



2024:DHC:9960-DB



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI***Date of decision: 20.12.2024*

+ W.P.(C) 6320/2023 & CM APPL. 24815/2023 –Stay

COMMISSIONER OF POLICE & ORS.

.....Petitioners

Through: Mr.Vijay Joshi & Mr.Hemant Goyal,
Advs.

versus

MANISH KUMAR MEENA

.....Respondent

Through: Mr.Vivek Kumar Tandon, Ms.Purna
Tandon, Mr.Harshit S Gahlot & Mr.Mayank
Tiwari, Advs.**CORAM:****HON'BLE MS. JUSTICE REKHA PALLI****HON'BLE MR. JUSTICE SAURABH BANERJEE****REKHA PALLI, J (ORAL)**

1. The present writ petition under Articles 226 & 227 of the Constitution of India, seeks to assail the order dated 29.11.2022 passed by the learned Central Administrative Tribunal (hereinafter “the Tribunal”) in OA No.930/2022. Vide the impugned order, the learned Tribunal has allowed the Original Application (OA) preferred by the respondent thereby setting aside the order dated 27.10.2021 passed by the petitioners dismissing him from service without holding any enquiry. The learned Tribunal has also, consequently, quashed the appellate order dated 22.02.2022 vide which the respondent’s departmental appeal was rejected.

2. However, while setting aside the respondent’s dismissal order, the



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learned Tribunal has granted liberty to the petitioners to initiate disciplinary proceedings against him within a period of three months. The learned Tribunal, further, directed that till the culmination of the fresh disciplinary enquiry against the respondent, for which liberty was being granted to the petitioners, he would be placed under suspension.

3. The brief factual matrix which may be necessary for adjudication of the present petition may be noted at the outset.

4. The respondent was working as a Constable (Executive) with the Delhi Police till his service was terminated vide order dated 27.10.2021. It was alleged against him that as per a fact finding enquiry conducted by the petitioners, it was found that the respondent alongwith other persons was passing comments in favour of the agitating farmers. Since the action of the respondent was found to be violative of Section 3 of the Police Forces (Restriction of Rights) Act, 1966 and Section 3 of the Police (Incitement to Disaffection) Act, 1972, it was opined by the petitioners that the respondent did not deserve to be a member of the disciplined force like the Delhi Police and his retention in the Police Force would be detrimental to public interest. Consequently, the petitioners held that retaining the respondent in service for a long and tedious enquiry was not warranted and therefore, it was imperative to dismiss him from service with immediate effect under Article 311(2)(b) of the Constitution of India.

5. Based on the aforesaid conclusion arrived at by the petitioners, the respondent was dismissed from service on 27.10.2021. Being aggrieved, the respondent preferred a statutory appeal, which came to be dismissed on 22.02.2022 leading to the filing of the aforesaid OA by the respondent, which has been allowed vide the impugned order.



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6. In support of the petition, learned counsel for the petitioners submits that the learned Tribunal has failed to appreciate that both the appellate authority as also the disciplinary authority had clearly found that the respondent was guilty of serious misconduct, which was shameful and disgusting and therefore, the dispensation of departmental enquiry in such a case is justified. By placing reliance on the decisions of the Apex Court in *Union of India vs. Tulsi Ram Patel*, (1985) 3 SCC 398, *Jaswant Singh vs. State of Punjab & Ors.*, (1991) 1 SCC 362 and *Union of India & Anr. vs. M.M.Sharma*, (2011) 11 SCC 293, he contends that the learned Tribunal failed to appreciate that the decision of the petitioners to dispense with the departmental enquiry was based on objective facts and therefore, ought not to have interfered with. He, therefore, prays that the impugned order be set aside.

7. On the other hand, learned counsel for the respondent supports the impugned order and submits that the learned Tribunal has allowed the OA after finding that there was no reason whatsoever as to why a regular departmental enquiry could not be held against the respondent. He submits that the petitioners except for stating in the dismissal order that the charges against the respondent were serious and a regular enquiry against him was likely to be long and tedious, have assigned no reason whatsoever. The requirement to record reason, he submits, is a pre-requisite not only as per the decisions relied upon by the petitioners themselves but also as per the circulars dated 21.12.1993 and 11.09.2007 issued by the petitioners. He submits that once the learned Tribunal found that the reasons furnished by the petitioners in the dismissal order for dispensing with the enquiry against the respondent were unsustainable, it was justified in allowing the OA. He,



therefore, prays that the writ petition be dismissed.

8. In order to appreciate the rival submissions of learned counsel for the parties, we may begin by noting herein below, the findings of the learned Tribunal as contained in paragraph nos.7 to 10 of the impugned order:-

*“7. We have thoroughly gone through the judgment relied upon by the learned counsel for the applicant in **Jaswant Singh vs. State of Punjab** (1991) 1 SCC 362 wherein it has been observed 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.”

