



**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI**

OA No. 1114/2018

This the 17th day of June, 2021

(Through Video Conferencing)

**Hon'ble Mr. Justice L. Narasimha Reddy, Chairman
Hon'ble Mr. Mohd. Jamshed, Member (A)**

Tara Dutt, Age – 38 years,
S/o Tika Ram,
R/o-H. no. 1/190, Khichri pur,
PS Kalya puri, Mayur Vihar-91.

... Applicant

(By Advocate : Mr. Sachin Chauhan)

Versus

1. Govt. of NCTD through,
The Chief Secretary,
Govt. of NCTD,
A-Wing, 5th Floor,
Delhi Secretariat,
New Delhi – 110113.
2. The Commissioner of Police,
Police Headquarters, MSO Building,
I.P. Estate, New Delhi.
3. The Joint Commissioner of Police,
Special Branch, Delhi,
Police Headquarters, MSO Building,
I.P. Estate, New Delhi.
4. The Dy. Commissioner of Police,
Special Branch,
Delhi.

... Respondents

(By Advocate : Ms. Harvinder Oberoi)

O R D E R (ORAL)**Justice L. Narasimha Reddy, Chairman :**

The applicant is working as Assistant Sub Inspector in the Delhi Police. A criminal case was registered against him in FIR No.215/17 dated 27.08.2017 U/s 12 of Prevention of Corruption Act & 120-B IPC PS Sabzi Mandi, Delhi, on the basis of a complaint made by one Shri Chander Shekhar, Assistant Session Judge, (ASJ) Tis Hazari Court. It was alleged that one Head Constable by name Surender Kumar, Court, Naib entered the chamber of learned ASJ and verified that whether he knows someone by name Daya Nand Sharma; and when the learned ASJ told that he does not know anyone by that name, Surender Kumar is said to have informed him that the applicant wants to contact him i.e. ASJ on the directions of Shri Daya Nand Sharma.

2. Learned ASJ is said to have refused to meet the applicant and went for lunch, in the chamber of Shri Rakesh Kumar Sharma, learned CBI Judge, Tis Hazari Court and told Surender Kumar that the applicant may have come to meet someone else. The applicant is said to have made a phone call to Shri Daya Nand Sharma in the presence of Surender Kumar



and wanted to know whether he should contact the learned ASJ or someone else. The applicant is said to have shown visiting card of Daya Nand Sharma to Surender Kumar and thereafter handed over an envelope to him, to be delivered to Learned ASJ.

3. At about 4.00 p.m. Surender Kumar is said to have informed of these developments to the learned ASJ, and the latter asked the former to open the cover. It is stated that when the envelope was opened, a photocopy of the interview letter in respect of a candidate by name Mukul Kumar S/o Ramesh Kumar and 25 currency notes in the denomination of Rs.2,000/- each (aggregating to Rs.50,000/-) were found. The learned ASJ is said to have forwarded the same to SHO/PS Sabzi Mandi and accordingly a case was registered.

4. The Deputy Commissioner of Police, special branch passed an order dated 29.10.2017, dismissing the applicant from service by invoking the power under Article 311(2)(b) of the Constitution of India. It was observed that the acts of the applicant are shameful and have tarnished the image of police department; and that he cannot be allowed to continue in the Police Force. The appeal preferred by the applicant against



the said order was rejected by the Joint Commissioner of Police i.e. the 3rd respondent through order dated 16.02.2018. This OA is filed challenging the order of dismissal as well as the order passed by the Appellate Authority.

5. The applicant contends that the allegations made against him are totally baseless and that there is not even an iota or semblance of evidence, to prove the said allegation. He contends that the complaint submitted against him was on the basis of a hearsay and even the complainant, a Judicial Officer, did not verify the facts before submitting a complaint. He submits that the impugned order was passed just on the face value of the complainant. It is also urged that no reason whatever is mentioned as to how the disciplinary inquiry, the only protection given to an employee by the Constitution of India, is dispensed with and the impugned order is liable to be set aside. He contends that the appellate authority has travelled beyond the scope of the impugned order and tried to justify, an otherwise untenable order.

6. Respondents filed a detailed counter affidavit. According to them, the allegations made against the applicant are serious in nature and if one takes into account, the status of the complainant and the gravity of the allegations made against



the applicant, the impugned order is very much justified. It is stated that the acts attributed to the applicant have tarnished the image of the police and the procedure under Article 311 (b) was taken recourse to. Various allegations made by the applicant are denied.

7. Today, we heard Shri Sachin Chauhan, learned counsel for the applicant and Ms. Harvinder Oberoi, learned counsel for the respondents.

8. If any acts or omissions, on the part of an employee, constituting misconduct are noticed, the ordinary course is to initiate disciplinary proceedings under the relevant provisions of law. For a Government Servant, this protection is accorded under Article 309 and 310 of the Constitution of India. An exception is carved out under Article 311 (2)(b), where the disciplinary inquiry can be dispensed with in certain cases.

