

(2009) 10 DEL CK 0038

In the Delhi High Court

Case No : Writ Petition (Civil) No. 2087 of 2001

Ex. Ct. Jasminder Singh

APPELLANT

Vs

Union of India (UOI) and Another

RESPONDENT

Date of Decision : 12-10-2009

Acts Referred:

Constitution of India, 1950 — Article 226, 227, 311, 311(2)

Evidence Act, 1872 — Section 25, 26, 27

Penal Code, 1860 (IPC) — Section 302, 307, 34, 392, 395

Citation : (2009) 164 DLT 21 : (2010) 2 ILR Delhi 238

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

Bench : Division Bench

Advocate : Rekha Palli Abhya Kr. Verma and Amrita Prakash, for the Appellant; Anusuya Salwan, for the Respondent

Final Decision : Dismissed

Judgement

A.K. Pathak, J.—Vide order dated 24th June, 1997 passed by the Disciplinary Authority Petitioner, a police Constable, was dismissed from service, without holding a regular departmental enquiry, by invoking Article 311 of the Constitution of India. The grounds of dismissal and dispensing with the departmental enquiry have been mentioned in the dismissal order dated 24th June, 1997 and, for the sake of ready reference, same are reproduced as under:

One K.S. Rana was shot dead on 14.4.97 in Swroop Nagar by some unknown persons. A case FIR No. 289/97 u/s 302/34 IPC PS Samay Pur Badli was registered. One Virender Singh was shot near Gole Market on 21/4/97 by car borne criminals. A case FIR No. 196. u/s 307/34 IPC PS Mandir Marg was registered. On 7.4.97, a scooterist was robbed of Rs. 2.20 lacs in the area of PS Samay Pur Badli. Case FIR No. 266/97 u/s 395/397 IPC was registered. One Davender Singhs s/o Mohender Singh r/o Poonth Kalan, Delhi reported at 10.30 PM on 5.4.97 that four persons namely Sandeep @ Bhoori B.C. of Lawrance Road, Jitender Rathi @ Kale r/o Krishan Vihar, Sanjay r/o Mnjri and Virender @

Kale r/o Khera Khurd robbed him of his white Maruti Car No. DL-8 CC 3975. They also fired at Davender when he tried to resist. A case FIR No. 446 dated 14.4.97 u/s 307/392/34 IPC PS Sultan Puri was registered and investigation was handed over to Inspr. Spl. Staff/North West Delhi, as it was suspected that the above mentioned accused had murdered Sh. K.S. Rana r/o Khere Kalan and used the same Maruti Car with fake No. Plates.

During the course of investigation of these cases it was established that it was the handiwork of Sandeep @ Bhoori Gang consisting of Sandeep, Jitender Rathi @ Kala, Sanjay, Virender etc. 9 members of this gang have since been caught by Crime Branch on North Distt. The interrogation has revealed that Const. Jasminder Singh, No. 7570/DAP (PIS) No. 28912054 was found to be in association with this gang. Some of the specific instances are mentioned below:

1. After committing crime in case FIR No. 266/77 u/s 395/397 IPC, the above accused persons went to the house of one Ravi Tyagi who is a very good friend of Const. Jasminder Singh /@ Jassa/Singh No. 7570/DAP & Cts. Joginder Singh and Sandeep Singh, Ravi Tyagi disclosed this fact to them. It is worth mentioning that Ravi Tyagi, Sandeep Singh (Const.), Jasminder Singh and alongwith Jitender Rathi helped one Ajay Chauhan in taking forcible possession of a plot in Malviya Nagar previously. Ravi Tyagi was arrested in a murder case in 1992.
2. After the murder of Sh. K.S. Rana, Sandeep @ Bhoori, Virender, Jitender Rathee and Sanjay vide the above mentioned case again went to the house of Ravi Tyagi, changed their blood stained clothes, No. plate of Maruti Car which was used in commission of crime. Ravi Tyagi once again informed Ct. Jasminder Singh (No. 7570/DAP), Cts. Joginder Singh and Sandeep Singh regarding this crime. All these three Constables were found sending the messages to these criminal on their pagers for the reasons best know to them.
3. On 16.4.97 Ct. Jasminder Singh, alongwith Cts. Sandeep Singh, arranged a meeting in the house of Ct. Sandeep Singh (H. No. 71, Type II, Shalimar Bagh) Police Colony, with Sandeep @ Bhoori, Sanjay and Virender @ Kale. All of them assembled at the house of Ct. Sandeep where the accused persons confessed that they have murdered K.S. Rana. They also showed the revolver and gold chain belonged to K.S. Rana. But none of the Cts. wished to inform the police regarding their presence.

