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IN THE HIGH COURT OF DELHI AT NEW DELHI*Date of decision: 19.02.2024*

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W.P.(C) 2407/2024

GOVT OF NCT OF DELHI AND ORS.

..... Petitioners

Through: Mr.Gaurav Dhingra, Adv.

Mr.Rishikesh, Parvi Officer, SI, Delhi Police.

versus

DUSHYANT KUMAR

..... Respondent

Through: Mr.Sachin Chauhan, Adv.

CORAM:**HON'BLE MS. JUSTICE REKHA PALLI****HON'BLE DR. JUSTICE SUDHIR KUMAR JAIN****REKHA PALLI, J (ORAL)****CM APPL. 9912/2024**

1. Exemption allowed, subject to all just exceptions.
2. The application stands disposed of.

W.P.(C) 2407/2024 & CM APPL. 9913/2024 (stay)

3. The present writ petition under Articles 226 & 227 of the Constitution of India seeks to assail the order dated 13.12.2023 passed by the learned Central Administrative Tribunal (Tribunal) in O.A. No.1019/2023. Vide the impugned order, the learned Tribunal has set aside the order dated 03.10.2022 passed by the petitioners dismissing the respondent from service under Article 311 (2) (b) of the Constitution of India.
4. The brief factual matrix, as maybe necessary for adjudication of present petition maybe noted at the outset.



5. The respondent was working as an Assistant Sub Inspector (Exe.) in the Delhi Police till his services got terminated vide termination order dated 03.10.2022. It was alleged against him that he, at the behest of ACP Mr. Brij Pal, had received a sum of Rs.7,89,000/- from one Mr. Vinod Kumar Sapra. It is the petitioners' case that though based on the aforesaid allegations, a CBI case under Section 7 of the Prevention of Corruption Act was registered against the respondent, taking into account the seriousness of his misconduct, which was evident from a preliminary enquiry, it was deemed necessary to terminate his services. Since, a regular departmental enquiry was likely to take some time, it was decided to terminate him from service without holding any inquiry by resort to Article 311 (2) (b). Consequently, the petitioners proceeded to dismiss the respondent vide order dated 03.10.2022.

6. Being aggrieved, the respondent preferred a statutory appeal which was rejected vide order dated 10.03.2023 passed by the Appellate Authority after giving an opportunity of hearing to the respondent. Since the Appellate Authority upheld the decision of the Disciplinary Authority dismissing him from services without holding any inquiry, the respondent approached the learned Tribunal by way of the aforesaid OA, which has been allowed vide the impugned order.

7. In support of the petition, learned counsel for the petitioners submits that the learned Tribunal has failed to appreciate that the learned Appellate Authority had, clearly found that the respondent was guilty of serious misconduct and his further retention in service was not desirable. By placing reliance on the decision in *Ajit Kumar Nag v. General Manager (PJ), Indian Oil Corpn. Ltd. Haldia & Ors. (2005) 7 SCC 764*, he contends that



the learned Tribunal failed to appreciate that the dismissal order was passed after taking necessary approval from the competent authority. Furthermore, the Appellate Authority had also come to a categorical conclusion that this was a fit case for dismissing the respondent without inquiry. He, therefore, prays that the impugned order be set aside.

8. On the other hand, learned counsel for the respondent, who appears on advance notice, supports the impugned order and submits that the learned Tribunal has allowed the OA after finding that there was no reason as to why a regular departmental inquiry could not be held against the respondent. The requirement to record reasons, he submits, is a pre-requisite, not only as per various decisions of the Apex Court but also as per the own circulars dated 21.12.1993 and 11.09.2007 issued by the petitioners. 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 liberty to the petitioners to take appropriate disciplinary action against the respondent as per law. He, therefore, prays that the writ petition be dismissed.

9. Having considered the rival submissions of learned counsel for the parties, we may begin by noting the circular dated 21.12.1993 which succinctly lays down the guidelines for dealing with situations, where decision is taken to dispense with the enquiry by resort to Article 311(2)(b) of the Constitution of India. The same reads as under:-

"The Police Officers involved in the case of rape or dacoity or any such heinous', offence have been dismissed straightway under Article 311 (2)(b) despite the fact that criminal cases have been registered. Such dismissals without holding D.Es are illegal because in such cases



D.E. can be conveniently held.

It is, once again emphasized that the Disciplinary Authority should not take resort to Article 311 (2)(b) lightly but only in those cases where it is not reasonably practicable to hold the enquiry. Whenever the Disciplinary Authority comes to the conclusion that it is not reasonably practicable to hold an enquiry he must record at length cogent and legally tenable reasons. for coming to such conclusion. In the absence of valid reasons, duly reduced in writing, no such order of dismissal etc. with resort to Article 311 (2)(b) can be sustainable in law."

