



**CENTRAL ADMINISTRATIVE TRIBUNAL
KOLKATA BENCH
(CIRCUIT AT PORT BLAIR)**

No. O.A. 31/A&N/2016

Date of order: 12/06/2019

**Present: Hon'ble Ms. Bidisha Banerjee, Judicial Member
Hon'ble Mr. N. Neihsial, Administrative Member**

Shri M.P. Arun, Assistant Sub Inspector
Radio Operator No. 6 (Dismissed), S/o Shri O.M. Pappan
Permanent resident of Buniyadabad Village
Port Blair Tehsil, South Andaman.

.. Applicant

-Versus-

1. The Union of India Service through the Secretary
Govt. of India, Ministry of Home Affairs
North Block, New Delhi – 110001.
2. The Andaman & Nicobar Administration
Service through the Lt. Governor (Administrator)
Andaman & Nicobar Islands, Raj Niwas, Port Blair- 744101.
3. The Chief Secretary
Andaman & Nicobar Administration, Secretariat, Port Blair – 744101.
4. The Secretary (Home)
Andaman & Nicobar Administration, Secretariat, Port Blair – 744101.
5. The Director General of Police
Andaman & Nicobar Islands, Police Head Quarters
Atlanta Point, Port Blair – 744101.
6. The Inspector General of Police
Andaman & Nicobar Islands, Police Head Quarters
Atlanta Point, Port Blair – 744101.

.. Respondents

For the Applicant : Mr. G.B. Kumar

For the Respondents : Mr. S.K. Mandal

[Signature]

ORDERN. NEIHSIAL, MEMBER (A):

This is the fourth round of litigation so far as this Tribunal is concerned. Previously this Tribunal passed an order dated 21.05.2008 in O.A. No. 158/AN/2007.

2. The issue before this Tribunal is to examine and consider whether the respondent authorities are justified in dismissing the services of the applicant by invoking Article 311(2)(b) of the Constitution of India without holding departmental enquiry. This issue has essentially animated from the observation of the Hon'ble High Court of Calcutta dated 19.11.2008 in W.P.C.T. No. 153 of 2008 where the Hon'ble High Court has set aside the order of Disciplinary Authority dated 12.04.2007 as well as order of this Tribunal dated 21.05.2008 passed in O.A. No. 158/AN/2007. The Hon'ble Calcutta High Court while dismissing the order of Disciplinary Authority as well as of this Tribunal has observed as under:-

“ 7. We have no hesitation to hold that the authority misused the power so granted to him under Article 311 (2)(b) which was to be exercised sparingly and that too, in an extreme extraordinary circumstance. We are of the view that the Tribunal should have examined the case from this angle.

8. The petition succeeds. The order of the Tribunal is set aside. The order of dismissal dated April 12, 2007 appears at pages 140-143 so merged in the order of the appellate authority dated 15.10.2007 appearing at page 164 is set aside.

9. This order would, however, not preclude the administration to place him under suspension immediately after his reinstatement and proceed against him

departmentally by affording him adequate opportunity to defend himself in the said proceeding.

10. We further make it clear that the question of back wages for the period till he is reinstated would be decided by the authority at the time of passing of the final order."

2. Subsequent to this, the applicant had filed O.A. No. 37/AN/2012 and another O.A. No. 111/AN/2013 challenging the dismissal orders of Disciplinary and Appellate Authority. In the O.A. 111/AN/2013, this Tribunal vide order dated 11.03.2014 has observed as under:-

" 16. Having considered the matter and its entirety in the given conspectus of fact and circumstances, we are of the considered opinion that the authorities faulted in invoking provision of Article 311(2)(b) of the Constitution of India while dismissing the applicant from service without any enquiry. We thus without any hesitation quash the penalty order dated 16.03.2011 and direct the authorities to justify invoking Rule 311(2)(b) by a reasoned and speaking order within 2 months or proceed against the applicant departmentally in accordance with law or pass appropriate order in view of any order passed in connection with the criminal appeal pending before the Hon'ble High Court. However, if the applicant is enlarged on Bail in connection with the criminal case, he shall be kept under suspension".

3. In compliance of this direction, the respondent authorities had passed Order No. 4778 dated 26.06.2014 and order No. 965 dated 7th/21.03.2016 giving justification amongst others, that disciplinary proceeding was dispensed with under Article 311(2)(b) of the Constitution of India while dismissing the applicant.

4. In addition to the above orders issued by the respondent authorities, they also have filed reply to this O.A. on 08.07.2016. They have

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brought out the justification, amongst others, for invoking Article 311(2)(b) of the Constitution of India in the following reasons:

