

(2018) 09 CAT CK 0127

In the Central Administrative Tribunal

Case No : Original Application No. 3548 Of 2013

Rameshwar Prasad Meena

APPELLANT

Vs

Commissioner Of Police And Others

RESPONDENT

Date of Decision : 13-09-2018

Acts Referred:

Constitution Of India, 1950 — Article 311(2)(b)

Citation : (2018) 09 CAT CK 0127

Hon'ble Judges : K.N. Shrivastava, Member (A), S.N. Terdal, J

Bench : Division Bench

Advocate : M.K. Bhardwaj, Vijay Kumar Pandita

Final Decision : Allowed

Judgement

S.N. Terdal, J

1. Heard Shri M.K.Bhardwaj, counsel for applicant and Shri Vijay Kumar Pandita, counsel for respondents, perused the pleadings and all the documents produced by both the parties.

2. In the OA, the applicant has prayed for the following reliefs:

"(a) To quash and set aside the impugned orders dated 30.5.2006, 21.11.2006, 08.03.2013 & 23.07.2013 and direct the respondents to reinstate the applicant in service with back wages and consequent seniority etc.

(b) To award interest on the backwages and exemplary cost in favour of applicant.

(c) To allow the OA with cost.

(d) To pass any such other order as this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the case."

3. The relevant facts of the case are that an FIR No.23/2006 dated 9.1.2006 u/s 409 IPC PS Sarojni Nagar was registered against the applicant for the alleged

incident of misappropriation of cash and jewellery of various moods worth Rs. 13,66,400/- by the applicant while posted as MHC (M) of P.S. Malkhana of Police Station, Sarojini Nagar. In the said case he was arrested on 18.05.2006. The said conduct of the applicant was treated as grave misconduct and held that the applicant had acted in a manner which was unbecoming of a member of a disciplined force and leading to erode the faith of public in Delhi Police. The said observations are extracted below:-

".....The above act on the part of defaulter HC, Rameshwar Prashad, No. 13/SW is highly reprehensible and totally unbecoming of a member of disciplined force. His act is not only a blot of his career but he also has defamed the force as a whole. It is responsibility of the police to prevent crime, but the defaulter HC himself has indulged in criminal act of misappropriation of the govt. property under the charge maligning the image of Delhi Police. Being a member of a disciplined force he had a greater responsibility of looking after Malkhana property entrusted to him but he has instead misappropriated it. Instead of proving himself to be an upright and disciplined policeman, he has indulged in this criminal act. This misappropriation of Malkhana property by the defaulter. HC has shaken the faith of the public in the police force. The police is perceived as a protector of the life and property of the public but in this case, the very person who was the custodian of property, has himself misappropriated that very property which was entrusted to him. The involvement of the defaulter HC in this criminal activity amounts to grave misconduct, unbecoming of a member of a disciplined force. His continuance in the police force after indulging in such a criminal act is not warranted in public interest as it will completely erode the faith of public in Delhi Police as an upholder of law and protector of life and property."

4. On the basis of above narrated facts and in view of the above observations, the disciplinary authority dispensed with holding of departmental enquiry invoking the provisions of Article 311 (2) (b) of the Constitution of India on the following further observations:

"..... It is not reasonably practicable to proceed against such a policeman with immoral propensities in departmental enquiry because one who violated all the norms without any fear and committed a crime of misappropriation of govt. property, could very well subvert the departmental proceedings. It would also be very difficult for witnesses to come forward to depose against such a person since the possibility of his misusing his position to subvert the witnesses cannot be ruled out. Retention of such a person in the police force till such time a departmental enquiry is conducted into the matter, thereby giving him an opportunity to misuse the process of enquiry for his own gains, can only promote the criminal activities in the police stations and would be a morale booster for the persons involved in this nefarious act.

In view of the above facts and circumstances of the case, I am of the view that he is not fit to be retained in police force any more as it would be prejudicial to

public interest. Therefore, I Shalini Singh, Additional Deputy Commissioner of Police, South West District, New Delhi, hereby dismiss HC Rameshwar Parshad No. 13/SW from service with immediate effect under Article 311 (2)(b) of the Constitution of India. His suspension period from 3.2.2006 to the date of issue of this order is treated as period not spent on duty for all intents and purposes."

