

Central Administrative Tribunal
Principal Bench
New Delhi

R.A.No.143/2017
in
O.A.No.2592/2014

Order Reserved on: 20.09.2017
Order pronounced on 30.10.2017

Hon'ble Shri V. Ajay Kumar, Member (J)
Hon'ble Ms. Nita Chowdhury, Member (A)

Shri Kaushal Singh
S/o Late Shri Rajpal Singh
R/o Vill. & PO – Thora, P.S. Zever,
Distt. G.B. Nagar, U.P.
Aged 44 years

... Applicant

(Through Shri Ajesh Luthra, Advocate)

Versus

1. Commissioner of Police
Police Headquarters, I.P. Estate
M.S.O. Building, New Delhi

2. Jt. Commissioner of Police
South Eastern Range
Police Headquarters, I.P. Estate
M.S.O. Building, New Delhi

3. Deputy Commissioner of Police
(South-East)
P.S. Sarita Vihar,
New Delhi ... Respondents

(Through Shri K.M. Singh, Advocate)

ORDER

By V. Ajay Kumar, Member (J):

The applicant, a Constable in the Respondent - Delhi Police, was dismissed from service by invoking Article 311(2)(b) of the Constitution of India, i.e., by dispensing with the departmental inquiry, vide Order dated 27.11.2013. The departmental appeal preferred by the applicant against the said dismissal order was also rejected by order dated 22.05.2014 of the appellate authority. Assailing both the said orders the applicant filed OA No.2592/2014, which was dismissed by this Tribunal vide Judgement dated 26.09.2016. Seeking review of the said Judgement, the original applicant filed the instant Review Application.

2. Heard Shri Ajesh Luthra, the learned counsel for the Review Applicant and Shri K.M.Singh, the learned counsel for the review respondents and perused the pleadings on record.

3. Shri Ajesh Luthra, the learned counsel appearing for the review applicant would, inter-alia, submit that this Tribunal without giving any finding that the applicant's conduct falls within the parameters fixed by the Constitution Bench of the Hon'ble Apex Court in **Tulsi Ram Patel's** case and by wrongly considering and applying the conduct of the other charged officers to the applicant, held that the case on hand is a fit case in which Article 311(2)(b) has been invoked.

4. The learned counsel further submits that right to continue in service is personal to every employee and the employer/respondents cannot dismiss the applicant basing on the conduct of other employees. This Tribunal without examining the individual conduct of the applicant with regard to conducting or dispensing with the inquiry against him, held the action of the respondents is valid. Hence, in view of the said apparent error on the face of the record, the Judgement dated 26.09.2016 in OA No.2592/2014 is liable to be recalled.

5. Per contra, Shri K.M.Singh, the learned counsel appearing for the review respondents, inter-alia, would submit that the allegation against the applicant was that he along with SI Nagendra Kumar and HC Amit Thomar extracted money from one Shri Sanjay Kumar Thakur illegally and since the departmental inquiry is required to be conducted jointly against them, and since admittedly the said two persons by firing on their colleagues when they were approached, created a situation which makes the holding of an inquiry contemplated by Article 311(2) is not reasonably practicable, and hence, Article 311(2)(b) was rightly invoked by the respondents and that this Tribunal rightly upheld the same.

6. Brief history of the case is that while the applicant was working as Constable, one Shri Sanjay Kumar Thakur filed a complaint against three police officials, i.e., SI Nagendra Kumar, Head Constable Amit Kumar and Constable Kaushal Singh (the applicant) which was

registered as FIR No.186/13 dated 06.11.2013 under Sections 384/34/IPC, PS Crime Branch and the charge levelled against the applicant in this connection is as follows:

