
(2009) 09 DEL CK 0065

In the Delhi High Court

Case No : Writ Petition (C) 3940 of 2008 and CM 7635 of 2008

Commissioner of Police and Another

APPELLANT

Vs

Daya Nand

RESPONDENT

Date of Decision : 02-09-2009

Acts Referred:

Constitution of India, 1950 — Article 311(2)

Citation : (2010) 1 ILR Delhi 538

Hon'ble Judges : Reva Khetrapal, J; Mukul Mudgal, J

Bench : Division Bench

Advocate : Rohit Madan, for the Appellant; Ritika, for Sachin Chauhan, for the Respondent

Judgement

Mukul Mudgal, J.—With the consent of the learned Counsel for the parties this writ petition is taken up for hearing.

2. This writ petition challenges the judgment of the Central Administrative Tribunal (hereinafter referred to as "the Tribunal") dated 3rd October, 2007 allowing the OA filed by the respondent herein Constable Dayanand, who was a driver in Delhi Police. The allegation against the appellant arose from an incident where certain allegations were made against the respondent upon the recovery of the gold ornaments from his person, while chasing certain robbers. The question involved in the OA in fact relates to the dispensation of the departmental inquiry under Article 311(2)(b) of the Constitution of India. The said provision of the Constitution reads as follows:

311. Dismissal, removal or reduction in rank of persons employed in civil capacities under the Union or a State -

(1) No person who is a member of a civil service of the Union or an all-India service or a civil service of a State or holds a civil post under the Union or a State shall be dismissed or removed by an authority subordinate to that by which he was appointed.

(2) No such person as aforesaid shall be dismissed or removed or reduced in rank except after an inquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges:

[Provided that where it is proposed after such inquiry, to impose upon him any such penalty, such penalty may be imposed on the basis of the evidence adduced during such inquiry and it shall not be necessary to give such person any opportunity of making representation on the penalty proposed:

Provided further that this clause shall not apply-]

(b) Where the authority empowered to dismiss or remove a person or to reduce him in rank is satisfied that for some reason, to be recorded by that authority in writing, it is not reasonably practicable to hold such inquiry."

3. The reasoning by the respondent No. 3, the Deputy Commissioner of Police, Police Headquarters for invoking the above provision of the Constitution reads as follows:

In this circumstance of the case, the possibility of the victim being unduly pressurized and threatened duly (sic) the departmental proceeding cannot be ruled out. It is probable that in a regular DE, the defaulter will overawe the witnesses who out of the fear may not depose against him. This is one of those glaring official grave misconduct which erode the faith of public in the criminal justice system.

Therefore, under these circumstances, I am of the considered view that for the reasons mentioned above, it is not practicable to hold a regular DE against him for establishing the truth.

In view of over all circumstances of the case, I Ajay Kumar, Dy. Commissioner of Police, Delhi hereby order dismissal of Const. (Dvr) Daya Nand No. 4696/PCR (PIS No. 28970052) from the force immediate effect under Article 311(2)(b) of the Constitution of India.

4. The above order of dispensation of the departmental inquiry under Article 311(2)(b) was challenged before the appellate authority and the appellate authority while reproducing largely the reasoning of the Disciplinary authority gave the following reasoning for dismissing the departmental appeal preferred by the respondent/appellant:

I have carefully gone through the appeal of the appellant as well as relevant record on file. The appellant was also heard in orderly room on 21.2.2007 and he reiterated the pleas already taken in his appeal. After hearing the appellant and verifying the facts from ASI Virender Singh No. 1069/D and Head Const. Parshu Ram, No. 1441/PCR, who were on duty on the van at that relevant time, and also perusing the record available on file, it appears that the action taken against the appellant by the disciplinary authority is justified. There is no reason to interfere

with the order passed by the disciplinary authority. The appeal of the appellant is rejected.

5. The Tribunal has in the impugned judgment dated 3rd October 2007 felicitously summed up the law laid down by the Hon''ble Supreme Court in the cases of Union of India and Another Vs. Tulsiram Patel and Others, and Satyavir Singh and Others Vs. Union of India (UOI) and Others, The Tribunal further relied on the judgment of this Court in the case of R.K. Mishra v. G.M.N. Railway 1977 Lab. IC 643, where the following position of law has been laid down:

The word "practicable" in the context of the disciplinary rule would imply some "physical or legal impediment" to the holding of enquiry, such as a situation may arise where it is not reasonably practicable to secure the attendance of the delinquent or the persons who are to conduct the enquiry or those who are to give evidence. The mere anxiety to take drastic or swift action, however, expedient from the point of view of administration, could not be said to have rendered the holding of an inquiry impracticable.

