

(2009) 09 DEL CK 0027

In the Delhi High Court

Case No : Writ Petition (Civil) No. 7068 of 2000

Ex-Constable Mahabir Singh and Ex-Constable Mahabir Singh APPELLANT
Vs

Union of India (UOI) and The Additional Deputy RESPONDENT
Commissioner of Police

Date of Decision : 02-09-2009

Acts Referred:

Constitution of India, 1950 — Article 311(2), 311(3)
Criminal Procedure Code, 1973 (CrPC) — Section 164

Citation : (2009) 09 DEL CK 0027

Hon'ble Judges : Madan B. Lokur, J; A.K. Pathak, J

Bench : Division Bench

Advocate : Anil Mittal and Gagandeep Singh, for the Appellant; V.K. Tandon, for the Respondent

Judgement

Madan B. Lokur, J.—The Petitioners are aggrieved by an order dated 24th April, 2000 passed by the Central Administrative Tribunal, Principal Bench in OA No. 1876/1996.

2. Both the Petitioners were working as Constables with the Delhi Police. It was alleged that in the evening of 25th November, 1994 they had raped one lady (the prosecutrix) and also assaulted her husband Dharam Singh. This information was passed on to the Disciplinary Authority of the Petitioners at about 9.15 p.m. by one Chand Ram, M.L.A.

3. The Disciplinary Authority visited the site where the offence was alleged to have been committed. He was accompanied by the SHO of P.S. Shalimar Bagh, Inspector P.T. Rana as well as the Inspector/Superintendent of Police Badli, Inspector Ravi Shankar. The Disciplinary Authority was also accompanied by Chand Ram, M.L.A. and Dharam Singh, the complainant.

4. When the party reached the spot at about 10.15 p.m., they heard the prosecutrix screaming in the bushes adjacent to the police picket. The party

rushed and caught hold of one person (one of the Petitioners) who was only in his underwear while another person escaped in the dark. Later on, the other person was caught and identified as the other Petitioner.

5. According to the prosecutrix, the Petitioners assaulted her husband Dharam Singh and told him to run away from the spot. Later on both the Petitioners made her drink liquor, molested and raped her continuously for about 6 hours. On the basis of her statement, a First Information Report was lodged and the prosecutrix and the Petitioners were sent for a medical examination.

6. Subsequently, a preliminary inquiry was conducted by the Delhi Police which implicated the Petitioners. Around the same time, the Disciplinary Authority passed an order under Clause (b) of the second proviso to Article 311(2) of the Constitution on 30th November, 1994 concluding that it is not reasonably practicable to hold a regular departmental enquiry against the Petitioners and then ordering their dismissal from service. At this stage, it is necessary to reproduce the view expressed by the Disciplinary Authority in the order dated 30th November, 1994. It is stated in the order as follows:

... After considering all the facts and circumstances, I am of firm view that it is not at all reasonably practicable to hold a regular Departmental Enquiry against these two constables because if they could have terrorised the lady while on duty and in the police picket and going to the extent of assaulting her husband for realizing their illegal, immoral goal than I have reason to believe that they would resort to the same tactics during the DE and thereby terrorise the lady and her husband who are the only witness to the whole agony/and shall not stand to the brutal force of these two highly undesirable police personnel.

7. We have been told by learned Counsel for the Petitioners that his clients were arrested on the day of the alleged incident and granted bail by the Additional Sessions Judge on 17th January, 1995. In other words, when the order dispensing with the departmental enquiry was passed, both the Petitioners were in judicial custody.

8. Be that as it may, upon receipt of the order dated 30th November, 1994 the Petitioners preferred a departmental appeal which came to be dismissed on 15th July, 1996. Against that decision the Petitioners preferred an original application before the Tribunal which came to be dismissed by the impugned order dated 24th April, 2000. This is why the matter is now before us.

9. In the criminal trial, the prosecutrix entered the witness box but did not implicate any of the Petitioners. On the basis of her statement as well as the other evidence on record, by a judgment and order dated 17th May, 1999 the learned Additional Sessions Judge acquitted the Petitioners.

10. We have been taken through the decision rendered by the learned Additional Sessions Judge which notes that the statement of the prosecutrix was recorded u/s 164 of the Cr.P.C. Although the text of this statement is not on record, it

appears that the prosecutrix completely exonerated the Petitioners. Under the circumstances, it is quite clear that both at the stage of recording her statement u/s 164 of the Cr.P.C. as well as when she entered the witness box in the criminal trial, the prosecutrix did not implicate any of the Petitioners. However, we need not go into the merits of the case because that is not an issue before us. We have merely given these background facts to better appreciate the issue before us, which is the validity of the order dated 30th November, 1994 dispensing with the departmental enquiry.

11. Insofar as this issue is concerned, we find from the above narration that the principal witnesses in the disciplinary inquiry would be the Disciplinary Authority himself, the two police officials and the M.L.A. apart from the prosecutrix and her husband. It is not possible for us to accept the view that the Disciplinary Authority (who himself is a senior police officer) as well as the two police officials would not have supported the case of the prosecution in the departmental enquiry. Nor is it possible for us to accept the view that Chand Ram, M.L.A. a political leader, could have been terrorized by the two Petitioners so as not to give a statement in the departmental enquiry. This, coupled with the fact that at the time when the order dated 30th November, 1994 was passed, both the Petitioners were in judicial custody makes it difficult to accept the view that these Petitioners could have spread terror so as to make it reasonably impracticable to hold a disciplinary inquiry.

