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

Date of decision: 14.03.2024

44.

+ W.P.(C) 63/2023 & CM APPL. 163/2023 (Stay)

COMMISSIONER OF POLICE & ORS.

..... Petitioners

Through: Mrs. Avnish Ahlawat, Standing
Counsel with Mrs. Tania Ahlawat and
Mr. Nitesh Kumar Singh, Advocates.

versus

MEENA KUMARI

..... Respondent

Through:

45.

+ W.P.(C) 3544/2023 & CM APPL. 13758/2023 -Stay.

COMMISSIONER OF POLICE DELHI POLICE & ORS.

..... Petitioners

Through: Mrs. Avnish Ahlawat, Standing
Counsel with Mrs. Tania Ahlawat and
Mr. Nitesh Kumar Singh, Advocates.

versus

VIJENDER SINGH

..... Respondent

Through: Mr. Pankaj Yadav, Advocate.

46.

+ W.P.(C) 3844/2023 & CM APPL. 14916/2023 -Stay.

COMMISSIONER OF POLICE DELHI POLICE & ORS.

..... Petitioners

Through: Mrs. Avnish Ahlawat, Standing
Counsel with Mrs. Tania Ahlawat and
Mr. Nitesh Kumar Singh, Advocates.

versus

KRISHAN KUMAR



..... Respondent

Through: Mr. Pankaj Yadav, Advocate.

48.

+ W.P.(C) 7000/2023 AND CM APPL. 27210/2023 (Stay) & CAV
270/2023GOVERNMENT OF NCT OF DELHI THROUGH ITS CHIEF
SECRETARY & ORS.

..... Petitioners

Through: Mrs. Avnish Ahlawat, Standing
Counsel with Mrs. Tania Ahlawat and
Mr. Nitesh Kumar Singh, Advocates.

versus

ANIL KUMAR

..... Respondent

Through: Mr. Sachin Chauhan, Advocate.

CORAM:**HON'BLE MS. JUSTICE REKHA PALLI****HON'BLE MR. JUSTICE RAJNISH BHATNAGAR****REKHA PALLI, J (ORAL)**

1. The present batch of petitions under Articles 226 and 227 of the Constitution of India seek to assail four similar orders passed by the learned Central Administrative Tribunal in four different original applications. Vide these impugned order, the learned Tribunal has allowed all the four original applications (OAs) preferred by the respondents by setting aside orders dismissing them from service.

2. For the sake of convenience, we are hereinafter referring only to the facts of W.P. (C) 7000/2023.

3. On 01.10.2019, while the respondent was working as a constable with petitioners, an FIR, being FIR no. 195/2019, was registered under Sections 409/420/120B of the IPC at Police Station Economic Office Wing against him and three other persons, who are



the respondents in the three other connected petitions. Immediately upon the FIR being registered, the respondent was arrested on 09.10.2019 and dismissed from service on the very same day by an order passed by the petitioners under to Article 311 (b) (2) of the Constitution of India.

4. Being aggrieved, the respondent approached the learned Tribunal by way of O. A. No. 1247/2020 assailing the aforesaid dismissal order, which OA was allowed vide order dated 01.12.2022. Vide the impugned orders, the learned Tribunal, while setting aside the dismissal orders dated 09.10.2019 passed, has directed that the respondent be kept under suspension till conclusion of the departmental enquiry against him for which liberty was granted to the petitioners. Further, the Tribunal has also granted the petitioner liberty to initiate departmental enquiry against the respondents as per law. It is in these circumstances that the petitioners have approached this Court by way of the present petition.

5. In support of the petitions, Mrs. Ahlawat, learned counsel for the petitioners, submits that the impugned orders are wholly perverse as the learned Tribunal, while passing these orders, has failed to appreciate that the respondents had committed grave and serious misconduct which had undermined the image of the Delhi Police in the eyes of the general public and, therefore, the petitioners were justified in terminating them without holding any enquiry. She further submits that the learned Tribunal has allowed the OAs preferred by simply relying on its earlier decisions in *OA No. 2097/2019* titled *Neeraj Kumar v Commissioner of Police & Anr* and in *OA No. 702/2019*



titled *Dharmender Singh Dangi v GNCTD & ors* , and has failed to appreciate the grave misconduct committed by them. This course of action, she contends, was not permissible as the learned Tribunal was required to examine the reasons furnished by the petitioners for dispensing with the enquiry in each case. She, therefore, prays that the impugned order be set aside.

