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**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL**  
**NEW DELHI**

OA No. 1033/93

**DATE OF DECISION**

22-9-93

Sh. Bijender Kumar**Petitioner**Sh. Shanker Raju**Advocate for the Petitioner(s)****Versus****Respondent**

U.O. I. &amp; Ors

**Advocate for the Respondent(s)**

DR SI Ram Swaroop

**CORAM****The Hon'ble Mr.** N.V. Krishnan, Vice Chairman (A)**The Hon'ble Mr.** B.S. Hegde, Member (J)

1. Whether Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporter or not ? ✓
3. Whether their Lordships wish to see the fair copy of the Judgement ? ✗
4. Whether it needs to be circulated to other Benches of the Tribunal ? ~

Ex-Party order

(delivered by Sh. N.V. Krishnan, V.C. (A))

The applicant is aggrieved by the order dated 24.8.92  
 (Annexure A-2) passed by the Deputy Commissioner of Police,

South West District, New Delhi dismissing the applicant  
 from service under clause (b) of the second proviso to

Article 311(2) of the Constitution of India, after the

(L)

disciplinary authority dispensed with the departmental enquiry on the ground that the enquiry was not be possible in the circumstances of the case.

2. The applicant is alleged to have molested a foreign lady while she was on her way to the airport on 7/8-8-92. A crime has been registered. The impugned order states as follows regarding the reasons for resorting to dismissal without enquiry:-

The above act of Const. Bijender Kumar No. 1960/SW is reprehensible and amounts to gravest misconduct which can be committed by a protector of public. In addition to the Criminal case, I proposed to initiate a regular disciplinary proceedings against this Constable. However, it may not be reasonably practicable to hold a regular disciplinary enquiry because the complainants are foreign nationals and may not be able to present themselves before the Enquiry Officer. Even the Criminal case registered against

both the constables may not reach its logical conclusion because of lack of evidence in the absence of complainants, who have left the country. Under the circumstances as explained above, there is a strong possibility that the Const. Bijender Kumar may escape punishment for his act which is shameful not only to him but has brought a bad name to the entire Delhi Police force. In view of the above, I am inclined to exercise my powers under proviso II(b) of Article 311(2) to dismiss Const. Bijender Kumar No. 1960/SW from Delhi Police force without any regular D.E. or affording any opportunity of showing cause. As regards Const. Ram Saran No. 1930/SW he has been placed under suspension and further course of action will be decided later-on."

3. This order is impugned on the ground that it is not correct to state that an enquiry could not be held.

4. The applicant however, submits that an FIR has been filed and a criminal case has been registered against him. A charge has been framed

vide annexure A-5 under Section 354/34 I.P.C. by the Metropolitan Magistrate, New Delhi. It is contended that the Departmental Enquiry could have been initiated after the criminal case was decided.

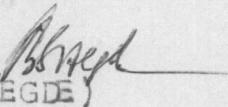
5. When the case came up for the first time on 13.5.93 we were struck by the fact that though the applicant was dismissed without an enquiry, on the ground that it is not practicable to hold an enquiry, yet, a criminal case has been registered in which the charges have been framed by the trial court and which will necessitate a trial. We briefly mentioned this fact in the order dated dated 13.5.93 when notice was ordered to be issued to the respondents.

6. Respondents have not filed any reply till date in this/where the only issue is whether the enquiry can be dispensed with on the grounds stated in the impugned order, extracts of which are reproduced in para 2 above.

7. We notice that in the charge sheet in the criminal case (Annexure A-4), 7 witnesses have been cited as witnesses of whom two, the main complainants are residents of England. The respondents have yet filed the criminal case in which/charge has already been framed against the applicant (Annexure A-5). The

court will convict him only if the charge is proved beyond reasonable doubt. As against this, in a departmental enquiry the delinquent can be found guilty, if the charge are proved on a balance of probability. Therefore, if a criminal case has been filed and is proceeded with *prima facie*, we see no reason why a departmental enquiry cannot be held. We are, therefore, of the view that, in the circumstances of the case, the resort to clause (b) of the proviso to Art. 311(2) of the Constitution to dispense with the enquiry was unjustified.

8. We, therefore, allow this application and quash the impugned Annexure A-2 order dated 24.8.92 of the second respondent. We make it clear that it is open to him to initiate disciplinary proceedings against the applicant in accordance with law. The respondents are directed reinstate the applicant within one month from the date of receipt of a copy of this order. The period between date of the dismissal and the date of reinstatement in service shall be regulated in accordance with the provisions of law.

  
(B.S. HEGDE)  
MEMBER(J)

  
(N.V. KRISHNAN)  
VICE CHAIRMAN(A)