

(2021) 10 CAT CK 0040

In the Central Administrative Tribunal

Case No : Original Application No. 1377 Of 2018

Dinesh Kumar

APPELLANT

Vs

Commissioner of Police & Others

RESPONDENT

Date of Decision : 25-10-2021

Acts Referred:

Administrative Tribunals Act, 1985 — Section 19
Indian Penal Code, 1860 — Section 32, 384, 385, 452
Code Of Criminal Procedure, 1973 — Section 313
Delhi Police (Punishment & Appeal) Rules, 1980 — Rule 12
Constitution Of India, 1949 — Article 311(2), 311(2)(b)

Citation : (2021) 10 CAT CK 0040

Hon'ble Judges : A.K. Bishnoi, Member (A); R.N. Singh, Member (J)

Bench : Division Bench

Advocate : Ajesh Luthra, Amit Anand

Final Decision : Partly Allowed

Judgement

R.N. Singh, Member (J)

(Through Video Conferencing)

1. In the present Original Application filed under Section 19 of the Administrative Tribunals Act, 1985, the applicant has challenged the order dated 9.4.2016 (Annexure A/2) passed by the disciplinary authority dismissing him from the service and order dated 12.5.2017 (Annexure A/1) by which the appellate authority has rejected his appeal. The applicant has prayed for the following reliefs:-

"a) Quash and set aside the impugned orders dated 12/05/2017 and 09/04/2016 placed at Annexure A/1 and A/2 above and

b) Direct reinstatement of the applicant forthwith.

c) Accord all consequential benefits including seniority and monetary benefits.

d) Award costs of the proceedings; and

e) Pass any other order/direction which this Hon'ble Tribunal deems fit and proper in favour of the applicant and against the respondents in the facts and circumstances of the case."

2. The facts relating to the present case are that the applicant joined as a Constable under the respondents in January 2010. He was arrested in case FIR No.218 dated 9.4.2016 under Section 384/385/452/32 of IPC registered with Police Station Dwarka South, New Delhi. The said impugned order dated 09.04.2016 has been passed by the disciplinary authority by invoking the provisions of Article 311 (2) (b) of the Constitution of India. The allegations against the applicant and the material and/or the reasons for the disciplinary authority to invoke his jurisdiction in view of the provisions of Article 311(2)(b) of the Constitution of India can be evident from paras 2 to 5 of the impugned order dated 9.4.2016 (Annexure A/2), which read as under:-

"The above mentioned case has been registered on the statement of Mohd. Nouman Sait S/O Mohd. Bashir Sait r/o Flat No. 45 Plot No. 28, Kasma Apartment, Sector-10, Dwarka, New Delhi, aged 28 years that he works online marketing. Today i.e. 9.4.2016 at about 12.00 night, he was present at his house and working on his Laptop. Suddenly, the bell of his house rang and he opened the door where three young men were standing. They entered in his flat forcefully after flashing their Identity Cards of Delhi Police and started a search in his flat. The Intruders claimed that they had information about some wrong activities being undertaken in his flat and demanded Rs. 20 lacs from the complainant and threatened him by showing pistol. Somehow, he managed to make a call to police through his friend. Local Police alongwith PCR staff reached the spot and found that all the three persons who had intruded were Consts. of Delhi Police namely (1) Const. Prashant No. 11122/DAP (posted in 4 Bn. DAP), (2) Const. Dinesh Kumar No. 1879/Sec. (posted in E-Block/Sec.) and (3) Const. Sandeep No. 596/SB (posted in Spl. Cell/SWR) and they had entered the flat of complainant unauthorizedly with ulterior motive. During investigation of the case, all the three accused persons have been arrested in the above mentioned case and their Identity Cards have been recovered and seized as per memo. by the local police. A service pistol alongwith 10 Nos. 9mm live cartridge and a Santro Car bearing registration No. DL-4-CB-A-0694 registered in the name of accused Sandeep were also seized by the local police.