These instances clearly indicates the association of Constable Jasminder Singh with Bhoori gang and others. Constables Jasminder Singh who is a Policeman should have informed the concerned Police Station about the involvement of Bhoori and others in the heinous offences. Instead of doing his duty he assisted the criminals. The above information is revealed during the interrogation of various persons mainly the members of the Bhoori gang. None of these criminals are going to depose against the Constable Jasminder Singh if a departmental enquiry is conducted against him. In fact on the contrary continuation of Constable Jasminder Singh in the police force would be beneficial to Bhoori and

others and therefore in no circumstances they would depose anything against Constable Jasminder Singh. Hence it is not practicably possible to conduct a regular departmental enquiry against him.

The common citizens of Delhi have certain expectations from the members of police. The police is supposed to protect the life and property of the citizens and it would be quite painful for any person to know that a police officer who is supposed to protect and to take action against criminals is himself associate with the criminals. His continuation in the police force would be against the interest of community and would be only in the interest of criminals. The reasons why it is not practicably possible to hold a regular departmental enquiry has already been discussed in the previous para.

Keeping in view the overall facts and circumstances of the case, Shri A.A. Farooque Dy. Commissioner of Police 6th Bn. DAP, Delhi after carefully considering the facts and circumstances put before me, hereby order that Constable Jasminder Singh, No. 7570/DAP is dismissed from the force with immediate effect under Article 311(2)(b) of the Constitution of India.

(emphasis supplied)

2. Petitioner preferred an appeal before the Appellate Authority which was dismissed vide order dated 27th April, 1998, after affording personal hearing to the Petitioner.

3. Thereafter, Petitioner preferred a Revision, which was also dismissed by the Commissioner of Police vide order dated 30th March, 1999.

4. Petitioner then approached the Central Administrative Tribunal, Principal Bench, New Delhi (hereinafter referred to as "Tribunal") by way of Original Application being O.A. No. 2371/1999 praying therein that the dismissal order be quashed and Petitioner be reinstated in service with all consequential benefits. Dismissal order was challenged, inter alia, on the ground that the action of Disciplinary Authority, dispensing the holding of departmental enquiry, was arbitrary and without any material in support thereof; enquiry was dispensed with the sole reason that the department's case against the Petitioner was weak and was liable to fail; the act of Disciplinary Authority in dispensing with the enquiry was nothing but colourable exercise of power; there was no basis for arriving at a conclusion that the witnesses i.e. members of Bhoori gang would not depose against the Petitioner in the departmental enquiry; Petitioner had no association with the criminals and on the contrary Bhoori Gang was inimical towards the Petitioner as one of the Petitioner's relative had received threats from the said gang. In a nutshell it was contended that reasons given for dispensing with the holding of departmental enquiry were not cogent and justifiable.

5. Vide order dated 7th April, 2000 Tribunal dismissed the OA. Tribunal was of the view that the reasons assigned for dispensing with the departmental enquiry

were just and proper.

6. Aggrieved by the impugned order of the Tribunal, Petitioner has approached this Court by filing the present writ petition under Articles 226 and 227 of the Constitution. It has been prayed that orders passed by the Tribunal, Disciplinary Authority and Appellate Authority be quashed.

