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Central Administrative Tribunal
Principal Bench

O.A. No. 818 of 2003

New Delhi, dated this the 9th September, 2003.

HON'BLE MR. JUSTICE V.S. AGGARWAL, CHAIRMAN
HON'BLE MR. R.K. UPADHYAYA, ADMINISTRATIVE MEMBER

Ex. Sub-Inspector Daya Ram No.339/D,
S/o Shri Pitam Singh,
R/o Village & P.O. Dayalpur,
P.S. Ballab Garh,
Distt. Gurgaon,
Haryana

....Applicant.

(By Advocate: Shri Sachin Chauhan)

Versus

1. The Union of India,
through
its Secretary,
Ministry of Home Affairs,
North Block,
New Delhi.
2. Joint Commissioner of Police,
Special Branch,
Police Headquarter,
I.P. Estate,
M.S.O. Building,
New Delhi.
3. Dy. Commissioner of Police,
Special Branch,
Police Headquarters,
I.P. Estate,
M.S.O. Building,
New Delhi.

....Respondents.

(By Advocate: Shri Ajesh Luthra)

ORDER (ORAL)

Shri R.K. Upadhyaya, Administrative Member

By this application under section 19 of the Administrative Tribunals Act, 1985 the applicant has claimed relief of setting aside the order of dismissal from service dated 6.5.2002 (Annexure-A1) as well as the order dated 10.8.2002 (Annexure-A2) of the appellate authority rejecting the appeal.

Ansaram

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2. It is stated by the applicant that he was appointed as Constable in Delhi Police on 1.1.66. In due course, he was promoted to the rank of Sub-Inspector in the year 1991. The applicant had verified the stay of Smt. Kiran Chopra for the purpose of issue of passport. It ^{was} found to be a case of obtaining Indian passport fraudulently. It was established that the address given in the passport form was not in existence. Therefore, the report submitted by the applicant was wrong/bogus. For the above mis-conduct of the applicant, regular departmental enquiry was held and Shri A.S. Bhullar, ACF was nominated as Enquiry Officer by the disciplinary authority vide order dated 9.5.2001 (Annexure-A3). The claim of the applicant is that no summary of allegations was ever issued by the said Enquiry Officer on the aforesaid charges. However, the applicant had received order dated 6.5.2002 (Annexure-A1) passed by the disciplinary authority in which in addition to the earlier misconduct, certain other illustrations of misconduct have been noticed. In the order dated 6.5.2002, it has been stated that the applicant while posted in South Zone/SB, Delhi as an Area Officer verified the stay of Smt. Baljeet Kaur at A-201, Ali Vihar Badarpur, Mehrauli, New Delhi. According to the applicant's report dated 23.12.98, Smt. Baljeet Kaur stayed at the above address for more than two years and her nationality was Indian. The immigration Authority established that the passport was obtained fraudulently and passport holder Smt. Baljeet Kaur was an Afgan national. Another incident stated in the impugned order dated

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6.5.2002 relates to misuse of an amount of Rs.11,000/- which was kept by the applicant without any valid cause when he was posted as Sub-Inspector, Ration during the period from January, 1994 to July, 1994. The disciplinary authority had also taken note of an incident of misbehaviour with Constable Ram Kumar in a drunken state when he was posted at P.S. Patel Nagar. The disciplinary authority further noted that the applicant's name existed in the list of persons having doubtful integrity. The disciplinary authority was "satisfied that it would not be reasonably practical to continue the departmental proceedings" against the applicant. Therefore, he had ordered "dismissal from service with immediate effect under the provisions of Article 311 (2)(b) of Constitution of India".

3. Aggrieved by the order of the disciplinary authority, the applicant had filed an appeal which has also been rejected vide order dated 10.8.2002 (Annexure-A2) by the appellate authority. The appellate authority has noticed the pleas of the applicant raised in the appeal and has summarised them as under:

"(i) The disciplinary authority imposed the extreme punishment of dismissal from service under the provisions of Article 311(2)(b) of the Constitution of India.

(ii) A DE was initiated against the appellant only on the charge of bogus passport verification but in the order of punishment a Pandora of charges have been levelled against him.

(iii) Before dismissing the appellant neither a SCN was issued to him nor a DE ordered.

21/5/2002

(iv) Long length of service has not been considered by the disciplinary authority while imposing the extreme punishment."

4. The appellate authority while rejecting the appeal filed by the applicant has observed that the pleas taken are not acceptable.

