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IN THE HIGH COURT OF DELHI AT NEW DELHI***Date of decision: 22.04.2024***

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**W.P.(C) 1258/2023 & CM APPL. 4759/2023 –Stay
COMMISSIONER OF POLICE DELHI POLICE & ORS.****..... Petitioners****Through: Mrs.Avnish Ahlawat, SC, GNCTD
with Mrs.Tania Ahlawat, Mr.Nitesh Kumar Singh,
Ms.Laavanya Kaushik, Ms.Aliza Alam &
Mr.Mohnish Sehrawat, Advs.****versus****MANJEET****..... Respondents****Through: Mr.Setu Niket & Ms.Esha Mazumdar,
Advs.****CORAM:****HON'BLE MS. JUSTICE REKHA PALLI****HON'BLE MR. JUSTICE RAJNISH BHATNAGAR****REKHA PALLI, J (ORAL)**

1. The present writ petition under Articles 226 & 227 of the Constitution of India seek to assail the order dated 19.10.2022 passed by the learned Central Administrative Tribunal (Tribunal) in OA No.742/2022. Vide the impugned orders, the learned Tribunal has allowed the original applications (OA) preferred by the respondent thereby setting aside the order dated 30.12.2020 passed by the petitioners dismissing him from service without holding any enquiry, as also the appellate orders dated 27.12.2021 passed against him. The learned Tribunal has, however, granted liberty to the petitioners to initiate disciplinary proceedings against the respondent in accordance with law.



2. We may begin by noting the brief factual matrix as emerging from the record.
3. The respondent was, on 02.04.2018, appointed as a Constable (Exe.) in Delhi Police. While he was working on the aforesaid post, an FIR was registered against him on 28.01.2020 under section 376/323/506/354-D IPC at PS Mukherjee Nagar, Delhi. Soon thereafter, a disciplinary enquiry was initiated against him and vide order dated 28.01.2020, the respondent was placed under suspension in connection with the inquiry. During the course of his suspension, another FIR was registered against the respondent on 28.11.2020, this time under Section 419/420/467/468/34/120B of the IPC and Section 3/9/10 of the Uttar Pradesh Public Examination (Prevention of Unfair Means) Act Act 1998 at P.S Sector 58, Noida, UP.
4. In the light of these FIRs against the respondent, the petitioners after holding a preliminary enquiry into the incidents, vide their order dated 30.12.2020 dismissed him from service by invoking Article 311(2)(b) of the Constitution of India. Being aggrieved, the respondent approached the appellate authority, which rejected the appeal vide order dated 27.12.2021. It was in these circumstances that the respondent had approached the learned Tribunal by way of aforesaid O.A, which was, as noted herein above, allowed vide the impugned order by setting aside the dismissal order dated 30.12.2020 as also the appellate order dated 27.12.2021.
5. In support of the petition, learned counsel for the petitioners has vehemently urged that the learned Tribunal has failed to appreciate that the respondent was a police employee who was repeatedly found involved in serious offences such as of impersonation and was, therefore, not fit to be retained in service. Furthermore, taking into account that the respondent was



a police personnel, no witness would have come forward to depose against him. The petitioners were, therefore, justified in dismissing him without holding any enquiry, as it was against public interest to retain the respondent during the pendency of a departmental enquiry which would have been a long drawn process. She therefore, prays that the impugned order be set aside.

6. On the other hand, learned counsel for the respondent supports the impugned order and submits that the learned Tribunal has quashed the dismissal order after finding that no reason was provided by the petitioners for dispensing with the departmental enquiry against the respondent. He submits that in these circumstances, the learned Tribunal was justified in holding that the dismissal order against the respondent, had been passed in a very casual manner. Once a preliminary enquiry has already been conducted, there is no reason why a regular departmental enquiry on the serious charges levelled against him could not be conducted. In support of his plea, he places reliance on a decision of this Court in W.P.(C) 2407/2024 titled ***Govt. of NCT of Delhi & Ors. v. Dushyant Kumar***. Furthermore, the learned Tribunal has, despite setting aside the dismissal order passed by the petitioners, granted them liberty to initiate disciplinary proceedings against the respondent. He, therefore, prays that the writ petition be dismissed.