7. Learned Counsel for the Petitioner has contended that this is not a fit case where Article 311(2)(b) of the Constitution could have been invoked by the Disciplinary Authority. The reasons for dispensing with the departmental enquiry are based on presumptions and surmises of the Disciplinary Authority. There was no material available before the Disciplinary Authority to say that the members of Bhoori gang would not come forward to depose against the Petitioner in the enquiry. The reasons for dispensing with the departmental enquiry have to be objective and should not be the subjective satisfaction of the Disciplinary Authority. There was no material to show that Petitioner was in a position to influence or terrorise the witnesses. Petitioner being a public servant could not have been dismissed summarily without holding a departmental enquiry in view of the protection available to him under Article 311 of the Constitution. Holding of departmental enquiry in such like matter is a rule. Taking recourse to the Article 311(2)(b) of the Constitution of India was an exception. This provision could be invoked only in exceptional cases and for the sufficient reasons to be recorded to demonstrate that it was not reasonably practicable to hold an enquiry in the given set of facts and circumstances. In support of her contentions learned Counsel has placed reliance on the following judgments:

- a) Sahadeo Singh and Others Vs. Union of India (UOI) and Others,
- b) Delhi Administration v. Ex. Constable Inderjit reported in 2003 I AD (Delhi) 32
- c) Tarsem Singh v. State of Punjab and Ors. reported in 2006 (11) SCALE 104.
- d) Chief Security Officer and Others Vs. Singasan Rabi Das,
- e) Jaswant Singh Vs. State of Punjab and others,
- f) Chandigarh Administration, Union Territory, Chandigarh and others Vs. Ajay Manchanda, etc.,
- g) Sudesh Kumar v. State of Haryana and Ors. reported in (2005) 11 SCC 525.

8. As against this, Learned Counsel for the Respondent has justified the order passed by the Disciplinary Authority and has defended the impugned judgment for the reasons recorded therein. She has contended that the Petitioner was hobnobbing with the criminals i.e. Bhoori gang. This fact was revealed after some of the members of Bhoori gang were arrested in different criminal cases. During their interrogation they disclosed the name of the Petitioner as the person who was aware of their activity and was also rendering assistance to them. According to learned Counsel Bhoori gang would not have come forward to depose against the Petitioner during the enquiry proceedings as he was their protector. No

prudent and reasonable person would like to put his benefactor in trouble, who had been lending help to him in difficult times. Petitioner was in police force and was providing help to the Bhoori gang and by no reasonable prudence it was expected that members of the Bhoori gang would have come forward to depose against the Petitioner. Not only this, keeping in mind that Petitioner was having close nexus with the criminals Disciplinary Authority has rightly concluded that it was not reasonably practicable to hold the enquiry against the Petitioner, thereby dismissed him by invoking the Article 311(2)(b) of the Constitution.

9. Learned Counsel has further contended that the Evidence Act would not apply in such like cases. Accordingly, the confession made by the members of the Bhoori gang during their interrogation, suggesting the close nexus with the Petitioner, has to be read against the Petitioner. Reliance has been placed on *Kuldip Singh Vs. State of Punjab and Others*, . Learned Counsel has further contended that such conduct of Petitioner has justified the penalty of dismissal from service under Article 311(2)(b) of the Constitution. Relevant and cogent reasons were given by the Disciplinary Authority on the basis of material available before it and the Court was not supposed to sit in judgment over such decision like a Court of first appeal. Where two views are possible the Court will decline to interfere. In support of this argument, reliance has been placed on a judgment rendered by the Constitution Bench of the Apex Court in *Union of India and Another Vs. Tulsiram Patel and Others*,

10. We have given thoughtful consideration to the rival contentions of both the sides in the light of material available on record. We do not find any force in the contentions advanced by the learned Counsel for the Petitioner. The judgments relied upon by the Petitioner are distinguishable on facts. In the judgments relied by the Petitioner, complaints of bribery were made against the delinquent police officials. Enquiry was dispensed with, on the ground that the witnesses may not come forward to depose against the police official during enquiry proceeding, either due to fear of the uniformed force or on account of probable threats to be extended by the delinquent police official. In these facts it was held that since there was no material available before the Disciplinary Authority regarding threats extended by the delinquent police official, therefore, the orders passed in these cases dispensing with the enquiry, by invoking Article 311(2)(b) of the Constitution, were perverse and based on no material. In our view, the judgments relied upon by the learned Counsel for the Petitioner are of no help to the Petitioner, as the same are in different facts.