The Article 311(2), reads as under:

(2) No such person as aforesaid shall be dismissed or removed or reduced in rank except after an inquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges Provided that where it is proposed after such inquiry, to impose upon him any such penalty, such penalty may be imposed on the basis of the evidence adduced during such inquiry and it shall not be necessary to give such person any opportunity of making



representation on the penalty proposed: Provided further that this clause shall not apply

(a) where a person is dismissed or removed or reduced in rank on the ground of conduct which has led to his conviction on a criminal charge; or

(b) where the authority empowered to dismiss or remove a person or to reduce him in rank is satisfied that for some reason, to be recorded by that authority in writing, it is not reasonably practicable to hold such inquiry; or

(c) where the President or the Governor, as the case may be, is satisfied that in the interest of the security of the State, it is not expedient to hold such inquiry.

9. No charge memo was issued to the applicant. On the other hand the order of dismissal was straightway passed by invoking the power under Article 311(2)(b).

10. In **Tarsem Singh Vs. State of Punjab** Criminal Appeal No.476/2005 dated 12.12.2008, Hon'ble Supreme Court cautioned against the indiscriminate invocation of power under Article 311 (2)(b), particularly, where the allegations made against the employee are not of security of State. Howsoever, grave the allegations of the misconduct can be, the ordinary course of conducting disciplinary inquiry cannot be short circuited, simply because the department is not confident of proving the charges by adducing oral or documentary evidence. This Tribunal also has dealt with the



cases of similar nature such as OA No.702/2019 (**Dharmender Singh Dangi Vs. Govt. of NCT & Ors.**) dated 07.01.2021.

11. The basis for passing the impugned order against the applicant is contained in the order itself. One Head Constable by name Surender Kumar is said to have entered the chamber of learned ASJ of Tis Hazari Court, stating that the applicant wants to meet him on the directions of one Daya Nand Sharma. The learned ASJ is said to have stated that he does not know Daya Nand Sharma and the same is said to have been conveyed to the applicant. It is thereafter, that the applicant is said to have handed over an envelope to Surender Kumar, who in turn is said have handed over the same to the learned ASJ.

12. The truth or otherwise of these allegations could have been verified if only the statement of Surender Kumar was recorded, even by conducting a preliminary inquiry. No effort was made to take that step. No officer has contacted the learned ASJ to know the circumstances that led to filing of FIR.

13. Howsoever serious the allegation may be, the course of law does not depend upon the stature of the person who



complains. Before law, everyone is equal. The complaint is emanated from a learned sitting judge of the Tis Hazari Court. The steps contemplated under law such as recording of statement of the complainant cannot be dispensed with. It is a different matter that the statement recorded from such authorities carry weight. All the same, they are also amenable for verification in accordance with the procedure, prescribed under law. If that is not done, the very basis of law, namely, fair play comes to be compromised.

14. This is not a case in which the applicant is said to have entered the chambers of learned ASJ and the envelope containing the currency notes were handed over to him. Even according to the impugned order, the so called envelope was handed over to the learned ASJ by Surender Kumar. In all fairness, Surender Kumar should have been shown as an accused, particularly when he is not an employee of the Court. There is no special law which exempts the actual participants in the crime, to be exempted from being shown as accused and permits an unknown person, to be implicated as an accused.

15. Whatever be the form of FIR or the circumstances under which it was registered the disciplinary authority cannot



abdicate its responsibility to get hold of the basic facts. It is only when one makes an attempt to know the relevant facts and finds in the process, that the situation is so grave that it is not possible to conduct inquiry in the ordinary course, that the power under Article 311(2)(b) should have been invoked. The FIR was taken on its face value and straightaway, the impugned order was passed. The only sentence in the impugned order which is employed to justify the extraordinary powers, reads as under :-

“The facts and circumstances of the case are such that it would not reasonably practicable to conduct a regular departmental inquiry against the defaulter.”

16. The applicant is not a terrorist posing any threat, in the course of the inquiry. The Learned ASJ who is the complainant is not above law and his statement could have been recorded, duly extending him, the privilege, commensurate with the position held by him. Atleast, a responsible officer could have gone to the learned judge and ascertain the facts, from the point of view of disciplinary inquiry. Things would have been different, had it been a case where applicant met the learned ASJ and handed over the envelope. The alleged link between the applicant on the one



hand and the learned ASJ on the other hand is Mr. Surender Kumar. It was his act that resulted in registration of an FIR as well as the dismissal of the applicant. Not a word is said as to why no effort was made to ascertain the facts from Surender Kumar, an employee of the Police department. The whole episode is in a very poor taste. Howsoever tempting it may be, for a superior official, to avoid the prescribed procedure, law does not permit the termination of service of a civil servant by denying him, the protection accorded under Constitution.

17. Therefore, we allow the OA and set aside the impugned order. The applicant shall be reinstated into service within a period of four weeks from the date of receipt of a copy of this order. We, however, leave it open to the respondents to initiate disciplinary proceedings against the applicant by issuing a charge sheet. A decision in this behalf shall be taken within four weeks after the reinstatement of the applicant. The manner in which the period from the date of impugned order till the date of reinstatement is to be treated, shall depend upon the outcome of the disciplinary proceedings, if initiated. If no decision is taken for initiation of the disciplinary proceedings, within the period referred to above, the applicant shall be extended all the consequential



benefits, within six weeks thereafter.

There shall be no order as to costs.

(Mohd. Jamshed)
Member (A)

(Justice L. Narasimha Reddy)
Chairman

/Lg/rk/ankit/sd