6. On the other hand, learned counsel for the respondents support the impugned orders and submit that once the learned Tribunal found that the reasons furnished by the petitioners in the dismissal orders dated 09.10.2019 for dispensing with an enquiry against the respondents were unsustainable, it was justified in allowing the OAs. The dismissal orders, they contend, have been passed without assigning any justifiable reason and merely proceed on the basis that since the respondents were alleged to have committed grave misconduct no enquiry against them was warranted. In any event, the learned Tribunal has granted liberty to the petitioners to initiate departmental enquiry against the respondents. They, therefore, pray that the petitions be dismissed.

7. In order to appreciate the rival submissions of learned counsel for the parties, we may begin by noting hereinbelow the findings of the learned Tribunal, as contained in para nos. 5-12 of the impugned order dated 01.12.2022 passed in O. A. No. 1247/2020.

“5. Heard learned counsel for the parties at length and have carefully perused the material on record as well as the decisions relied upon by the learned counsel for the applicant.

6. We have thoroughly gone through the decision in Neeraj Kumar (supra) wherein this Tribunal dealt with the issue of dispensing of



the department enquiry under Article 311 (2)(b) and while doing so relied upon the following decisions of the Hon'ble Apex Court:-

*“12 Hon'ble Apex Court's judgment in **Jaswant Singh Vs. State of Punjab** (1991) 1 SCC 362, had also ruled as under:-*

“5.....The decision to dispense with the departmental enquiry cannot, therefore, be rested solely on the ipse dixit of the concerned authority. When the satisfaction of the concerned authority is' questioned in a Court of law, it is incumbent on those who support the order to show that the satisfaction is based on certain objective facts and is not the outcome of the whim or caprice of the concerned officer.”

*13. In **Union of India & Anr. Vs. Tulsiram Patel & Ors.** (AIR 1985 SC 1416) also the Hon'ble Supreme Court observed as under:-*

“The reasonable practicability of holding an inquiry is a matter of assessment to be made by the disciplinary authority. Such authority is generally on the spot and knows what is happening. It is because the disciplinary authority is the best judge of this that clause (3) of Article 311 makes the decision of the disciplinary authority on this question final. A disciplinary authority is not expected to dispense with a disciplinary inquiry lightly or arbitrarily or out of ulterior motives or merely in order to avoid the holding of an inquiry or because the Department's case against the government servant is weak and must fail. The finality given to the decision of the disciplinary authority by Article 311(3) is not binding upon the court so far as its power of judicial review is concerned and in such a case the court will strike down the order dispensing with the inquiry as also the order imposing penalty.”

After taking shelter of the aforesaid decisions of the Hon'ble Apex Court, this Tribunal observed as under:-

“15. Article 311 provides for protection to a public servant from indiscriminate actions by the employer. Any punishment can be imposed only after conducting inquiry. That cannot be dispensed with indiscriminately. It is only in rare cases such as where security of State is involved, that recourse can be taken to Article 311(2)(b) of the Constitution. In this case, the preliminary inquiry itself has virtually declared that the applicant is guilty of grave misconduct. At the same time, regular inquiry is dispensed with. The whole exercise is not only opposed to the law laid down by the Hon'ble Supreme Court,



but also is a contradiction in terms.

16. In view of the Hon'ble Apex Court's judgments, the DE can be dispensed with only on the grounds 'which are robust, clear and substantial. We do not find any such ground or fact which has been brought on, record. We are not commenting on acts and omissions alleged against the applicant. It is only about the denial of reasonable opportunity for presenting his case to the applicant in a DE and denial of natural justice'

Finally the aforesaid OA was decided by this Tribunal in the following terms:-

"17. In view of the above, the OA is allowed. The order of dismissal is set aside. The applicant shall, & however, be under suspension. It shall be open to the respondents to initiate disciplinary proceedings in accordance with law. There shall be no order as to costs."

