

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

OA 1102/2015

Reserved on: 11.10.2017
Pronounced on: 27.11.2017

**Hon'ble Mrs. Jasmine Ahmed, Member (J)
Hon'ble Mr. Uday Kumar Varma, Member (A)**

Vikas, Age 27 years
No.1392/SD (PIS No. 28011223)
S/o Shri Shakti Singh
R/o Village & Post – Shima
Tehsil – Narnaul,
District-Mahendergarh, Haryana ... Applicant

(Through Shri Sachin Chauhan, Advocate)

Versus

1. Govt. of N.C.T.D.
Through Commissioner of Police,
Delhi Police,
Police Headquarters, I.P. Estate,
New Delhi
2. The Spl. Commissioner of Police, Administration
Through Commissioner of Police,
Delhi Police,
Police Headquarters, I.P. Estate,
New Delhi
3. The Joint Commissioner of Police,
South-Eastern Range, Delhi
Through Commissioner of Police,
Delhi Police,
Police Headquarters, I.P. Estate,
New Delhi
4. The Deputy Commissioner of Police,
South District, Delhi
Through Commissioner of Police,
Delhi Police,
Police Headquarters, I.P. Estate,
New Delhi ... Respondents

(Through Ms. Sumedha Sharma, Advocate)

ORDER

Mrs. Jasmine Ahmed, Member (J)

Invoking the powers conferred under Art. 311(2) (b) of the Constitution of India, by an order dated 06-05-2014, the applicant, a young constable of the Delhi Police who joined the Police Service in June, 2007 had been cashiered from service. The episode embracing the misconduct stated to have been committed by the applicant as given in the impugned order in nutshell is that one Mr. Abhinav Sharma, stated to be a Manager in the HDFC Bank, Gurgaon was on a telephonic conversation at 1.30 a.m. on 17-02-2014 at DDA Flats Munirka, near Canara Bank when the applicant at that point of time posted at the P.S. Vasant Vihar took him to the police station, got him medically examined and released him after taking Rs 2,600/- from him. It was on the next day evening that DD No. 35-B was lodged at PS Vasant Vihar, narrating the above alleged episode of Abhay Sharma having been taken to PS Vasant Vihar, followed by medical examination, release after taking the amount of Rs 2600/-. Some inquiry was conducted and the complainant, on requisition by the SHO, Vasant Vihar visited PS Vasant Vihar and gave a written statement but in the written statement did not mention about the alleged payment of Rs 2600 to the Police. Only orally he had narrated the same. Verification of the facts was conducted when it was revealed that H.C. Attar Singh had recorded an entry vide DD No. 5-B dated 18-02-2014 regarding detention and release u/s 65 of the DP

Act in respect of the complainant Mr. Abhinav Sharma at 2.45 A.M. The fact of medical examination having been conducted at Safdarjang Hospital was also then surfaced. Both the aforesaid Attar Singh and the applicant were then placed under suspension vide order dated 19-02-2014 and the respondents have come to a conclusion that the possibility of the applicant and HC Attar Singh receiving the illegal gratification cannot be ruled out. It was thus opined that the applicant and Shri Attar Singh had acted in a most reprehensible manner, an act unexpected from a disciplined force, which was undoubtedly extremely prejudicial to the personal safety and security of the citizens. Holding that the above duo were public servants of corrupt bent of mind and there was every possibility that the witness/complainant would not come forward to depose against them in case a departmental inquiry was initiated against them, rules under Art. 311(2) (b) of the Constitution of India was pressed into service for the sake of justice. Thus, the applicant and the said Attar Singh, HC were dismissed from service without holding inquiry.

2. Statutory Appeal filed by the applicant was unsuccessful as the authorities had rejected the same by order dated 19-01-2015. Hence this OA.

3. Respondents have contested the OA and have narrated the above in their counter and denied various parts of the OA in para 4 and 5 of the O.A.

4. Counsel for the applicant had taken the Court through various pleadings and it was argued that there was not even a written complaint about the alleged illegal gratification of Rs 2600/-. He has referred to various judgments annexed to the OA and also one handed over at the time of argument.

5. Counsel for the respondents justified the action taken on the plea that in such a case holding of enquiry may not be possible and in the interest of justice the provisions of Art. 311(2) of the Constitution had been invoked.

6. Arguments were heard and documents perused. Challenge in this case is as to whether waiver of holding the departmental inquiry under the provisions of Art. 311(2) (b) of the Constitution and dismissal of the applicant from service would qualify in the scrutiny on the touch stone of Principles of Natural Justice.

7. It has been held by the Apex Court in the case of **Sudesh Kumar vs State of Haryana** (2005) 11 SCC 525 as under:-

5. It is now established principle of law that an inquiry under Article 311(2) is a rule and dispensing with the inquiry is an exception. The authority dispensing with the inquiry under Article 311(2)(b) must satisfy for reasons to be recorded that it is not reasonably practicable to hold an inquiry. A reading of the termination order by invoking Article 311(2)(b), as extracted above, would clearly show that no reasons whatsoever have been assigned as to why it is not reasonably practicable to hold an inquiry.....