7. Having considered the submissions of the learned counsel for the parties and perused the record, we may begin by noting the relevant extracts of the impugned order, contained in paragraph nos. 9 to 11 thereof, which read as under:-

“9....We find that nothing has been recorded in the impugned order or shown to us that the applicant had ever threatened or



harassed any of the witness(es) and/or the prospective witness(es) and further there is no evidence or document to indicate that in view of the facts and circumstances of the case, any efforts was made by them to summon the witness(es) to lead the evidence against the applicant or anything was found that on regular enquiry or by summoning the witness(es) the relation with foreign countries was likely to be adversely affected. In the impugned orders, the respondents have not disclosed that any effort was made by them to conduct the enquiry nor there is any evidence that in spite of their best efforts, they had not been able to produce the witness(es) to lead evidence against the applicant. It is also found that the disciplinary authority while passing the impugned order has very casually come to the conclusion that it would not be possible to conduct the departmental enquiry against the applicant and there being a possibility that witness(es) may not come forward to depose against the applicant. The same is the position when the appellate authority rejected the appeal of the applicant. Such acts/orders of the respondents are not only in violation of the settled law but also of their own aforesaid instructions/circulars dated 29.11.1993, 08.11.1993 and 11.09.2007. Hence, we are of the considered view that reasons given by the respondents for dispensing with the enquiry are not in consonance with the law settled by the Hon'ble Supreme Court and Hon'ble High Courts and followed by this Tribunal in a catena of cases, a few of which cases are referred to hereinabove.

10. It cannot be in dispute that there must be zero tolerance towards corruption and misconduct in public service. However, without there being sufficient ground(s) to be recorded in writing, the protection given to the public servant of hearing under Article 311 of the Constitution cannot be taken away by the respondents. Our view is supported by the binding judicial precedents, referred to hereinabove.

11. Having regard to the aforesaid facts and circumstances of the present case, we are of the considered view that this case is squarely covered by the common Order/Judgment dated 10.2.2022 in Ct. Sumit Sharma (supra) and a batch of cases.



Therefore, the present OA deserves to be partly allowed and the same is partly allowed with the following directions:-

- (i) Orders dated 30.12.2020 (Annexure A/2) and 27.12.2021 (Annexure A/1) passed by the Disciplinary and Appellate authorities respectively are set aside with all consequential benefits to the applicant in accordance with the relevant rules and law on the subject;*
- (ii) The respondents shall implement the aforesaid direction within eight weeks of receipt of a copy of this order; and*
- (iii) However, the respondents shall be at liberty to initiate disciplinary proceedings against the applicant in accordance with the law.”*

8. From a perusal of the aforesaid, it appears that the learned Tribunal has allowed the original application not only by following its earlier decision dated 10.02.2022 in OA No. 1383/2020 titled ***Ct. Sumit Sharma v. Govt. of NCT of Delhi and Ors.*** but also after perusing the dismissal order dated 30.08.2019, from which, it clearly emerged that the reasons given by the petitioner for dispensing with the enquiry did not fall within the ambit of Article 311(2)(b) of the Constitution of India. Since, learned counsel for the petitioner has vehemently urged that there were sufficient reasons in the dismissal order for dispensing with the department enquiry, it would be apposite to note the reasons recorded in the order dated 30.12.2020 for dispensing with the enquiry. The relevant extract of the order dated 30.12.2020 reads as under:-

“Through the facts which emerged during the preliminary enquiry, it has been observed that the facts and circumstances of the case are so serious that it will not be reasonably practicable to conduct a regular departmental enquiry against the defaulter as there is a reasonable belief that the witnesses may not come forward to depose against him owing to his



influential position. It also calls for great courage to depose against the official person and the task becomes more acute and difficult where the police personnel could use his job to influence the statement/deposition of the witnesses. It is also highly probable that during the entire process of departmental proceedings, the complainant and witnesses would be put under constant fear of threat to their person and property from the defaulter. Under these circumstances, I am personally satisfied that conducting a regular D.E. against the defaulter is not practicably possible. The criminal act of the defaulter has tarnished the image of Delhi Police and this action amount is gross misconduct and is highly unbecoming of a police officer.

