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

+ **W.P.(C) 4078/2017 & C.M. APPL. 17906/2017 (stay)**

COMMISSIONER OF POLICE AND ORS.

..... Petitioners

Through: Mr. Satyakam, ASC, GNCTD.

versus

ASHWANI KUMAR AND ORS.

..... Respondents

Through: Mr. Ajesh Luthra, Advocate.

CORAM:

JUSTICE S. MURALIDHAR

JUSTICE TALWANT SINGH

ORDER

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11.12.2019

Dr. S. Muralidhar, J.:

1. The Commissioner of Police has in this petition challenged an order dated 7th October, 2016 passed by the Central Administrative Tribunal, Principal Bench, New Delhi ('CAT') disposing of OA No. 217/2016 filed by the Respondents herein directing that they would remain under suspension and that the Petitioners will take a decision regarding the revocation or continuation of the suspension. It was further directed that the Petitioners herein would be at liberty to proceed against the Respondents departmentally as per the Rules and that the treatment of the suspension period will depend on the same.

2. The aforementioned O.A. No. 217/2016 was filed by the six Respondents. The Respondent No.1 is an Assistant Sub Inspector ('ASI') (Executive),

Respondent No. 2 is a Head Constable ('HC') and the remaining Respondents are Constables (Executive). They were part of the 'Outstation Command' of the Delhi Police. On the allegation that they provided undue facilities to an under-trial prisoner ('UTP'), Mr. Manoj Kumar Bakkarwala, while performing the duty of producing him before a criminal court at Agra, Uttar Pradesh ('UP'), the Deputy Commissioner of Police ('DCP'), by an order dated 31st August, 2015 removed all the Respondents from service, invoking Article 311 (2) (b) of the Constitution.

3. The said order noted that in the evening of 27th August 2015, TV channels aired a video clipping showing all the Respondents in a shoe shop in Agra facilitating the UTP in buying shoes, ignoring the instructions in Standing Order No. 52/2008 of the Delhi Police. The Respondents were seen "embarrassed and speechless when confronted by media persons in the shop." The order concluded that "their malafide in this act stood proved and their omissions and commission has not only sent a wrong message amongst the public as well as other sincere and dedicated personnel of the force. This is a gross violation of all rules and regulations, and a conduct unbecoming a police personnel."

4. The issue that arose for consideration before the CAT was whether the impugned order removing the Respondents from service was illegal, inasmuch as it was passed without holding an enquiry. Incidental to that question was the issue whether there were sufficient grounds for dispensing with the enquiry. After discussing a series of decisions, including *Union of India v. Tulsi Ram Patel AIR 1985 SC 1416*, *Satyavir Singh v. Union of*

India AIR 1986 SC 555, Southern Railway Officers Association v. Union of India (2009) 9 SCC 24, the CAT concluded in the impugned order in Paragraph 33 and 34 as under:

“33. It is not the case of the respondents that any of the applicants at any time terrorised, threatened or intimidated any of the witnesses in any departmental proceedings or during the course of discharging of their duties. It is also, not the case of the respondents that when the media was picturing the applicants at the time of alleged incident of facilitation of the high risk UTP for shopping, any of the applicants used physical force or hurled abuses and threats on the media persons or on the public who were watching them at the place of alleged incident. On the other hand, it was the specific case of the Respondents that the applicants were seen embarrassed and speechless when confronted by media persons in the shop.

34. The allegation that the act of the applicants exposed the high risk UTP to grave dangers from his rival gangs and also provided an opportunity for such a dreaded criminal involved in 73 cases to escape, had he so wanted and the applicants deliberately ignored all the norms and standing instructions on the subject during the production duty of the said UTP, all matters to be inquired with but cannot be grounds for dispensing with the inquiry. It was also not the case of the Respondents that the applicants developed close relation with the said high risk UTP or with his gang and involved in any of his illegal activities.”

5. This Court has heard the submissions of Mr. Satyakam, learned ASC for the Petitioners and Mr. Ajesh Luthra, learned counsel appearing for the Respondents.

6. The order dated 31st August 2015, passed by the DCP removing the Respondents from service gives the following reasons for dispensing with

the enquiry:

“And whereas, prima facie, holding an enquiry in this case would only be an advantage to the members of the Escort Guard as the probability to manage the evidence and witnesses in their favour at later stage also cannot be ruled out. Moreover, in such cases where video clippings of illegal activities of police personnel is made, the media also do not support the misdemeanour of the police officers when an enquiry is ordered initiated. Therefore, it would not be reasonably practicable to hold a regular departmental enquiry against the defaulters as it is believed that witnesses either will not join the enquiry or they will not depose against the police officials as well as disclosed the identity of High Risk UTP Manoj Bakarwala, a hard core notorious criminal, who has a history of involvement in 73 criminal cases.”

7. According to Mr. Satyakam the above reason is contained in the notings in file as well. The mandate of the law is clear that before dispensing with an enquiry, a subjective satisfaction is to be arrived at by the Disciplinary Authority ('DA') that it is not reasonably practicable to hold a regular departmental enquiry. These reasons must be based on an objective criterion and not on the whims and fancies of the DA. In other words, it cannot be based on surmises and conjectures, but must reflect the actual ground reality, which makes it impossible for the DA to order a regular departmental enquiry.

8. In the present case, with the Petitioners being in possession of a video footage, as aired on the television, of the actual incident involving the Respondents, there should be no difficulty in holding a regular enquiry where that evidence is not only presented, but also provided to the Respondents for them to defend themselves. Without there being any effort

made to record statements of public witnesses, or of media persons, the DA could not have come to a conclusion that the Respondents would have been able to “manage the evidence and witnesses in their favour at a later stage” or that the media would not cooperate in the inquiry. Without making the slightest effort of investigating into the matter further, to have taken a decision not to hold an enquiry, and to proceeding to remove the Respondents from service appears to this Court to be a decision unsustainable in law.

9. The Court is unable to find that any legal error has been committed by the CAT in the impugned order. The petition is accordingly dismissed. The pending application is also disposed of. No costs.

S. MURALIDHAR, J.

TALWANT SINGH, J.

DECEMBER 11, 2019

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