6. A reasonable opportunity of hearing enshrined in Article 311(2) of the Constitution would include an

opportunity to defend himself and establish his innocence by cross-examining the prosecution witnesses produced against him and by examining the defence witnesses in his favour, if any. This he can do only if inquiry is held where he has been informed of the charges levelled against him. In the instant case, the mandate of Article 311(2) of the Constitution has been violated depriving reasonable opportunity of being heard to the appellant.”

In *Risal Singh v. State of Haryana*, (2014) 13 SCC 244, the Apex Court has held as under:-

7. In *Jaswant Singh v. State of Punjab* the Court, while dealing with the exercise of power as conferred by way of exception under Article 311(2)(b) of the Constitution, opined as follows:

“5. ... Clause (b) of the second proviso to Article 311(2) can be invoked only when the authority is satisfied from the material placed before him that it is not reasonably practicable to hold a departmental enquiry. This is clear from the following observation at of *Tulsiram case*:

‘130. ... A disciplinary authority is not expected to dispense with a disciplinary inquiry lightly or arbitrarily or out of ulterior motives or merely in order to avoid the holding of an inquiry or because the department’s case against the government servant is weak and must fail.’

The decision to dispense with the departmental enquiry cannot, therefore, be rested solely on the ipse dixit of the authority concerned. When the satisfaction of the authority concerned is questioned in a court of law, 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 the whim or caprice of the officer concerned.”

8. The judgment of the Apex Court in *Tulsi Ram Patel* (supra) has also been heavily relied upon by the applicant in para 5.18 of the OA.

9. In the instant case, the reasons recorded vide the impugned order dated 06-05-2014, are as under:-

“The facts and circumstances of the case are such that it would not be reasonably practicable to conduct a regular departmental enquiry against the defaulters as there is a reasonable belief that the witness/complainant may not come forward to depose against them, as earlier also he was reluctant to give anything in writing about Rs 2,600/- given by him to the defaulters as an illegal gratification.”

10. The very same justification has been given by the Appellate Authority in its order dated 20-01-2015.

11. The above reasons are nowhere near the ingredients qualifying for invoking the provisions of Art. 311(2)(b) of the Act. The authorities have based their conclusion only on unreasonable and less probable presumption. Had it been a case where the proceedings having continued and a situation arisen that it is not practicably possible to continue with the inquiry then at that time the provisions under the aforesaid Article could be pressed into service.

12. The applicant has thus made out a cast iron case. A valuable opportunity of defence has been deprived to the applicant by invoking the provisions of Art. 311(2)(b) of the Constitution, which is only a short cut adopted by the respondents. The OA thus, succeeds. Orders impugned viz., order of the disciplinary authority dated 06-05-2014 and order of the appellate authority dated 20-01-2015 are hereby quashed and set aside. The applicant is entitled to reinstatement and

placed in the same position as on the date of issue of the impugned order. If he was under suspension, he shall continue to be so unless by a formal order the suspension is revoked by the competent authority. The authorities shall hold the inquiry in accordance with law. His dues for the period he remained outside the employment shall be regulated in accordance with the provisions of F.R. 53 read with the procedure laid down in Chapter XIV of the Vigilance Manual which is as under:-

3. When penalty of dismissal/removal/compulsory retirement is set aside for non- observance of procedure prescribed under Article 311 of the Constitution.

3.1. If an order of dismissal, removal or compulsory retirement from service is held by a court of law or by the appellate/reviewing authority to have been made without following the procedure prescribed under Article 311 of the Constitution, and no further inquiry is proposed to be held, action to regulate his pay and allowances for the period of absence from duty and to specify whether the said period shall be treated as duty for any specific purpose will be taken in accordance with FR 54 or FR 54-A, as the case may be

3.2. In such cases, if it is decided to hold a further inquiry and thus deem the Government servant to have been placed under suspension from the date of dismissal/removal/compulsory retirement under Rule 10(3) or (4) of the CCA Rules, the Government servant will be paid the subsistence allowance from the date he is deemed to have been placed under suspension under FR 53.

Time calendared for implementing the above order is as under:-

- (a) Three weeks from today for reinstatement of the applicant.
- (b) Two months reckoned from the date of reinstatement for payment of the subsistence allowance admissible to the applicant as stated above.
- (c) One month reckoned from the date of reinstatement for issue of charge sheet.

(d) Six months from the date of issue of charge sheet to complete the inquiry.

13. We have not made any observations as to the merits of the case.

No orders as to cost.

(Uday Kumar Varma)
Member (A)

(Jasmine Ahmed)
Member (J)

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