10. We may also now refer to petitioners' subsequent circular dated 11.09.2007, which again reiterates that an enquiry must not be dispensed with lightly. The same reads as under:

"CIRCULAR No. /2007

An analysis has been done by PHQ in 38 cases pertaining to the period between 1.1.2000 to 31.12.05 where action under W.P.(C)-2407/2024 Article 311 (2) (b) of the Constitution of India was taken against the defaulters. The analysis shows that out of the 38 cases, the action of the department has been upheld by CAT only in two cases and out of these two cases and only one case action was upheld by the Hon ble High Court of Delhi and most of these cases have been remanded back in the Department by the Tribunal for initiating departmental inquiry.

Though some cases are still pending in the Honble High Court for decision, in a majority of cases, Disciplinary Authorities have resorted to Article 311 (2) (b) on assumptions and conjectures. No speaking orders were passed based on and supported by material/facts on record for dispensing with prior enquiry. Orders for dismissal were passed arbitrarily violating Article 311 and the principles of natural justice.



Henceforth, it has been decided that whenever any Disciplinary Authority intends to invoke Article 311 (2) (b) of the Constitution of India, he must keep in mind the judgment in the case of UOI v. Tulsi Ram Patel, AIR 1985 SC 1416. Only in cases where Disciplinary Authority is personally satisfied on the basis of material available on file that the case is of such a nature that it is not practicable to hold an enquiry in view of threat, inducement, intimidation, affiliation with criminals etc. and keeping in view of specific circumstances of the case it is not possible that PWs will depose against the defaulter and Disciplinary Authority has no option but to resort to Article 311 (2) (b) should such an action be taken. Prior to such an order, a PE has to be conducted and it is essential to bring on record all such facts. It has also been decided that before passing on order under Article 311 (2) (b) of the Constitution W.P.(C)-2407/2024 of India, Disciplinary Authority has to take prior concurrence of Spl. CP / Admn.

This has the approval of C.P., Delhi.

*Sd/-
Jt. Commissioner of Police,
HDQRS;
Delhi*

11. We may now also note the relevant extracts of the termination order dated 03.10.2022, which read as under:

"01.09.2022, RI/5thBn has intimated that ASI(Exe) Dushyant Kumar No.4066/DAP, PIS No. 28911063 posted in NDMC guard from 5thBn DAP has been arrested in Case FIR No. RC0032022A0055 u/s 120B IPC r/w sec.07 PC Act PS CBI, ACB, New Delhi.

For his involvement in the case, ASI (Exe) Dushyant Kumar, No. 4066/DAP, PIS No. 28911063 has been placed under suspension vide order No. 6543-6643/HAP/P-I/Sth Bn. DAP dated 01.09.2022 from the date of his arrest in



the case.

According to the contents of FIR, on the complaint of one Sh. Vinod Kumar Sapra S/o Late Shri Kishan Lal Sapra R/o C--6/96 Sector-5 Rohini Delhi -110085, it is revealed that he(Complainant) was working as 'Khabri' of ACP Sh. Brij Pal for 5-6 years when, ACP Sh. Brij Pal was working as Sub-Inspector and Inspector in Delhi Police in different Police Stations of Delhi. However, he (complainant) left this work 14-15 years ago. At present ACP Sh. Brij Pal is posted at Narcotics Department in Bawana, New Delhi. He (Complainant) stopped the work of Khabri to ACP Sh. Brij Pal Singh due to non-payment of money for the information provided by him (Complainant). Since last 9 months, when ACP Sh. Brij Pal was working as Inspector at Bawana Police Station., New Delhi (In Narcotics Division), he is demanding Rs.50 Lakhs for not implicating his (Complainant) wife Smt. Mamta Sapra in various cases.

On 23.08.2022, one ASI (Exe) Dushyant Kumar, No. 4066/DAP, PIS No. 28911063 who was earlier working under ACP Brij Pal, contacted the wife of the complainant over whatsapp call from his mobile number 9899072635 and informed her (wife of complainant) that ACP Brij Pal is ready to negotiate the amount in his (ASI (Exe) Dushyant Kumar, No. 4066/DAP, PIS No. 28911063) presence and if she does not agree the terms of ACP Sh. Brij Pal, she will be implicated in criminal case. Based on the complaint, a verification of allegation was undertaken on 29.08.2022 & 30.08.2022 and it was revealed from verifications that Brij Pal, ACP of Delhi Police posted at Bawana Police Station in Narcotics Department has demanded Rs.15 Lakh in the presence of ASI(Exe) Dushyant Kumar, No. 4066/DAP PIS No. 28911063 of Delhi Police and also directed the complainant to hand over the bribe amount to ASI (Exe) Dushyant Kumar, No. 4066/DAP, PIS No.28911063. The Complaint and Verifications prima facie disclose commission of offence punishable u/s 120B of IPC r/w Sec.7 of PC Act, 1988 (as



amended in 2018) on the part of Brij Pal, ACP of Delhi Police posted at Bawana Police Station in Narcotics Department and ASI(Exe) Dushyant Kumar No. 4066/DAP, PIS No. 28911063 of Delhi Police posted at 5th Bn. DAP

