "Police is the protector of citizens and indulgence of a policeman in crimes will destroy the faith of people in the system". The disciplinary authority has, therefore, come to the conclusion that due to his involvement with his other associates in the criminal case of kidnapping the son of a businessman of Roop Nagar for ransom, where an FIR had been lodged, was not only undesirable but also amounts to serious misconduct and indiscipline. In the circumstances as the actions of the applicant were unbecoming of a policeman, the Deputy Commissioner of Police came to the conclusion that it was not reasonably practical to hold an inquiry and hence the dismissal order had been passed, dismissing the applicant from service, with immediate effect under proviso (b) of Article 311 (2) of the Constitution.

3. In the above circumstances, the learned counsel for the applicant has submitted that the impugned dismissal order and the appellate authority's order should be quashed and set aside and the applicant should be reinstated in service. He has fairly submitted that he has no objection if a further direction is given to the respondents that they are at liberty to hold an inquiry in accordance with law/rules, if they wish to proceed against the applicant but, in any case, he states that there is no reason at all to

dispense with the inquiry merely on surmises and conjectures.

4. The respondents have filed their reply controverting the facts and we have also heard Shri Vijay Pandita, learned counsel for respondents. He has referred to the relevant records from which the impugned dismissal order and appellate authority's order have been issued. We note that apart from the reasons given above in the impugned orders, in which it has been recorded that it was not practical to hold the departmental inquiry against the applicant, there appears to be no other material available in the relevant departmental record to come to this conclusion. In similar circumstances, the Tribunal in the case of Kamla Devi vs. Union of India (O.A.1391/97) decided on 2.12.97, relied upon by the learned counsel for applicant, following the judgement of the Supreme Court in the case of Jaswant vs. State of Punjab - 1991 (1) SCC 362, quashed the dismissal order and appellate authority's order. The Supreme Court in Jaswant's case (supra) has stated that in order to apply the protection available under proviso (b) of Article 311(2) of the Constitution, it is incumbent on those who support the order to show that the satisfaction is based on certain objective facts, and is not the outcome of whim or caprice. The Supreme Court further held that "it is an essential requirement that the decision of the disciplinary authority must have independent material to justify the dispensing with of the enquiry envisaged under Article 311(2)." In the present case there is no such material to justify the decision of the disciplinary authority to dispense with the enquiry.

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5. The judgement of the Supreme Court in Jaswant's case (supra) followed by the Tribunal in Kamla Devi's case is applicable to the facts of this case. The learned counsel for the applicant further submits that the judgement in Kamla Devi's case has been confirmed by the High Court of Delhi on appeal by the Union of India & ors. in C.W.P.6218/98 vide order dated 3.12.98. The recent judgement of the Hon'ble Supreme Court in the case of Chandigarh Administration and others vs. Ex.S.I. Gurdit Singh - JT 1998(4) SC 253, is also relevant.

6. In the result, for the reasons given above the O.A. is allowed to the following extent:-

(i) The impugned dismissal order dated 15.6.92 and the appellate authority's order dated 23.3.93 are quashed and set aside. The applicant shall be reinstated in service and placed under suspension, i.e. in the same position he was prior to passing of the impugned dismissal order:

(ii) However, the respondents are at liberty to hold a departmental inquiry against the applicant and thereafter pass consequential orders in accordance with law/rules within six months from the date of receipt of a copy of this order.

No order as to costs.

N. Sahu  
( N. Sahu )  
Member(A)

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

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