On the extracted recorded grounds the disciplinary authority held that it was not reasonably practicable to hold for departmental enquiry and accordingly passed the impugned penalty order dismissing the applicant. In support of the impugned order, particularly regarding dispensing with the departmental enquiry under Article 311 (2)(b) of the Constitution, the counsel for the respondents relied on the following judgments:

- "(I) Union Territory, Chandigarh & Ors. Vs. Mohinder Singh (1997) 3 SCC 68)
- (2) Satyavir Singh and Others Vs. Union of India and Others (AIR 1986SC 555)
- (3) Ex.Ct.Hasminder Singh Vs. Union of India and Anr. (W P (C) No. 2087/2001
- (4) Balkar Singh Vs. Union of India & Ors. (WP (C) No. 1191/2015)"

But from the perusal of para 6 of the above said judgment of Mohinder Singh (supra) it is crystal clear that there should be some materials on record to conclude that it is reasonably not practicable to hold the departmental enquiry. Such materials could be in the form of letter of intimidation, or threat etc., to the witnesses. For ready reference, the relevant portion of para 6 of the above said judgment is extracted below:

"6. The Superintendent of Police, Intelligence, has reported that the respondent "is a terror in the area" and, more important, in his very presence, the respondent "intimidated the complainant Shri Ranjit Singh who appeared to be visibly terrified of this Sub-Inspector." It is also reported that the other persons who were arrested with Ranjit Singh, and who were present there, immediately left his office terrified by the threats held out by the respondent. In such a situation- and keeping in view that all this was happening in the year 1991 in the State of Punjab- the Senior Superintendent of Police cannot be said to be not justified in holding that it is not reasonably practicable to hold an inquiry against the respondent."

It is similarly held in the case of Satyabir Singh (supra). The relevant portion of para 21 is extracted below:

".....Where the disciplinary authority feels that crucial and material evidence will not be available in an inquiry because the witnesses who could give such evidence are intimidated and would not come forward and the only evidence which would be available, namely, in this case, of policemen, police officers and senior officers, would only be peripheral and cannot relate to all the charges and that, therefore, leading only such evidence may be assailed in a court of law as being a mere farce of an inquiry and a deliberate attempt to keep back material

witnesses, the disciplinary authority would be justified in coming to the conclusion that an inquiry is not reasonably practicable. The affidavit filed by the Joint Director, Research and Analysis Wing, Cabinet Secretariat, Hari Narain Kak, who had passed the impugned orders sets out in detail the various acts of intimidation, violence and incitement committed by each of the Appellants. Copies of the written reasons for dispensing with the inquiry in the case of the Appellants have also been annexed to the said affidavit. It is clear from a perusal of the said affidavit. It is clear from a perusal of the said affidavit and its annexures that the police officers, policemen and senior officers could not have possibly given evidence with respect to all these acts. The said affidavit further states that the senior officers of the RAW in the said charter of demands submitted by the said Association and the evidence of senior officers would have been attacked as being biased and partisan. There is thus no substance in this point also.

In the case of Ex.Ct.Hasminder Singh (supra), similar view has been taken by the Delhi High Court. The relevant para 8 of the said judgment is extracted below:

"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.

However, in the present case, the disciplinary authority has not alluded to any such materials let alone placing such materials on record. Hence, we have no hesitation to hold that the disciplinary enquiry has been dispensed with without any valid reason or ground.

5. The counsel for the applicant submitted that there are no ground or material regarding any threat, terror or intimidation etc., to justify dispensation of the departmental enquiry under Article 311 (2)(b) of the Constitution and hence the impugned orders are illegal. He placed reliance on the following judgments in this regard:

"(1) Govt. of NCT of Delhi & Ors Vs. Ex.Constable Sudesh Pal Rana (183 (2011) DLT 387 (DB).

(2) OA No.2592/2014 (Kaushal Singh Vs. Commissioner of Police and Others) with connected OAs.

(3) TA No. 23/2009 (M.M.Dahiya Vs. Municipal Corporation of Delhi through the Commissioner and Ors.) with connected TAs.

6. In view of the facts narrated above and in view of the law laid down by Hon'ble Supreme Court and other Courts and this Tribunal, the impugned orders cannot be sustained.

7. Accordingly, OA is allowed. The order dated 30.05.2006 passed by the disciplinary authority, order dated 15.11.2012 passed by the appellate authority and order dated 08.03.2013 dismissing the mercy appeal filed by the applicant are quashed and set aside. The applicant is thus entitled for reinstatement which shall be done within two months of this order. The respondents are at liberty to proceed against the applicant according to law. Further, the period from date of dismissal to the date of reinstatement shall be treated as period not spent on duty in view of the fact that he was in custody for long time and as stated at the bar the criminal proceedings are still pending against him, he is not entitled to backwages. No order as to costs.