- "(a) (ii) That earlier the applicant herein was involved in a criminal case vide Crime No. 255/97 dated 26/11/1997 U/S 489B and 489C IPC along with two others and engaged in circulation of fake currency notes. He was arrested in connection with the said case and placed under deemed suspension vide Order Book No. 4299 dated 01/12/1997. However, he was acquitted from the said criminal case on the benefit of doubt. Subsequently, he was reinstated into service in the year 2003 and thereafter, a departmental enquiry was initiated against him for his involvement in the said case vide Memorandum dated 03/06/2005."
- (b) "It is not possible to enumerate the cases in which it would not be reasonably practicable to hold the inquiry, but some instances by way of illustration may, however, be given. It would not be reasonably particularly through or together, with his associates, so terrorizes, threatens or intimidate witnesses who are going to give evidence against him with fear of reprisal as to prevent them from doing so or where the government servant by himself or together with or through others threatens, intimidates and terrorizes the officer who is the disciplinary authority or members of his family so that he is afraid to hold the inquiry or direct it to be held. It would also not be reasonably practicable to hold the inquiry whereas atmosphere of violence or of general indiscipline and insubordination prevails, and it is immaterial whether the concerned government servant is or is not a party to bringing about such an atmosphere. In this connection, we much bear in mind that numbers coerce and terrify while an individual may not."
- (c) The reasonable practicability of holding an inquiry is a matter of assessment to be made by the disciplinary authority. Such authority is generally on the spot and knows what is happening. It is because the disciplinary authority is the best judge of this that clause (3) of Article 311 makes the decision of the disciplinary authority on this question final."

5. It may be recalled that the applicant was initially put under deemed suspension for alleged involvement in fake currency case. Subsequently, he was reinstated and a departmental proceeding was initiated under No. IGP/DE-6/2005/106 dated 03.06.2005. While the

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disciplinary proceeding was pending, the applicant was alleged to be involved in robbery and intimidation case in Delhi Restaurant, Aberdeen Market, Port Blair and was booked under Book No. 2082 dated 12.04.2007. Then in another case of allegation of providing false information in the application form for Passport was registered vide crime No. 533/2007/1 dated 29.06.2007. The second disciplinary proceeding was initiated under No. DGP/DE-10/2009/314 dated 18.12.2009. Then another criminal case No. 13/11 dated 03.03.2011 was filed against the applicant in connection with conspiracy of leakage of question papers for Class XII of CBSE examination in 2011.

6. In view of the above series of incidents, the respondent authorities took a deliberate decision not to hold and complete the said two departmental proceedings initiated against the applicant and passed order of dismissal without holding an enquiry under Article 311(2)(b) of the Constitution of India.

7. On perusal of the records submitted by both the parties, it is observed that in the 1st case of fake currency, the applicant was acquitted by the trial court giving benefit of doubt. In the case of conspiracy in leakage of question paper of CBSE, the applicant also has been acquitted by the court of law [as stated by the respondents in their reply at para 3 (xviii) page 8 by giving the benefit of doubt.]

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As regards to the FIR vide Book No. 2082 dated 12.04.2007 filed in respect of the robbery/intimidation case, nothing has been stated by the respondent authorities as regards to the status. On the other side, the two departmental proceedings have not been continued and not concluded. This effectively leads to the situation wherein the applicant has neither been convicted by the court of law nor proved of the charges in the departmental proceedings.

8. As regards to the contention of the respondent authorities in the speaking orders that they are not reasonably able to hold departmental enquiry against the applicant, the main reasons stated by them is that due to the involvement of the applicant in the series of criminal activities, his character is one of the doubtful integrity and is liable to be discharged not only for restoration of faith of the general public but also in the overall interest of the police force. Retention of such a person with criminal intent will not only bring disrepute and defame to the entire police force but also shatter the moral fabric of the entire police force.

9. In the submissions made by them in their reply to the O.A., they also contended that as noted above (supra), keeping in view of the threat of intimidation of the witnesses etc, it is not practicable to hold the disciplinary proceedings. But we have not noticed such situation wherein the applicant, (charged officer) has created a situation of violence and threats. The respondent authorities are making it out as if the entire department has been terrorized by the applicant due to which they are not able to hold

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normal departmental enquiry. The situation however, is not that case as can be made out from the simple fact that applicant is seeking redressal of his grievances only through the legal course of action. Therefore, the contention of the respondent authorities that they are reasonably not able to hold departmental enquiry against the applicant is not acceptable.

10. As regards to the imposition of penalty particularly that too dismissal from service which is heaviest punishment for a Govt. employees, it is felt that this imposition of penalty is not justified. This view is due to the fact that the applicant has not been convicted by the legal court. In the 1st and 3rd case, he has been honourably acquitted. In the 2nd case, the department has not come out with the status of the FIR being registered against the applicant, which remains as on date only as an allegation. On the other side, the department has not continued the two departmental proceedings initiated against him. This stands that nothing has been proved against the applicant either in the criminal cases registered against him or in the departmental proceedings initiated. Therefore, the imposition of penalty of dismissal on the applicant amounts to punishing the applicant without any conviction or proof of charges filed or initiated against him.

11. Keeping in view of the above, we are of the considered view that the respondent authorities have not been able to fully justify to invoke Article 311(2)(b) of the Constitution of India for dispensing with of holding of enquiry and have not adequately justified imposition of penalty of dismissal

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from service. Accordingly, order under Book No. 4778 dated 26.06.2014 and another order of the appellate authority under order No. 965 dated 7th/21st March 2016 are hereby set aside and quashed.

12. Respondent authorities are at liberty to continue departmental proceedings, complete and arrive at conclusion and issue a suitable order as considered appropriate. If the applicant was on suspension on the date of dismissal, he shall continue to remain deemed under suspension till further order passed by disciplinary authority.

13. With the above observations and directions, O.A. stands disposed of.

14. There shall be no order as to the costs.


(N. Neihsial) _____
Administrative Member


(Bidisha Banerjee)
Judicial Member