5. The applicant alleges that the order of the disciplinary authority as well as the appellate authority are vitiated. The disciplinary authority has adopted a short-cut method to avoid holding of departmental enquiry. Normally, the departmental proceedings cannot be dispensed with merely on the ground that it will take a long time. According to the applicant, similar mis-conduct in other cases had been enquired by holding a regular departmental proceedings whereas he has been prejudiced by the impugned order whereby the regular departmental proceedings have been dispensed with. In support of his claims, reliance has been placed by the applicant on an order dated 14.12.2001 in O.A.No.1066/2001 Ex.Constable Radhey Shyam Vs. UOI & Ors., wherein this Tribunal has held as follows:

"6. We have carefully considered the rival contentions of both the parties and also perused the material on record. Having regard to the ratio laid down by the Apex Court in Satyavir Singh Vs. Union of India 1986 SCC (L&S) P-1, the enquiry cannot be lightly dispensed with on the ipsi dixit of the disciplinary authority and can be only when it is not reasonably practicable to proceed with the departmental enquiry, when it is found that the witnesses and the complainants have been terrorised during the enquiry and are not ready to depose against the delinquent officials.. Mere presumptions or surmises, as done by the disciplinary

Radhey Shyam

authority, would not be a sufficient compliance of the Rules."

6. The respondents have contested this application. In their reply, it has been stated that the conduct of the applicant as a member of the disciplined force is most reprehensible. It is further stated by the respondents that continuance of the departmental enquiry against the applicant was not reasonably practicable as the departmental proceeding would take a long time. It is not uncommon in such cases that the witnesses were later on won over and they turn hostile mainly due to threats and pressure from the applicant. Moreover, the concerned foreign nationals would also not stand as witnesses against him. The respondents have also stated that because of the grave misconducts committed by the applicant, the reliefs claimed should not be granted to him.

7. The applicant has filed rejoinder reiterating his pleas as contained in the OA.

8. We have heard the learned counsel of both the parties and have perused the materials available on record.

9. On the facts of this case, we find that the departmental enquiry in respect of applicant's misconduct relating to verification of passport of Smt. Kiran Chopra was initiated as per order dated 9.5.2001 as can be seen from the order of appointment

Amrinder Singh

of Enquiry Officer (Annexure-A3). The applicant claims that no proceedings in pursuance to the appointment of Enquiry Officer had been continued. The respondents in their reply have not stated anything as to why the proposed departmental proceeding in respect of misconduct relating to verification of particulars of passport of Smt. Kiran Chopra could not be continued. On the other hand, we find that several illustrations of misconduct have been enumerated in the impugned order dated 6.5.2002. This included misconduct in respect of verification of passport of Smt. Baljeet Kaur and misuse of an amount of Rs. 11000/- which was kept by the applicant when he was posted as SI Ration during the period from January, 1994 to July, 1994. The disciplinary authority has also mentioned the incident of misbehaviour of applicant with Constable Ram Kumar while he was posted at P.S. Patel Nagar. Another reason for issuing the impugned order is that the applicant's name also existed in the list of persons having doubtful integrity.

10. In our opinion, none of the charges relating to the misconduct of the applicant enumerated by the disciplinary authority justify for resorting to provisions contained in Article 311(2)(b) of Constitution of India. Such a summary punishment awarded to the applicant is in violation of principles of natural justice in as much as the applicant did not get any opportunity to state his defence. The Division Bench of this Tribunal in the

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case of Ex.Constable Radhey Shyam (supra) has quashed the order of dismissal passed by the disciplinary authority and directed the respondents to reinstate the applicant in service with all consequential benefits.

11. This Bench in OA No.3107/2002 by order dated 9.9.2003 held as follows:

"In almost identical terms in the cases of Shri Keshav Kumar Vs. Union of India and Ors., in OA No.1096/2001 decided on 11.9.2002; Ravinder Singh Vs. Commissioner of Police and others, in OA No.157/2002 decided on 17.4.2002; Constable Krishan Singh Vs. Commissioner of Police and others in OA No.2097/2001 decided on 10.7.2002 and a Full Bench of this Tribunal in the case of Jagdish Vs. Union of India and others in OA No.1515/2001 decided on 7.2.2003 did not approve of invoking Article 311 (2) (b) of the Constitution of India. It was held that heinous nature of the offences is not the tilting factor."

12. In the present case also, there is no evidence to show that the enquiry was really impracticable. There is also nothing on record to show that applicant has influenced or won over the witnesses if the regular enquiry proceeding had been conducted against him. Merely because the regular departmental proceedings may take a long time, action resorted to by the disciplinary authority under Article 311(2)(b) of the Constitution cannot be upheld. Besides, we find that the applicant has never been confronted with all the charges enumerated by the disciplinary authority.

13. For all these reasons, the impugned orders of

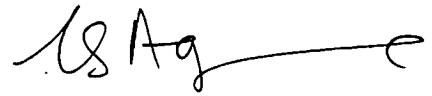
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the disciplinary authority as well as the appellate authority cannot be upheld. Therefore, we quash and set aside the said orders accordingly. The applicant is directed to be given all consequential benefits as per rules. We make it clear that nothing said herein would restrain the respondents and they may, if deemed appropriate, continue and take appropriate disciplinary action in accordance with rules.

14. Accordingly, this application is allowed without any order as to costs.



(R.K. Upadhyaya)
Administrative Member



(V.S. Aggarwal)
Chairman

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