ASI (Exe) Dushyant Kumar No. 4066/DAP. PIS No. 28911063 has been arrested by ACB, CBI on 01.09.2022 under prevention of corruption ACT for demanding Rs. 15 lacs from the complainant in connivance with ACP Brij Pal and the bribe amount of Rs 7,89,000 recovered from ASI (Exe) Dushyant Kumar No. 4066/DAP, PIS No. 28911063.

The above act on the part of ASI (Exe) Dushyant Kumar, No. 4066/DAP, PIS No. 2891 1063 shows that he is **involved in demanding and accepting of the bribe** amount of Rs 7,89,000 and his criminal attitude has tarnished the image of Delhi Police and **his action amounts to gross misconduct and highly unbecoming of a police officer.**

Further on perusal of his entire service record it is revealed that previously he has been punished on 02 different occasions as under:-

1. DE initiated vide order No. 2502- 17 /HAP/ C&R, Delhi dated 17.12.2002 has been finalized and awarded him a Censure vide order No. 1797-1815/HAP/ C&R, Delhi dated 27.08.2003 for his negligence in duty.
2. SCN issued to him vide order No. 7699- 770/HAP/P-III/West dated 15.07.2019 has\ been finalized and awarded him a Censure i vide order No. 3987-88/HAP(P-II)/ 5th; Bn.DAP, Delhi dated 21.10.2019.

The above criminal attitude of ASI (Exe) Dushyant Kumar, No. 4066/DAP, Pl No. 28911063 has tarnished the image of Delhi Police and his action amounts to gross misconduct and highly unbecoming of a police officer.

Taking into account the totality of facts and circumstances of the above mentioned misconduct, it is very clear that the delinquents committed the grave



*misconduct which cannot be tolerated in any disciplined organization like the police force whose basic duty is to protect the life and liberty of citizen in the society. He indulged himself in a most abominable act which is not expected from a uniformed police person. **The shameful act committed by him has not only tarnished the image of the police force but has also brought disgrace to the organization.** He demoralized the moral of other police officers/staff. It is a clear instance of a law enforcer turning into the law breaker and has thereby projected a very shabby image of Delhi police in the eyes of the general public which shall tend to erode the faith in police department. It is an apt case where an exemplary punishment needs to be awarded to the defaulter so that a strong message should go among the other police personnel. In order to deter other members of the force from contemplating such conduct, this act should be dealt with heavy hand & be awarded exemplary punishment. When a police officer who is supposed to uphold the law himself resorts to lawlessness and commit a serious misconduct and tarnish the image of Police Department, it causes a major blow to the confidence of citizens in the police. Such conduct will cause a lot of damage to the goodwill of the organization and will shaken the confidence of the public in the police force. The defaulter ASI(Exe) attracts the provision of Article 311 (2) (b) of Constitution of India and makes him completely unfit for police service.*

*In order to send a clear message to such undesirable elements in the police force and to maintain discipline as well as to prevent recurrence of such incidents, it has become **absolutely imperative to dismiss the defaulter ASI(Exe) as he is completely unfit for police service.** His further retention in the department after his involvement/arrest in above mention case is absolutely detrimental to public interest. He is completely a burden on the Govt exchequer.*

Therefore, I SHRI KISHAN MEENA, Deputy



Commissioner of Police, 5 Bn. DAP, Delhi do hereby order to dismiss defaulter ASI (Exe) Dushyant Kumar, No. 4066/DAP, PIS No. 28911063 from the force with immediate effect under Article 311 (2)(b) of Constitution of India. His suspension period from O 1/09/2022 to date of issue of this order is also been decided as 'period not spent on duty for all intents and purposes'

(Emphasis Supplied)

12. We find that in support of the petition, learned counsel for the petitioners has simply submitted that once the Appellate Authority has, after giving an opportunity of hearing to the respondent, come to a conclusion that it was a fit case where the respondent should be dismissed without any enquiry, the learned Tribunal could not have interfered with the said decision. We are, however, unable to agree. No doubt, it is for the Disciplinary Authority to decide whether in a case it is not reasonably practical to hold an enquiry, but this decision has to be necessarily based on cogent reasons. Learned counsel for the petitioners has not been able to provide any reason, much less to say any cogent reasons, not to hold any enquiry against the respondent. There is neither any plea that the respondent is in any influential position nor any plea of threat to or intimidation to the witnesses by him.

