

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Judgment Reserved On:21st October, 2010
Judgment Delivered On:29th October, 2010

+ **W.P.(C) 7879/2005**

GOVT. OF N.C.T. OF DELHI

..... Petitioner

Through: Mr.R.S. Mathur, Advocate for
Mr.Amitabh Marwah, Advocate

versus

JARNAIL SINGH AND ANR.

..... Respondents

Through: Mr.Anil Singal, Advocate

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MR. JUSTICE SIDDHARTH MRIDUL

1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether the judgment should be reported in the Digest?

SIDDHARTH MRIDUL, J.

1. The present writ petition under Article 226 of the Constitution of India assails the legality and validity of the judgment and order dated 13.10.2004 of the Central Administrative Tribunal (hereinafter referred to as 'the Tribunal') in OA No.740/2004.

2. By the impugned judgment, the Tribunal has quashed the order dated 25.04.2003 passed by the disciplinary authority and order dated 27.02.2004 passed by the appellate authority, whereby the services of the respondent herein, who was a Head Constable in the Delhi Police, were terminated without holding a departmental enquiry. Power was exercised by the Disciplinary Authority under Article 311(2)(b) of the Constitution of India.

3. The reasoning of the disciplinary authority is being reproduced for the sake of facility:

“The involvement of the Police H.C. in above both heinous crimes shows his desperate character and his continuation in a disciplined force like police is against public interest. The police is the protector of the citizens rights and indulgence of a police officer in crime would destroy the faith of the people in the system. The involvement of the H.C. in such criminal activities is not only undesirable, but also amounts to serious misconduct and indiscipline. He has acted in a manner totally unbecoming of a police officer. The said act has rendered him unfit to be in the police force since his continuation in service would be highly prejudicial to the security of the citizens.

There is every possibility that HC may involve himself in more such cases, if stern action is not taken against him. Under these circumstances it would not be practicable to hold a departmental enquiry against the delinquent H.C. since it is certain that during the enquiry/entire process of departmental proceedings, the complainants and other witnesses would be put under constant fear of threat to their person by the delinquent. Instances are not uncommon where people have not dared to depose even against ordinary criminals, whereas in the instant case, the deposition of the complainants and witnesses would be not only against the desperate criminal but also against the Police Officer, who has greater capability of terrorizing these complainants/witnesses.

It would be extremely difficult for the complainants and witnesses to muster enough courage against the delinquent H.C. due to fear of severe reprisal from him and due to his criminal background. In case the D.E. is initiated against the delinquent H.C. it may not be easy to secure presence of these complainants from time to time especially their being from Surat. Keeping in view the above reasons, I feel totally satisfied that it would not be reasonably practicable to hold a D.E. against the delinquent H.C. Jarnail Singh, No.11148/DAP, whose acts have clearly indicated serious criminal propensity on his part.

Under these circumstances, I am of the view that H.C. Jarnail Singh, No.11148/DAP has brought a bad name to the entire police force and his retention in service would be prejudicial to public interest. In my opinion he is unfit to be retained in

the police force any more.....”

4. From a perusal of the reasoning of the Disciplinary Authority, the reasons set-forth to dispense with an inquiry are: (i) involvement of the respondent in heinous crimes shows his desperate character; (ii) there is every possibility that the respondent may involve himself in more such cases; (iii) it is certain that during inquiry the witnesses would be put under constant fear; (iv) the witnesses would not muster enough courage to depose against the respondent due to fear of severe reprisal; and (v) it would not be easy to secure the presence of the complainants as they reside in Surat.

5. Suffice would it be to state that what was alleged against the respondent was that he extracted valuables from innocent persons under fear of false implication. It was alleged that on two different dates he had resorted to extortion from 2 different persons who were residents of Surat.

6. If we peruse the reasoning to dispense with the inquiry we find that the cause of reasoning No.(ii) was capable of being removed by suspending the respondent and merely because there was a likelihood of the respondent so indulging in the future, would be no ground to dispense with an inquiry. That apart, there is no material shown in the impugned order on basis whereof the said subjective satisfaction was formed. No basis has been shown to record the opinion that the complainants and the witnesses would be terrorized and would face severe reprisal from the respondent. The opinion so formed is sans any reference to a fact. That the complainants were residents of Surat is no basis to conclude that it would be difficult to secure their presence. That apart, it cannot be lost sight of that for both acts of extortion two FIRs No.72/2000 and 112/2003 were registered. If the police could secure presence

of witnesses at the criminal trial, we see no reason for any opinion to be formed that witnesses could not be secured for purposes of being produced at the inquiry.

7. The Tribunal held that the petitioner herein had not adverted to any communication or fact that the witnesses had been threatened and that this bogie was only an apprehension drawn by the disciplinary authority which was not based on any material. As such, the Tribunal allowed the application filed by the respondent herein holding that it could not be held that it was not reasonably practicable to hold the enquiry and consequently quashed the impugned order.

8. The judgment of the Tribunal shows that it had considered judicial precedents for dispensing with the enquiry under Article 311(2)(b) of the Constitution of India in cases similar to the present case and reached the conclusion that reasons adduced by the petitioner for concluding that it would not be reasonably practicable to hold a regular departmental enquiry are totally unsatisfactory. According to the Tribunal there should have been material to indicate that an apprehension that witnesses would not depose against the respondent herein, which was not forthcoming.

9. The learned counsel for the petitioner would rely on the decisions of the Supreme Court in Bakshi Sardari Lal (dead) through LR's and others vs. Union of India and Anr., AIR 1987 SC 2106 and Kuldip Singh vs. State of Punjab and Others, (1996) 10 SC 659.

10. The first decision does not apply since it deals with Article 311(2)(c) of the Constitution of India and not Article 311(2)(b) of the Constitution of India. The second decision is distinguishable on facts since in that case the delinquent police officer had clearly stated about his association with certain named militants; the plot laid by them to kill the

Superintendent of Police, Tarn Taran by placing a bomb; the manner in which they carried out the said plot; and had also stated that he and his militant companions planned to plant the bomb in the office of SSP, Tarn Taran which plan was foiled on information in that behalf reaching the police officers.

11. Suffice would it be to state that the subjective satisfaction formed has not to be the ipse dixit of the person concerned but has to be founded on objective facts, and we find none.

12. We dismiss the writ petition for the reason the opinion of the Disciplinary Authority to dispense with an inquiry is evidently based on suspicions and surmises, and does not justify the invocation of Article 311(2)(b) of the Constitution.

13. We therefore, agree with the conclusion of the learned Tribunal and, therefore, dismiss the writ petition.

14. No costs.

SIDDHARTH MRIDUL, J

OCTOBER 29, 2010/mk

PRADEEP NANDRAJOG, J