“It is found that a case FIR No.186/13 dated 06.11.2013 u/s 384/34 IPC, PS Crime Branch is registered on the complaint of Shri Sanjay Kumar Thakur. As per the complaint he is running a Computer Coaching Institute at I-390, Hari Nagar Market, Jaitpur Road, Badarpur, Delhi. On 04.11.2013 at about 7.30PM, three police officials namely SI Nagendra Kumar, HC Amit Tomar and Const. Kaushal Singh, who disclosed themselves to be from Crime Branch came to his institute and told him that he is running a syndicate of e-ticketing and started checking his computer. Police officials asked him the password of his e-mail and after getting it, they opened his mail and checked all the tickets booked by him in the name of various parties. They checked that on 4.11.2013, complainant issued three Tatkal tickets for Savita Thakur (Bhabhi), Dinesh Kumar uncle of his friend Chander Kumar and one more third ticked whose details are not known to complainant. All the three police officials told the complainant that he is doing some illegal act by booking these Tatkal Tickets and he is to be arrested in the case. In the meantime, father of the complainant, Shri Alik Kant Thakur came to the spot and requested to leave his son. On this the police officials took the complainant and his father to their office at 2nd floor, Police Post Nehru Place, New Delhi. One ticket agent was already found in their custody in the office and by causing the fear of arrest they demanded Rs.5,00,000/- from the complainants’ father. After lot of bargaining they have settled for Rs.1,50,000/- and the complainant’s father paid them the agreed amount and took the complainant back to house. The police officials also removed the hard disk from their computer and took the register and bill book from their office.”

6A. The disciplinary authority dismissed the applicant from service without conducting the departmental inquiry in terms of the relevant disciplinary and appeal rules, by invoking Article 311(2)(b) of the Constitution of India and the reasons for invoking the said power was explained as under:

“..... I am of the view that Const. Kaushal Singh, No.1265/SE brought bad name to the entire police force. The indulgence of police personnel in such a dastardly act would destroy the faith of the people in the law enforcement system and no witness will come forward for any enquiry. The involvement of the Constable in such criminal activities is not only undesirable, but it also amounts to serious misconduct and indiscipline, totally unbecoming of a police officer. It is under these given set of compelling circumstances the rules under article 311(2)(b) of Constitution of India have been invoked in this case for the sake of justice. Const. Kaushal Singh, No.1265/SE has become a liability to the department and should not be allowed to continue in police service and needs to be dismissed. In my opinion, he is unfit to be retained in the

police force anymore. Therefore, I, Dr. P. Karunakaran, Dy. Commissioner of Police, South-East District, New Delhi do hereby DISMISS the defaulter Const. Kaushal Singh, No.1265/SE (PIS No.28911564) from service with immediate effect.”

6B. The appellate authority while rejecting the appeal of the applicant, against the dismissal order, stated as under:

“2..... Soon after the alleged incident, committed by the appellant and his co-defaulters, a PE was conducted. During PE, it has been revealed that the raiding team headed by Sh. Satish Yadav, ACP, Central Range, Crime Branch conducted a raid at 2nd floor, P.P.Nehru place and HC Amit Tomar succeeded to escape. When the raiding team signalled him to stop, he fired on the police party and fled away. Similarly, SI Nagender Kumar also fired on the police party and ran away from the spot. He fired 03 rounds on the police party. He was chased and ultimately apprehended after a scuffle. The appellant (Ex. Ct. Kaushal Singh), who also remained associated in the commission of crime, escaped from his govt. duties. He, ultimately, surrendered himself in the Ld. Court on 03.12.2013. Under these circumstances, it is evident that the appellant and his co-defaulters would have deterred the witnesses, had they come forward for deposition in the DE proceedings, had they come forward for deposition in the DE proceedings. Hence, the disciplinary authority has rightly dispensed with the DE proceedings and resorted to the provision contained in Article 311(2)(B) of Constitution of India.”

6C. This Tribunal, after hearing both sides and after considering the various case laws, relied on by both the counsel, while dismissing the OA, observed as under:

“9. The learned counsel for the respondents drew our attention to the fact that when the raiding team headed by a senior officer of the rank of ACP conducted a raid at 2nd floor, P.P. Nehru Place, Head Constable Amit Kumar succeeded to escape. When the raiding team signaled him to stop, he fired on the police party and fled away. Similarly, SI Nagendra Kumar also fired on the police party and ran away from the spot. He was chased and ultimately apprehended after a scuffle. The learned counsel contended that Head Constable Amit Kumar and SI Nagendra Kumar were desperate characters and they even did not hesitate from firing at their own colleagues and a senior officer of the rank of ACP. It is his contention that this situation was not very common and facts in all the cases cited by the applicant are not comparable at all. After this knowledge is available with the witnesses that they have to deal with police officers in the departmental inquiry who had actually fired several rounds at their own colleagues comprising the raiding party, including a senior officer in the rank of ACP, it can reasonably be concluded that no witness would dare to give evidence in such a case. The learned counsel for the

respondents vehemently argued that the facts and circumstances of the case being such, the order of dismissal invoking Article 311 (2) (b) of the Constitution is justified and, therefore, the OA deserves to be dismissed.