11. In the present case, Petitioner was hobnobbing with the criminals and was providing help to them. During interrogation of the members of Bhoori Gang Petitioner's name surfaced as the person, who had been meeting them and was providing them help. Not only this, Petitioner despite having knowledge about their criminal activity did not take any step to inform his superiors. He being a police official was under legal and moral obligation to see that the persons carrying on unlawful activities are brought to book and are punished in

accordance with law of the land. In spite of the fact that Petitioner was having information regarding the involvement of the Bhoori Gang in the murder of K.S. Rana, he did not bring this fact to the notice of his superior officers. In fact, during the personal hearing given by the Appellate Authority to the Petitioner, he had admitted that he was having knowledge of the accused persons involved in the murder of late Mr. K.S. Rana and also about their plans to commit more murders. A categorical reference in this regard has been made by the Appellate Authority in his order. Perusal of appeal also shows that the accused persons were known to the Petitioner and he had been meeting them. This fact itself reflects on his conduct and shows his association with the Bhoori gang thereby lending support to the confessional statements made by the accused persons in certain criminal cases. We have also perused the memorandum of appeal filed by the Petitioner before the Appellate Authority and we find that submissions made therein clearly indicate that the Petitioner had been hobnobbing with the criminals. Not only this, he was also meeting with them off and on. In these facts it was not expected from the members of the Bhoori gang to depose against the Petitioner in enquiry. In view of the above discussion, we are of the opinion that Disciplinary Authority has rightly concluded that it was not reasonably practicable to hold a departmental enquiry against the Petitioner and has rightly passed the order of dismissal, by invoking Article 311(2)(b) of the Constitution.

12. In Kuldeep Singh's case (supra) Supreme Court has observed in para Nos. 10 and 11, as under:

10. Now coming to the main contention of the learned Counsel for the appellant, it is true that a confession or admission of guilt made by a person accused of an offence before, or while in the custody of, a police officer is not admission in a court of law according to Sections 25 and 26 of the Evidence Act, 1872 but it is equally well settled that these rules of evidence do not apply to departmental enquiries - See *State of Mysore v. Shivabasappa Shivappa Makapur* and *State of Assam v. Mahendra Kumar Das* - wherein the only test is compliance with the principles of natural justice - and, of course, compliance with the rules governing the enquiries, if any. In this context, it is well to remember that in India, evidence recovered or discovered as a result of an illegal search is held relevant departing from the law in the United States. We may refer to the following observations of the Judicial Committee of the Privy Council in *Kurma v. R.*, quoted approvingly by the Constitution Bench of this Court in *Pooran Mal v. Director of Inspection (Investigation)* : (SCC p. 365, para 24)

The test to be applied, both in civil and in criminal cases, in considering whether evidence is admissible is whether it is relevant to the matters in issue. If it is, it is admissible and the Court is not concerned with how it was obtained.

11. In this sense, if the appellant's confession, the fact that it was made to the police or while in the custody of the police may not be of much consequence for the reason that strict rules of Evidence Act do not apply to departmental/disciplinary enquiries. In a departmental enquiry, it would perhaps be permissible

for the authorities to prove that the appellant did make such a confession/admission during the course of interrogation and it would be for the disciplinary authority to decide whether it is a voluntary confession/admission or not. If the disciplinary authority comes to the conclusion that the statement was indeed voluntary and true, he may well be entitled to act upon the said statement. Here, the authorities say that they were satisfied about the truth of the appellant's confession. There is undoubtedly no other material. There is also the fact that the appellant has been acquitted by the Designated Court. We must say that the facts of this case did present us with a difficult choice. The fact, however, remains that the High Court has opined that there was enough material before the appropriate authority upon which it could come to a reasonable conclusion that it was not reasonably practicable to hold an enquiry as contemplated by Clause (2) of Article 311. Nothing has been brought to our notice to persuade us not to accept the said finding of the High Court. Even a copy of the counter filed by the respondents in the High Court is not placed before us. Once proviso (b) is held to have been validly invoked, the government servant concerned is left with no legitimate ground to impugn the action except perhaps to say that the facts said to have been found against him do not warrant the punishment actually awarded. So far as the present case is concerned, if one believes that the confession made by the appellant was voluntary and true, the punishment awarded cannot be said to be excessive. The appellant along with some others caused the death of the Superintendent of Police and a few other police officials. It must be remembered that we are dealing with a situation obtaining in Punjab during the years 1990-91. Moreover, the appellate authority has also agreed with the disciplinary authority that there were good grounds for coming to the conclusion that it was not reasonably practicable to hold a disciplinary enquiry against the appellant and that the appellant was guilty of the crime confessed by him. There is no allegation of mala fides levelled against the appellate authority. The disciplinary and the appellate authorities are the men on the spot and we have no reason to believe that their decision has not been arrived at fairly. The High Court is also satisfied with the reasons for which the disciplinary enquiry was dispensed with. In the face of all these circumstances, it is not possible for us to take a different view at this stage. It is not permissible for us to go into the question whether the confession made by the appellant is voluntary or not, once it has been accepted as voluntary by the disciplinary authority and the appellate authority.

