

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

OA 3664/2017

Reserved on 13.02.2019
Pronounced on 25.02.2019

Hon'ble Ms. Nita Chowdhury, Member (A)
Hon'ble Mr.S.N.Terdal, Member (J)

Rajendra Kumar Meena,
(Ex. Constable)
S/o Late Sh. Manmohan Meena,
R/o Village Post & Tehsil Bamanwas,
Patti Kallan (Bada Thoke)
Distt. Sawai Madhopur, Rajasthan.

... Applicant

(By Advocate: Mr. Chittaranjan Hati)

VERSUS

1. Commissioner of Police
Police Head Quarter, I.P.Estate,
ITO, New Delhi.
2. Joint Commissioner of Police
South Eastern Range,
Police Head Quarter, I.P.Estate,
ITO, New Delhi.
3. Deputy Commissioner of Police
South East District,
Sarita Vihar, New Delhi.

. . . Respondents

(By Advocate: Mr. G.D. Chawla for Mrs. Harvinder Oberoi)

ORDER

Hon'ble Mr. S.N.Terdal, Member (J):

We have heard Mr. Chittaranjan Hati, counsel for applicant and Mr. G.D. Chawla for Mrs. Harvinder Oberoi, counsel for respondents, perused the pleadings and all the documents produced by both the parties.

2. In this OA, the applicant has prayed for the following reliefs:

"8.1 This Hon'ble Tribunal may kindly be pleased to set aside/quash the dismissal order No. 16772-871/ HAP/SED (P-1) dated 29.12.2016 and appellate authority order No.(07/2017) 3674-76/SO/SER (AC-II) dated 07.09.2017 passed by Joint Commissioner of Police, South Eastern Range, New Delhi.

8.2 Any other order may also kindly be passed in the facts and circumstances of the case in favour of the applicant."

3. The relevant facts of the case are that on getting a reliable information regarding demanding a bribe of Rs.10,000/-, a trap was laid and the applicant was caught red handed while accepting Rs.10,000/- in conspiracy with SI Amarjeet Singh. In that regard an FIR was registered by CBI authorities who conducted the trap and the applicant was arrested. The disciplinary authority recording the entire conduct of the applicant and the other co-accused, and the factual situation that there is reasonable belief that the witnesses would not come forward to depose against the applicant due to influencing position of the applicant and vulnerable position of the witnesses, particularly in view of the fact that the applicant is a police official came to the conclusion for the reasons recorded in the impugned order itself that it was not reasonably practicable to hold departmental enquiry and thus invoking the provisions of Article 311 (2)(b) of the Constitution of India dismissed the applicant vide order dated 29.12.2016. The relevant portion of the reasoning given by the disciplinary authority is extracted below:-

"After having committed this gravest misconduct of involvement in case FIR No. RC-DAI-2016-A-0040 dated 20.12.2016 u/s 120-B IPC and section 7 of P.C. Act, 1988, PS Anti Corruption Branch/CBI, New Delhi, if the defaulters are allowed to be continued in police service, it would be detrimental to public interest and further lower down the image of police force in the society. 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 witnesses may not come forward to depose against them. It is a common experience that due to influencing position of the delinquents, witnesses and complainant do not come forward to depose against the delinquents in the departmental enquiry. It also calls for great courage to depose against such desperate person and the task becomes more acute and difficult where the delinquents are police

officials as they may use their job to influence the statement/deposition of the witnesses.

Under these given set of compelling circumstances the article 311 (2)(B) of Constitution of India is required to be invoked in this case for the sake of justice. Therefore, I Romil Baaniya, Deputy Commissioner of Police, South-East District, New Delhi do hereby order to dismiss the defaulters SI (Exe.) Amarjeet Singh, No. D/304 (PIS No. 28070503) and Const. Rajender Kumar Meena, No. 1741/SE (PIS No. 28031770), from the service w.e.f. 20.12.2016 i.e. date of arrest under Article 311 (2)(B) of Constitution of India."

The applicant filed an appeal before the appellate authority. The appeal was, however, dismissed by the appellate authority only on the ground of appeal having been filed beyond the period of limitation of 30 days vide order dated 07.09.2017

4. The counsel for the applicant vehemently and strenuously contended that the impugned orders passed by the disciplinary authority as well as the appellate authority are non speaking orders. He further contended that no cogent reasons were recorded by the disciplinary authority in dispensing with the holding of departmental enquiry and invoking the power under Article 311 (2)(b) of the Constitution of India. In our view, the disciplinary authority has recorded cogent factual reasons for dispensing with the holding of departmental enquiry and invoking of provision of Article 311(2)(b) of the Constitution of India as such the order passed by the disciplinary authority does not require to be interfered with. We have perused the order passed by the appellate authority. The appellate authority has dismissed the appeal only on the ground of delay.

5. He further submitted that the applicant was in jail and within 5 days from his release, he had filed the appeal, and that the appellate authority has not considered his appeal on merit and that his appeal was dismissed by the appellate authority only on the ground of delay. In the counter affidavit also the respondents have stated that the appeal was dismissed by the appellate authority only on the ground of limitation. We are of the view that the appellate authority should have considered the appeal of the applicant on merit. As such the order passed by the appellate authority is set aside and we remand the case to the appellate authority to dispose of the appeal after considering his grounds raised in his appeal on merit.

6. Accordingly, OA is disposed of in above terms. No order as to costs.

(S.N.Terdal)
Member (J)

(Nita Chowdhury)
Member (A)

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