12. However, the Disciplinary Authority has noted that the Petitioners could have terrorized the prosecutrix and her husband who were the main witnesses. In our opinion, it was rather hasty to come to that conclusion on 30th November, 1994 considering the fact that on that day the Petitioners were in judicial custody and given the nature of the alleged crime, it was unlikely that they would soon be given bail. There was, therefore, little factual basis for the Disciplinary Authority to come to that conclusion.

13. To what extent can the court interfere with the opinion formed by the Disciplinary Authority that it is not reasonably practicable to hold a disciplinary enquiry? This question is required to be answered in the light of Article 311(3) of the Constitution which places the seal of finality on the decision of the Disciplinary Authority whether or not it is reasonably practicable to hold an inquiry. This question is also to be answered in the light of the decision of the Constitution Bench in *Union of India and Another Vs. Tulsiram Patel and Others*,

14. The Supreme Court observed in *Tulsiram Patel* that whether it is reasonably practicable to hold an enquiry is a matter of assessment to be made by the Disciplinary Authority. This is because the Disciplinary Authority is generally on the spot and knows what is happening. The Supreme Court also observed that finality given to the decision of the Disciplinary Authority is not binding upon the Court so far as its power of judicial review is concerned. In an appropriate case the Court may strike down the order dispensing with the enquiry as also the order imposing penalty.

15. On the scope of interference by the Court, the Supreme Court held that interference is permissible on grounds well established in law in the exercise of the power of judicial review in matters where administrative discretion is exercised. For example, interference is permissible when Clause (b) of the second proviso to Article 311(2) of the Constitution has not been properly applied, as also in a case when there is a charge of mala fides. Similarly, the Court can examine the relevancy of the reasons given by the Disciplinary Authority for holding that it is not reasonably practicable to hold an enquiry. However, the Court will not sit in judgment like a Court of first appeal over the relevancy of the reasons. The Court may also judge the reasonableness of the decision in the light of the then prevailing situation rather than in the cool and detached atmosphere of the court room, removed in time from the actual situation. In a case where two views are possible, the Court will decline to interfere.

16. Considering the law laid down by the Supreme Court, we have gone through the reasons given by the Disciplinary Authority of the Petitioners to conclude that it is not reasonably practicable to hold a disciplinary enquiry. On a perusal thereof, it appears to us that what weighed with the Disciplinary Authority was the seriousness of the alleged crime; that the Petitioners were caught red handed?; that the Petitioners were implicated in the preliminary enquiry; and that despite all this the Petitioners might be let off if the prosecutrix and her husband turn hostile. It appears that on a cumulative assessment and to prevent as not guilty? decision of the enquiry officer, in the event of the prosecutrix and her husband turning hostile, that apparently prompted the Disciplinary Authority to take precipitate action.

17. We say this because the Disciplinary Authority has stated in the order dated 30th November, 1994 that the Petitioners may so terrorize the prosecutrix and her husband who may not be able to withstand the brutal force of the two highly undesirable police personnel?. This clearly suggests that the application of mind by the Disciplinary Authority was to the ultimate outcome of the disciplinary enquiry and not to the reasonable practicability of holding a disciplinary enquiry. In other words, it appears from a reading of the order dated 30th November, 1994 that it might have been possible to hold a departmental enquiry, but the Petitioners may not be found guilty in that enquiry because of their ability to terrorize the prosecutrix and her husband who were the only witnesses to the alleged offence. In our opinion, the application of mind by the Disciplinary Authority was not to the reasonable practicability of holding an enquiry, but to the result of the enquiry. Therefore, the reason given for dispensing with the inquiry was neither relevant nor germane to the issue.

18. We are also of the opinion that the Disciplinary Authority misunderstood the then prevailing situation. On 30th November, 1994 the Petitioners were in judicial custody and, therefore, could not terrorize the prosecutrix or her husband. It is not as if the Petitioners were notorious criminals who could operate even while in

judicial custody. Moreover, the Disciplinary Authority seems to have completely overlooked the fact that apart from the prosecutrix and her husband the main witnesses were the Disciplinary Authority himself (a senior police officer), two other police officers and an MLA. Surely, these persons could not have been prevented by the Petitioners (who were only Constables) from giving evidence in the disciplinary enquiry, for whatever it is worth. If these material and relevant facts were taken into consideration by the Disciplinary Authority, perhaps his view may have been different.

19. Under the circumstances, we are of the opinion that the order dated 30th November, 1994 passed by the Disciplinary Authority deserves to be quashed on the ground that it was based on reasons which were not relevant or germane to the reasonable practicability of holding a departmental enquiry and because the Disciplinary Authority did not take into consideration all the relevant and material facts pertaining to the then prevailing situation. The Disciplinary Authority appears to have adopted a convenient short cut. There is, therefore, no option but to quash the order passed by the Tribunal on 24th April, 2000 as well as the order passed by the Disciplinary Authority on 30th November, 1994 dispensing with the departmental enquiry. We do so accordingly.

20. The Disciplinary Authority will now take steps to conduct a departmental enquiry against the Petitioners in respect of the allegations made. For this limited purpose, the Petitioners will be deemed to be reinstated, but they will not be entitled to any benefits on account of the deemed reinstatement. On conclusion of the departmental enquiry, the Disciplinary Authority will pass appropriate orders regarding the period that the Petitioners have been out of service.

21. With these observations, the writ petition stands disposed of.