After having committed above gravest misconducts of criminal activities, if the defaulter Const (Exe.) Dinesh Kumar, No. 1879/Sec. (posted in E-Block/Security Unit) is allowed to continue in the police force, it would be detrimental to public interest and further tarnish the image of the Police force in the society. His misconduct has put the entire police force to shame. Such misconduct can not be tolerated in a disciplined organization like police whose basic duty is to protect the life of citizen in the society. The facts and circumstances of the case are that it would not be reasonably practicable to conduct a regular departmental enquiry

against the defaulter Const. (Exe.) Dinesh Kumar, No. 1879/Sec. as there is a reasonable belief that the witnesses would not come forward to depose against him due to intimidation, inducement and affiliation of material PWs by the default Const. (Exe.) It also calls for great courage to depose against desperate person and that task becomes more acute and difficult where the defaulter is police official who may use his job to influence the statement/deposition of the witnesses. Further an extended enquiry would only cause more trauma to the victim.

The misconduct of accused Const. (Exe.) Dinesh Kumar, No. 1879/Sec. who has been arrested in a case of extortion from an innocent citizen which is of such a grave nature that warrants an exemplary punishment of dismissal, in order to send a clear message to such undesirable person and to prevent the recurrence of such crimes. Taking into account the holistic facts and circumstances of the case as mentioned above, the undersigned is of the firm opinion and satisfied that the acts and grave misconduct of accused Const. (Exe.) Dinesh Kumar, No. 1879/Sec. attract the provisions of Article 311 (2) (b) of the Constitution of India and make him completely unfit for police service.

Keeping in view the facts of the case and overall implication of such misconduct for disciplined force and sensitivity of the matter, I, B.K. Singh, Dy. Commissioner of Police, Security (SG), New Delhi do hereby DISMISS Const. (Exe.) Dinesh Kumar, No. 1879/Sec (PIS No. 28100488) from service under clause (b) of Second Proviso to Article 311 (2) of the Constitution of India with immediate effect."

3. The applicant underwent trial in the said case FIR and the learned Trial Court vide Order/Judgment dated 3.2.2017 passed in the said case FIR (Annexure A/6) has acquitted the applicant and other two co-accused from all the charges levelled against them in the said case FIR. The paragraphs 21 and 22 of the said Order/Judgement of the learned Trial Court read as under:-

"21. It is clear from the above discussion that prosecution has miserably failed to bring even an iota of incriminating evidence against the accused persons justifying examination of accused persons under Section 313 Cr.P.C. and there being no sufficient incriminating evidence against the accused persons, warranting recording of statement of accused persons under Section 313 Cr.P.C., their statement under Section 313 Cr.P.C. has been dispensed with.

22. In view of above scrutiny of evidences, I find that this case suffers from lack of evidences and it is hold that prosecution has miserably failed to prove the charges levelled against the accused persons. Hence, accused persons Sandeep, Parshant Solanki and Dinesh Kumar are acquitted from all the charges levelled against them in the present case."

4. In the last sub-para of 20, learned Trial Court has recorded that "From the statement of the I.O. it is clear that he stated only about the seizure of the car at the instance of accused Sandeep. Complainant, who has been shown as recovery

witness, has turned hostile. Apart from this there is no evidence on the point that Santro car was being used by accused Sandeep. Mere recovery at the instance of accused cannot be taken as use of car with forged number or false property mark."

5. Pursuant to notice from this Tribunal, the respondents have filed counter reply and they have opposed the OA and have prayed for dismissal thereof with costs.