6. The Tribunal had relied upon several other judgments of the Hon''ble Supreme Court to arrive at its conclusion.

7. The settled position of law emerging from the judgments of the Hon''ble Supreme Court is as under:

In Ikramuddin Ahmed Borah Vs. Superintendent of Police, Darrang and Others, it was held that in order to decide whether it was practicable to hold an enquiry or not, the test to be applied is that of a reasonable person taking a reasonable view of a prevailing situation. However, in a situation where two points of view are possible, a court will decline to interfere. Also, in Chief Security Officer and Others Vs. Singasan Rabi Das, the respondent was removed from service for misconduct, stating that an enquiry was not reasonably practicable on the basis that it might cause personal humiliation, insults or threat to witnesses, the court, however, held that in light of total absence of sufficient material, dispensing with the enquiry was not justified. Further, in Jaswant Singh Vs. State of Punjab and others, it was held that the concerned authority cannot dispense with the department enquiry merely based on its ipse dixit (which would imply something being asserted but not duly proved). In another decision, it was held by the Hon''ble Supreme Court in Union of India (UOI) and Others Vs. R. Reddappa and Another, that cases, the outcome of which would result in injustice or arbitrary exercise of power, recourse cannot be taken to Article 311(2)(b).

Further, it was held in the case of Kuldip Singh Vs. State of Punjab and Others, that when there is sufficient material before the appropriate authority the same can be relied upon to conclude that it was not reasonably practicable to hold an enquiry, as contemplated under Article 311(2)(b).

In Chandigarh Administration, Union Territory, Chandigarh and others Vs. Ajay Manchanda, etc., it was held that in order to satisfy the grounds for invoking

Article 311(2)(b) and dispensing with the disciplinary enquiry, some independent material should be relied upon. Also, in Onkar Lal Bajaj Vs. Union of India (UOI) and Another etc. etc., it was laid down that keeping in mind the greater objective of public interest, each case dealing with Article 311(2) must be ascertained under its own relevant facts, circumstances and merits.

The Hon'ble Supreme Court in the case of Sudesh Kumar v. State of Haryana and Ors. (2005) 11 SCC 525, held that a reasonable opportunity of being heard must be afforded in cases involving Article 311(2), wherein Article 311(2)(b) acts as an exception to the said rule. It was also enunciated in Ajit Kumar Nag Vs. General Manager (P.J.), Indian Oil Corporation Ltd., Haldia and Others, that reasons for dispensing with enquiry should be recorded in writing and communicated to the delinquent, being a mandate of the Constitution.

8. It has also been held that Article 311(2)(b) can be invoked even after the enquiry has started and we are in entire agreement with the aforesaid position of law culled out by the Tribunal and endorse the same. We are of the view that dispensation of the departmental inquiry seriously affects the respondent as his right to repel the allegations against him is totally taken away and ought not to be resorted to in a cavalier fashion, as has been held by this Court in the case of Satish Chand Gupta and Ors. Hari Om and Ors. and Amit Kumar v. MCD and Ors. Writ Petition (C) Nos. 8268-85, 8379-99 and 9576/2006, decided on 9th July 2007 as follows:

Where the authority is satisfied for some reason to be recorded that it is not reasonably practicable to give the employee an opportunity of showing cause, or where the employee is removed or dismissed on the ground of conduct which led to his conviction, the procedure of imposing any penalty on such an employee by holding an enquiry can be dispensed with.

9. In an another decision of this Court in Delhi Administration and Ors. v. Ex-constable Inderjit and Anr. CWP No. 4196/1998 decided on 17th September 2002 it was held as follows:

A case, thus, must be made out, which would make the said provision applicable, if no material has been brought on record to show that as to why such an enquiry is not reasonably practicable to be held and if sufficient and cogent reasons are not assigned in support thereof, the order would be a nullity. Even a case where the order does not reveal or disclose existence of sufficient material, it becomes obligatory on the part of the Department to produce such materials(s) before the appellate court in the event an appeal is filed.

10. In our view, the Tribunal has rightly held that there was a gross abuse of the constitutional provision to hold that the delinquent officer may overawe the witnesses, most of whom would be police officers senior in rank to him.

11. We entirely agree with the said reasoning of the Tribunal. It is not in dispute that in the present case the respondent is a constable and even the appellate

authority noted that the facts were verified from Assistant Sub Inspector Virender Singh and the Head Constable Parshu Ram, who were on duty in the van, and since both such police officers are senior in rank to the respondent, who was only a constable, the Tribunal was absolutely justified in quashing the order of dispensation of the departmental inquiry against the respondent. Accordingly, we see no reason to interfere with the impugned judgment and the writ petition is thus dismissed along with CM 7635/2008 with no order as to costs.