13. Finally, we may refer to the relevant extracts of the impugned order as contained in paragraph nos.9 to 11, which read as under:

9. Having regard to the above, we have carefully perused the impugned order(s), we find that nothing has been recorded in the impugned order(s) or shown to us that the applicant had ever threatened or harassed any of the witness(es) and/or the prospective witness(es). From the impugned orders, it is also evident that neither any effort was made by them to conduct an enquiry, nor there is any



evidence that despite their best efforts, the respondents would not have been able to produce the witness(es) to lead evidence against the applicant. Further nothing is brought on record that witness(es) has/have been threatened by the applicant or they were too scared of the applicant to come forward in the regular enquiry proceedings. 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, as no reason at all has been recorded in this regard and the applicant is guilty of committing grave misconduct and was involved in the aforesaid offences.

10. Having regard to the above, we are of the considered view that impugned orders passed by the respondents are not only in violation of the settled law but also of their own circular dated 11.9.2007. The 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, including in one referred to hereinabove.

11. In view of the aforesaid facts and circumstances of the present case, we are of the considered view that the instant OA 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 hence, the same is partly allowed with the following directions:-

- (i) Orders dated 03.10.2022 (Annexure A/ 1) and dated 10.3.2023 (Annexure A/2) passed by the disciplinary and appellate authorities respectively are set aside;*
- (ii) The applicant shall be entitled to all consequential benefits in accordance with the relevant rules and law on the subject;*



(iii) The respondents shall implement the aforesaid directions within eight weeks of receipt of a copy of this order; and (iv) However, the respondents shall be at liberty to initiate disciplinary proceedings against the applicant in accordance with the law.”

14. In the light of the aforesaid, we have no hesitation in concurring with the Tribunal that the petitioners’ decision to dispense with the enquiry was wholly unsustainable. The petitioners appear to have proceeded on an erroneous presumption that merely because a criminal case has been registered against the respondent, he was to be treated as guilty of the misconduct. No doubt, the respondent is a police officer, whose misconduct can never be condoned, but this would not imply that the principles of natural justice should be given a complete go by. As noted hereinabove, the petitioners have not given any valid reason for dispensing with the enquiry except for repeatedly stating that the respondent is guilty of serious misconduct. This course of action, in our view, is completely impermissible.

15. Before we conclude, we may also consider the decision in **Ajit Kumar Nag (supra)** relied upon by the petitioners. We, however, find that instead of forwarding the case of the petitioners, the said decision supports the case of the respondent. It would, therefore, be apposite to refer to paragraph no.44 of the said decision, which reads as under:-

“44. We are aware of the normal rule that a person must have a fair trial and a fair appeal and he cannot be asked to be satisfied with an unfair trial and a fair appeal. We are also conscious of the general principle that pre-decisional hearing is better and should always be preferred to post-decisional hearing. We are further aware that it has been stated that apart from Laws of Men, Laws of God also observe the rule of audi alteram partem. It has



been stated that the first hearing in human history was given in the Garden of Eden. God did not pass sentence upon Adam and Even before giving an opportunity to show cause as to why they had eaten the forbidden fruit. (See R. v. University of Cambridge [(1723) 1 Str 557 : 93 ER 698] .) But we are also aware that the principles of natural justice are not rigid or immutable and hence they cannot be imprisoned in a straitjacket. They must yield to and change with exigencies of situations. They must be confined within their limits and cannot be allowed to run wild. It has been stated: “ ‘To do a great right’ after all, it is permissible sometimes ‘to do a little wrong’.” [Per Mukharji, C.J. in Charan Lal Sahu v. Union of India [(1990) 1 SCC 613] (Bhopal Gas Disaster), SCC p. 705, para 124.] While interpreting legal provisions, a court of law cannot be unmindful of the hard realities of life. In our opinion, the approach of the Court in dealing with such cases should be pragmatic rather than pedantic, realistic rather than doctrinaire, functional rather than formal and practical rather than “precedential”.”

16. We are, therefore, of the considered view that the petitioners have not only ignored the decisions of the Apex Court laying down the parameters for applicability of Article 311(2)(b) of Constitution of India, but have also ignored their own circulars dated 21.12.1993 and 11.09.2007. We, therefore, find no infirmity with the impugned order.

17. The writ petition being meritless is, accordingly, dismissed with all pending applications.

(REKHA PALLI)
JUDGE

(DR.SUDHIR KUMAR JAIN)
JUDGE

FEBRUARY 19, 2024/kk