After completing the Preliminary Enquiry into the matter, in compliance of the Circular issued from PHQ into the matter vide No. 5545-645/P. Cell/Vig. dated 11 09.2007, the enquiry report was forwarded to Spl.C.P/CZ, Delhi for seeking his concurrence to dismiss the defaulter under Article 311(2)(b) of the Constitution of India and the same has been approved by the competent authority:

Taking into account the totality of facts and circumstances of above mentioned case, it is amply clear that the defaulter committed the gravest act of misconduct which cannot be tolerated in any disciplined organization like: police whose basic duty is to protect the life and liberty of citizen in the society. He indulged himself in such abominable act which is not expected from a personnel of a uniformed force shameful act committed by him has not on tarnished the image of the price force brought disgrace to the organisation also demoralized other police officers/staff. It is a clear instance of a law enforcer turning into the law breaker and has thereby projected a very bad Image of Delhi Police in the eyes of the general public which shall tend to erode the faith in police department. Therefore, the undersigned is Satisfied that the act and grave misconduct of defaulter Ct. (Exe) Manjeet, No. 1360/NE attracts the provisions of Article 311(2)(D) of the



Constitution of India and makes him completely unfit for police service.

Therefore, in order to maintain discipline and to prevent recurrence of such an incident, it has become absolutely imperative to dismiss the defaulter as he is completely unfit for police service. Moreover, his further retention in the department after his involvement/arrest in the above mentioned case is absolutely detrimental to public interest.

Therefore, keeping in view the sensitivity of the matter, I, Ved Prakash Surya, IPS, Deputy Commissioner of Police, North-East District, Delhi, hereby order to dismiss defaulter Ct. (Exe.) Manjeet, No. 1360/NE (PIS No. 28182203) from Delhi Police under Article 311(2)(b) of the Constitution of India with immediate effect. His suspension period from 28.11.2020 to till the issue of this order is also decided as period not spent on duty for all Intents and purposes and the same will not be regularized in any manner."

9. A bare perusal of the aforesaid reasons contained in the dismissal order makes it clear that the primary reason for the petitioners not holding any enquiry against the respondent was that due to seriousness of the offence alleged to have been committed by him it would not be reasonably practicable to conduct a regular departmental enquiry. It also emerges that on the basis of the allegations levelled against the respondent in the FIR coupled with the findings of the preliminary enquiry, the petitioners presumed that the respondent was guilty of a serious offence and therefore deserve to be dismissed at the earliest. This in our considered view, as has been rightly held by the learned Tribunal, could not be treated as a ground to reach a conclusion that it was not reasonably practicable to hold an enquiry against the respondent. The petitioners have sought to dispense with the



enquiry in such a casual manner and that too only on the basis of a perceived notion that the respondent being a police personnel, an enquiry against him was likely to be difficult on account of his influence. This course of action is clearly violative of Article 311(2)(b) of the Constitution of India.

10. We have also considered the decision in *Dushyant Kumar (Supra)* and find that in the said case, this Court had rejected a similar challenge by the petitioners to the Tribunal's quashing of a dismissal order passed after dispensing with the enquiry. In fact, this Court after considering the circulars dated 21.12.1993 and 11.09.2007 issued by the petitioners themselves, observed that despite there being a requirement to record cogent reasons to dispense with the enquiry, the petitioners were passing cryptic orders dispensing with the enquiry in the most mechanical manner.

11. No doubt, the respondent is a police personnel and any misconduct on his part is liable to be dealt with appropriately. This, however, does not imply that the petitioners could, on the basis of the gravity of the charges levelled against him, with an enquiry on absolutely vague grounds. As noted hereinabove, the petitioners have given no reason whatsoever in the impugned order for dispensing with the inquiry. The impugned order of dismissal proceeds on the basis that the respondent's guilt had already been proved in the preliminary enquiry. Furthermore, it is not as if the respondent has been let off without any departmental action being taken against him, as the learned Tribunal has already granted time to the petitioners to initiate departmental proceedings against him as per law.

12. For the aforesaid reasons, we find no reason to interfere with the impugned order. The writ petition being meritless is dismissed along with all applications.



13. Before we conclude, we are constrained to observe that in a large number of petitions filed by the Commissioner of Police which are coming up before this Court, we are finding termination orders are being passed by the petitioners by dispensing with departmental enquiries in a most mechanical manner without recording any valid reasons. We, therefore, direct that a copy of this order be placed before the Commissioner, Delhi Police to ensure that in future, enquiries are not dispensed with without assigning justifiable reasons.

14. A copy of this order be forwarded to the Commissioner of Police, Delhi, for information.

(REKHA PALLI)
JUDGE

(RAJNISH BHATNAGAR)
JUDGE

APRIL 22, 2024
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