*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.”

8. The Tribunal in OA No. 1224/2021 titled **Meena Kumari vs. Commissioner of Police**, taking note of judgments in *Jaswant Singh (supra)*, *Tulsiram Patel (supra)*, *Neeraj Kumar vs. Commissioner of Police & Anr.*, *Dharmender Singh Dangi vs. Govt. of NCTD & Ors.* passed the following order on 06.10.2022:

“13. Resultantly, the OA is allowed. The Order dated 22.10.2020 passed by the disciplinary authority dismissing the applicant and the order dated 03.06.2021 passed by the appellate 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.”

9. After considering the decisions of the Hon’ble Supreme Court and this Tribunal, relied upon by the learned counsel for the applicant as mentioned above, we are of the considered opinion that this issue is no more *res integra*, and taking shelter of these decisions, we find merit in the instant OA.

10. The OA is, therefore, allowed. The order dated 27.10.2021 passed by the disciplinary authority dismissing the applicant and the order dated 22.02.2022 passed by the Appellate Authority confirming the dismissal order, are quashed and set aside. We, however, make it clear that it shall be open to the respondents to hold enquiry against the applicant under the Delhi Police (Punishment and Appeal) Rules, 1980 within a period of three months from the date of receipt of a copy of this order. Till the culmination of the enquiry, the applicant



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shall be placed under suspension.

11. There shall be no order as to costs.”

9. From a bare perusal of the aforesaid order, we find that the learned Tribunal has allowed the OA after taking note of its earlier decision in **OA No.1224/2021** titled ***Meena Kumari vs. Commissioner of Police***, wherein a similar termination order was passed without holding an enquiry on the allegations of the applicant therein having committed serious misconduct. While allowing the OA, the learned Tribunal also noticed the fact that the enquiry had been dispensed with by the petitioners by simply observing that taking into account the shameful act committed by the respondent, he was un-fit for police service and therefore, deserves to be dismissed without any enquiry on account of the gravity and sensitivity of the misconduct committed by him.

10. We have also perused the dismissal order dated 27.10.2021 but find that the same except for recording that the misconduct committed by the respondent was serious as it does not even contain a semblance of any reason for not holding a departmental enquiry against him. We find that this order passed by the petitioners while observing that the respondent did not deserve to be a member of disciplined force like the Delhi Police on account of his having uploaded posts on the social media in support of the agitating farmers, does not even mention as to why an enquiry could not be held against him.

11. In these circumstances, even though Article 311(2)(b) of the Constitution of India provides for dispensation with holding of an enquiry in a situation when it is found that it is not reasonably practicable to hold the



same, it does not imply that the disciplinary authority by simply observing that the charges are serious, dispense with an enquiry against a delinquent employee. The seriousness of the purported misconduct of an employee, in our considered view, cannot in itself be a ground for dispensing with holding of a departmental enquiry against him.

12. We may also note that except for producing the impugned termination order and the appellate order, the petitioners did, either before the learned Tribunal or this Court, not produce any records to show reasons for coming to a conclusion that holding of an enquiry against the respondent was not reasonably practicable. In fact, before us, the learned counsel for the petitioners except stating that the respondent being a police personnel, his misconduct had to be dealt with a heavy hand as had tarnished the image of the entire Police Force in the eyes of the citizens of Delhi as also the country, has not been able to point out any justifiable reason for dispensing with an enquiry against the respondent.

13. In this regard, we may also refer to the decision of this Court in **W.P.(C) 5485/2024** entitled *Commissioner of Police and Ors. vs. Kapil*, wherein while dealing with a similar order passed by the learned Tribunal, this Court held as under :-

“11. A bare perusal of the aforesaid reasons contained in the dismissal order makes it clear that the primary reason for the petitioners for not holding any enquiry against the respondent was that the enquiry was long and tedious one and may, therefore, discourage the complainant from deposing against the respondent. 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 come to 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

12. 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 had 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 a most mechanical manner.

13. 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, dispense 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 without recording any reason. Furthermore, it is not as if the respondent has been let off without any departmental action being taken against him as we find that the learned Tribunal has already granted time to the petitioners to initiate departmental proceedings against the respondent as per law.

14. For the aforesaid reasons, we find no reason to



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*interfere with the impugned order. The writ petition being
meritless is dismissed along with all applications”*

14. In the light of the aforesaid, we find no reason to interfere with the impugned order. However, taking into account that under the impugned order, the petitioners were granted three months’ to conduct the disciplinary enquiry, which period has already expired, we grant the petitioners further three months time to conduct enquiry in terms of the impugned order.

15. The writ petition is, accordingly, dismissed with the aforesaid liberty to the petitioners.

(REKHA PALLI)

JUDGE

(SAURABH BANERJEE)

JUDGE

DECEMBER 20, 2024

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