6. The applicant has filed rejoinder and has reiterated and reaffirmed the contentions made therein in the OA.

7. Shri Luthra, learned counsel for the applicant, has argued that the impugned orders are bad and illegal for the same being contrary to the Constitutional provisions and also for the being contrary to and in violation of the law laid down by the Hon'ble Apex Court in Union Of India and another vs Tulsiram Patel and others, reported in 1985 AIR 1416, and further in Jaswant Singh vs. State of Punjab and others, reported in 1991 (1) SC 362, judgments of the Hon'ble High Courts and this Tribunal in catena of cases in which the law laid down by the Hon'ble Apex Court in Tulsiram Patel (supra) and Jaswant Singh (supra) have been referred to and relied upon. He has further submitted that other two accused in the aforesaid case FIR have been reinstated by the respondents in view of the representation(s) and/or the Orders/Judgments of this Tribunal after their acquittal from the aforesaid case FIR. The present OA deserves to be allowed and the applicant is entitled to be considered in the same manner as the other two co-accused who have also been dismissed by the respondents by invoking the provisions of Article 311(2)(b) of the Constitution of India in view of their alleged involvement in the said case FIR. Shri Luthra has further argued that the applicant after being acquitted from the said case FIR has submitted his representation before the respondents on 28.2.2017 (Annexure A/7) to allow him to join the service keeping in view the provisions of Rule 12 of the Delhi Police (Punishment & Appeal) Rules, 1980 (hereinafter referred to as 'the Rules of 1980'). However, without considering the same, the appellate authority has rejected his appeal vide impugned order dated 12.5.2017 (Annexure A/1) in a mechanical manner. However, the respondents vide order dated 30.11.2017 have taken into consideration the Order/Judgment dated 3.2.2017 of the learned Trial court in the aforesaid FIR 218/2016, the provisions of Rule 12 of the Rules of 1980 and the Order/Judgement dated 14.3.2011 of this Tribunal in OA 2816/2008, titled Sukhdev Singh and another vs. Govt. of NCT of Delhi and others, and have set aside the order of dismissal passed by the disciplinary authority as well as the order of the appellate authority and the co-accused Constable Prashant Solanki was ordered to be reinstated in service from dismissal and his intervening period was decided as 'spent on duty' for all intents and purposes. Shri Luthra, learned counsel for the applicant has further brought on record that the applicant's co-accused, namely, Constable Sandeep had approached this Tribunal by way of OA 1334/2018 and this Tribunal vide Order/Judgement dated 13.12.2019 disposed of the said OA and in compliance of the

said Order/Judgement, the respondents have passed an order setting aside the disciplinary and appellate authorities' orders in respect of Constable Sandeep and they have also decided the intervening period from the date of dismissal, i.e., 9.4.2016 till the issue of the said order as 'spent on duty' for all intents and purposes in respect of the said Constable Sandeep. Learned counsel for the applicant has further argued that once the applicant and other two co-accused have been acquitted honourably by the learned Trial court and the respondents have set aside the disciplinary authorities' order(s) and appellate authorities' order(s) in respect of the co-accused similarly placed persons which are identical to the orders impugned by the applicant in the present OA, the action of the respondents not according the same treatment to the applicant, as accorded to the said two co-accused, is illegal, arbitrary and discriminatory and, therefore, the aforesaid impugned orders deserve to be set aside by this Tribunal.

8. With the assistance of the counter reply, learned counsel for the applicant has vehemently argued that the applicant has rightly been dismissed by invoking the provisions of Article 311(2)(b) of the Constitution of India and there is no illegality and infirmity which may require any interference by this Tribunal. However, he has not disputed acquittal of the applicant and other two co-accused persons from the aforesaid case FIR, who have also been working as Constables under the respondents and have been dismissed by the respondents in the similar manner. It is also not disputed by the respondents that after acquittal, the punishment orders passed against the said two co-accused employees have been reconsidered by the respondents and keeping in view the provisions of Rule 12 of the Rules of 1980 and the Order/Judgement of this Tribunal in the case of Sukhdev Singh (*supra*), they have been reinstated by the respondents as noted hereinabove.

9. In view of the aforesaid facts and circumstances, leaving all other grounds available to the parties open, we are of the considered view that the impugned orders deserves to be set aside and the applicant's claim for reinstatement deserves to be reconsidered by the respondents afresh keeping in view the treatment accorded to the co-accused, namely, Constable Prashant Solanki and Constable Sandeep.

10. In view of the aforesaid, the OA is partly allowed with the following order(s)/direction(s):-

(i) The impugned orders dated 9.4.2016 (Annexure A/2) and dated 12.5.2017 (Annexure A/1) are set aside;

(ii) The respondents are directed to reconsider the applicant's representation dated 28.2.2017 (Annexure A/7) and if the applicant is found identically placed as other two co-accused Constables, namely, Prashant Solanki and Sandeep, the respondents are directed to grant the same benefits as accorded to the said Constables, namely Prashant Solanki and Sandeep;

(iii) The respondents shall complete the aforesaid exercise and pass necessary

orders in this regard as expeditiously as possible and in any case within six weeks of receipt of a copy of this Order.

11. However, in the facts and circumstances, there shall be no order as to costs.