(emphasis supplied)

13. Accordingly, we are of the view that even though the confessions made by an accused while in police custody would be inadmissible under Sections 25 - 27 of the Evidence Act but still can be relied in the disciplinary proceedings, as the Evidence Act is not applicable to the departmental proceedings. The Disciplinary Authority on the basis of confessions made by the members of the Bhoori gang wherein name of the Petitioner surfaced, had found it reasonable to believe that he had association with the criminals, and was providing help to them in their

criminal activities. Keeping in mind these facts Disciplinary Authority has held that the members of Bhoori gang may not come forward to depose against the Petitioner during the departmental enquiry as he had been lending help to them from time to time. We do not find any reason to interfere with this reasoning of the Disciplinary Authority more so, when association of the Petitioner with the members of the Bhoori gang was established in view of confessional statement as also the admission of the Petitioner regarding his knowledge about the murder of Mr. K.S. Rana by the Bhoori gang as also regarding meeting which took place at the house of Ravi Tyagi, before the Appellate Authority.

14. Besides this we find that no mala fide has been alleged either against the Disciplinary Authority or Appellate Authority. They are high ranking officers of the same department available at the spot therefore, there is no reason to believe that their decision is unfair and clothed with mala fide.

15. In Parveen Kumar Vs. Commissioner of Police and Others, it has been held as under:

Further the petitioner, being a Constable of Delhi Police having sanctimonious duty to protect the citizens and maintain law and order, has in violation of his sworn obligation involved himself in most heinous and reprehensible acts of lawlessness. The Disciplinary Authority on the basis of the facts borne from records and attending circumstances dispensed with the enquiry and dismissed the petitioner from Force. The said decision of the Disciplinary Authority is based on material and record and not on assumptions of conjectures. A police Constable or an official who is found to have strayed from his obligation and duty ought to be dealt with sternly in accordance with law. The petitioner in present case is a delinquent who has been who has been involved in heinous act of crime and has associations with people having criminal propensity. If the law keeper becomes lawbreaker, quick and expedient action ought to be taken, to maintain transparency, accountability and above all to maintain public trust and faith in the Police. This is an imperative requirement of a civilized society. The decision to dispense with the enquiry and proceedings was taken having regard to the gravity of offence and its possible and probable fall-outs. To our mind, this is a fit case for invoking Article 311(2)(b) of the Constitution.

16. In this case, from the material available before the Disciplinary Authority and Appellate Authority, they had arrived at the conclusion that the Petitioner was having close nexus with the Bhoori gang and was also providing assistance to them. Despite having knowledge of murder of Mr. K.S. Rana, by the Bhoori gang, he did not disclose this fact to his superiors. In view of this, Disciplinary Authority was of the view that it was not reasonably practicable to hold a departmental enquiry as chances of members of the Bhoori gang deposing against the Petitioner were remote. We do not find any reason to interfere with this reasoning of the Disciplinary Authority, more so when Petitioner had himself admitted that he was having knowledge about the murder of Shri K.S. Rana; in spite of this he did not inform this fact immediately to his superiors to see that

the culprits are caught and brought before the court of law. That apart, no mala fide has been attributed against the Disciplinary/Appellate Authority inasmuch as we do not find their reasoning perverse and devoid of material.

18. In the light of the above discussions we find no merit in this writ petition. Dismissed.