*7. It is also noticed that this Tribunal, taking similar view as in **Neeraj Kumar** (supra), decided yet another matter in **Dharmender Singh Dangi** (supra) holding as under:-*

"12. No word is said by the respondents as to how it would not be possible to conduct an inquiry in the present episode. Conversely, if inquiry cannot be conducted, it can- also be a reason, to doubt the veracity of the version presented against the applicant. The IO, in the disciplinary proceedings is given the latitude to record finding, not being regulated by any principles of evidence. Even if two views are possible either on the charges or as to the quantum of punishment decided by the DA, the Courts will permit that latitude. When such is the situation, the sacrosanct requirement under the law, namely, of conducting an inquiry before imposing the punishment cannot be sacrificed on the strength of imagination. Even now the inquiry can be conducted, and till such time the applicant can be continued under suspension.

13. We, therefore, allow the OA and set aside the impugned order. The applicant shall stand reinstated into service, but shall continue under suspension. It shall be open to the respondents to initiate disciplinary proceedings. by issuing a charge memo within a period of three months from the date of receipt of a copy of this order. In case no charge sheet or memo is issued within that time, the suspension of the applicant shall cease, and



he shall be reinstated in service. However, he shall not be entitled to back wages. If the applicant is reinstated as above, the DA shall pass an order as to the manner in which the period of suspension shall be treated. There shall be no order as to costs."

8. Having gone through the decisions relied upon by the learned counsel for the applicant and of the Hon'ble Apex Court mentioned therein, we are of the considered opinion that this issue is no more res integra, and taking shelter of these decisions, we find merit in this OA being similar one.

9, Resultantly, the OA is allowed. The Order dated 09.10.2019 passed by the disciplinary authority dismissing the applicant authority and the order dated 24.08.2020 passed by the appellant authority confirming the dismissal order, are quashed and set aside, but the applicant shall be under suspension. We, however, make it clear that it shall be open to the respondents to initiate disciplinary proceedings against the applicant in accordance with law. MA No. 3559 /2022 also stands disposed of accordingly. There shall be no order as to costs."

8. From a bare perusal of the impugned order, we find that the learned Tribunal has allowed the OAs simply on the basis of its earlier decisions in **Neeraj Kumar** (*supra*) and in **Dharmender Singh Dangi** (*supra*), without any reference to the reasons cited by the petitioners for dispensing with an enquiry. Having perused the dismissal orders, we *prima facie* find merit in the respondents' plea that reasons mentioned therein would not fall within the ambit of Article 311(2)(b) of the Constitution of India. Merely because the delinquent employee is a police personnel, would not be the sole ground to dispense with a departmental enquiry against him. We cannot lose sight of the fact the learned Tribunal has not even referred to the reasons furnished by the petitioners to examine whether the same were sufficient to dispense with an enquiry against them. When a dismissal order passed under



Article 311(2)(b) is assailed before the Court, it is incumbent upon the Court to examine the reasons mentioned in the dismissal order for dispensing with the enquiry and then decide whether any interference is called for with the decision of the employer to invoke Article 311 (2)(b) of the Constitution of India. In this regard, reference may be made to a recent decision of this Court, in W.P.(C) 10452/2023 titled ***Govt of NCT of Delhi And Ors. vs. Ex. Ct. Naeem Khan*** wherein it was held that the nature of cases where the enquiry can be dispensed with under Article 311 (2) (b), cannot be put in a straight jacket formula; every case is, therefore, required to be considered on its own facts.

9. In the present case, we find that the learned tribunal has allowed the OAs without even referring the reasons provided by the petitioners for dispensing with the enquiry and, therefore, we have no other option but to set aside the impugned orders and remand the matters back to the learned Tribunal for fresh adjudication of the respondents' O.As on merits. While remanding the matter back to the learned Tribunal, it is expected that the Tribunal will consider the reasons furnished by the petitioners for dispensing with enquiry against the respondents and pass a reasoned and speaking order accepting or rejecting the petitioners' explanation. Taking into account that pleadings in the matters are already complete, the Tribunal will make an endeavour to decide the O.As. within three months.

10. List before the learned Registrar of the learned Tribunal on 22nd



March 2024.

11. However, taking into account that while issuing notice in the present petitions, this Court had not stayed the impugned orders, the respondents would be entitled to monetary benefits in terms of the impugned orders from the date of the passing of the said orders till today. Payment in terms of this order to the respondents be made within four weeks.

12. The present petitions along with all accompanying applications stand disposed of in the aforesaid terms.

REKHA PALLI, J

RAJNISH BHATNAGAR, J

MARCH 14, 2024

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