10. We have heard the learned counsel for the parties, gone through the pleadings available on record and perused the judgments cited.

11. First of all, it is clear that the facts involved in the judgments cited by the learned counsel for the applicant cannot be compared with the facts of the present case. In the present case, we are dealing with basically hardened criminal offenders who did not hesitate even to fire upon their own colleagues, including an officer of the rank of ACP. In such a situation, it can easily be concluded that this would terrorise any witness, who would be called upon to give evidence and, therefore, any departmental inquiry is primarily a non-starter. It satisfies the criteria laid down in S.L. Meena (supra).

12. In our considered opinion, it was a fit case in which Article 311 (2) (b) has been invoked. We do not wish to interfere in the impugned orders. The OA is, therefore, dismissed. No costs."

7. A perusal of the impugned orders and the Judgement of this Tribunal dated 26.09.2016 indicate that the applicant personally has not done anything which warrant invocation of Article 311(2)(b). It was not even the case of the respondents that the applicant has done anything which attracts invocation of Article 311(2)(b). The circumstances which warrant initiation of disciplinary proceedings against an employee are different from the circumstances meant for dispensing with the inquiry.

8. In **Chairman and Managing Director, Central Bank of India & Others v. Central Bank of India, SC/ST Employees Welfare Association and Others**, in Review Petition (Civil) No.891/2015 in Civil Appeal No.209/2015, dated 08.01.2016, the Hon'ble Apex Court, while allowing the Review Petition observed as under:

"9. What constitutes an error apparent on the Review Petition (Civil) No. 891/2015 & Ors. Page 13 of 21 Page 14 face of the record is explained in State of Rajasthan & Anr. v. Surendra

Mohnot & Ors., (2014) 14 SCC 77 , with the aid of an earlier judgment, in the following manner:

“25. To appreciate what constitutes an error apparent on the face of the record, the observations of the Court in *Satyanarayan Laxminarayan Hegde v. Mallikarjun Bhavanappa Tirumale*, AIR 1960 SC 137, are useful: (AIR p.137)

“An error which has to be established by a long-drawn process of reasoning on points where there may conceivably be two opinions can hardly be said to be an error apparent on the face of the record. Where an alleged error is far from self-evident and if it can be established, it has to be established, by lengthy and complicated arguments, such an error cannot be cured by a writ of certiorari according to the rule governing the powers of the superior court to issue such a writ.”

26. In the case at hand, as the factual score has uncurtained, the application for review did not require a long-drawn process of reasoning. It did not require any advertence on merits which is in the province of the appellate court. Frankly speaking it was a manifest and palpable error. A wrong authority which had nothing to do with the lis was cited and that was conceded to. An already existing binding precedent was ignored. At a mere glance it would have been clear to the Writ Court that the decision was rendered on the basis of a wrong authority. The error was self-evident. When such self-evident errors come to the notice of the Court and they are not rectified in exercise of review jurisdiction or jurisdiction of recall which is a facet of plenary jurisdiction under Article 226 of the Constitution, a grave miscarriage of justice occurs...”

9. In the instant RA, it is the case of the applicant that upholding the invocation of Article 311(2)(b) without giving a finding that the conduct of the applicant satisfies the requirements of the said Article is an error apparent on the face of the record. Admittedly, there was neither an allegation nor a finding of this Tribunal against the applicant that either he fired on the inquiry party or he was present when the other delinquent employees alleged to have fired. It is also not the case of the respondents that inquiry cannot be conducted against the

applicant for the charge levelled against him and that they had made any attempt to conduct and failed due to the conduct of the applicant. This error is apparent on the face of the record and established without there being any lengthy and complicated arguments, and accordingly, this is a fit case for invoking the review power of this Tribunal.

10. Accordingly, in the circumstances and for the aforesaid reasons, the RA is allowed and the Order dated 26.09.2016 is recalled and the OA No.2592/2014 is restored to its original file.

List the OA on 09.11.2017.

(Nita Chowdhury)
Member (A)

(V. Ajay Kumar)
Member (J)

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