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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) 5485/2024**COMMISSIONER OF POLICE AND ORS**

..... Petitioners

Through: Mrs.Avnish Ahlawat, SC, GNCTD
with Mr.Nitesh Kumar Singh, Ms.Laavanya
Kaushik, Ms.Aliza Alam & Mr.Mohnish
Sehrawat, Advs.

versus

KAPIL

..... Respondent

Through: Mr.Urvi Mohan, Adv. along with the
respondent in person.

CORAM:**HON'BLE MS. JUSTICE REKHA PALLI****HON'BLE MR. JUSTICE RAJNISH BHATNAGAR****REKHA PALLI, J (ORAL)****CM APPL. 22592/2024**

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

W.P.(C) 5485/2024 & CM APPL. 22591/2024 (stay)

3. The present writ petition under Articles 226 & 227 of the Constitution of India seeks to assail the order dated 16.08.2023 passed by the learned Central Administrative Tribunal (Tribunal) in OA No.1461/2021. Vide the impugned order, the learned Tribunal has set aside the order dated 30.08.2019 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 is necessary for adjudication of the present petition maybe noted at the outset.
5. The respondent was working as a Constable (Exe) in the Delhi Police since 06.01.2010. While he was posted as Beat Constable in Narela Police Station, upon a complaint filed by one Mr Kapil Vashisht, an FIR under Section 7 of Prevention of Corruption Act was on 12.07.2019 registered against him at PS CBI/ACB Delhi. He was arrested on the very same date and was vide order dated 15.07.2019 placed under suspension w.e.f 12.07.2019 i.e., the date of his arrest. Subsequently, based on the findings of a preliminary enquiry purported to have been held in respect of the incident, he was dismissed from service vide order dated 30.08.2019 by invoking Article 311(2)(b) of the Constitution of India.
6. Being aggrieved by his dismissal from service without any departmental enquiry having been held against him, the respondent preferred a statutory appeal which came to be rejected on 01.07.2021. The respondent then approached the Tribunal by way of OA No.1461/2021, which OA has been allowed vide the impugned order, thereby setting aside the dismissal order dated 30.08.2019 passed against the respondent.
7. In support of the petition, learned counsel for the petitioners submits that the impugned order is wholly perverse and is liable to be set aside as the learned Tribunal has failed to appreciate that from the evidence led in the ongoing criminal trial against the respondent, it was clear that the respondent was taking monthly bribe from the complainant. Furthermore, the respondent was caught red handed by the CBI, demanding and receiving bribe. She, therefore, contends that 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.

8. 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 reasons were 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.

9. Having considered the submissions of the learned counsel for the parties and perused the record, we may begin by noting the following extracts of the impugned order.

“9. Keeping in view 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) and further there is no evidence or document to indicate that any effort Was made by the respondents to summon the witness(es) to lead the evidence. From the impugned orders, it is evidently clear that neither any effort was made by them to conduct the enquiry nor there is any evidence that in spite of 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 are 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 and there being a possibility that witness(es) may not come forward to depose against the applicant.

10. Having regard to the above, we are of the 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, a few of which are referred to hereinabove.

11. In view of the aforesaid facts and circumstances of the present case, we are of the considered view that the instance OA is squarely covered by a catena of cases relied on behalf of the applicant, including 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 30.8.2019 (Annexure A-1) and dated 1.7.2021 (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 direction 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.*

10. 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 30.08.2019 for dispensing with the enquiry. The relevant extract of the order dated 30.08.2019 reads as under:-

“A preliminary probe inter-alia into the matter was conducted through ACP/Sub-Division Narela, who concluded that the above criminal act on the part of constable Kapil, No. 2266/OND amounts to grave misconduct, indulgence in corrupt activities, dereliction in discharge of his official duties and



unbecoming of a police officer renders him liable to be dealt with departmentally, suffice to prove the criminality of the accused Constable. The octus-reus is itself proven on the doctrine of res-ipso-loautur. The conversation between the complainant and the defaulter constable together with the arrest by CBI/ ACB, Delhi is also on indispensable condition sine-quo-non mentioned the evil intention holding of guilty mind equilibrium to his misconduct. Ordinarily, a regular departmental enquiry should follow before taking disciplinary action against the defaulter Constable. But holding a long and tedious enquiry shall discourage the complainant from deposing against the delinquent. Taking into consideration oil the facts and circumstances of the present case, I am of the considered view that it is not reasonably practicable to hold a departmental enquiry. Hence, in compliance to Circular issued from PHQ into the matter vide No. 5545-645/P.Cel/Vig. (P.Misc.), Dt. 11.09.2007 and the subsequent circular No. 2513-2612/P.Cell (P .Misc.), Vigilance dated 18.04.2018, the above enquiry report was forwarded to Spl.CP/L&O (NJ, Delhi for seeking his concurrence to dismiss the defaulter under Article 311 (2) (b) of Constitution of India - 1949 and the some has been approved by the competent authority.

Whereas, such instance would shake the very foundations of the trust among the society deposes in the police force, that innocent public are safe in the hands of the police and it is only the criminals who should fear the police force. A Police Officer like Constable Kapil No. 2266/OND (PIS No. 28102077) is a threat to the discipline, integrity and morality of the entire police force and a huge threat to the public at large because the uniform that he dons bestows a huge authority on him which he has misused to indulge in the act of corrupt activities completely unbecoming of a government servant. He has acted in a most reprehensible manner which is unexpected from a member of the uniformed force and undoubtedly extremely prejudicial to personal safety and security of the citizen. The above misconduct on the part of Constable Kapil, No. 2266/OND [PIS No. 28102077) reflects his criminal tendency.



If left unpunished in the strongest possible manner will send a very wrong signal to the rest of the police department and will be extremely demoralizing for those police officials who discharge their duties with utmost responsibility and sincerity. The further retention of Constable Kapil, No. 2266/OND in the public service is extremely undesirable and the ends of justice would be met if a major penalty of dismissal from service, which shall ordinarily be a disqualification for future employment under the government, is imposed on the defaulter constable

Now, therefore, I, Gaurav Sharma, Dy. Commissioner of Police, IPS, Outer North District, Delhi, the disciplinary authority of Constable Kapil, No. 2266/OND (PIS No.28102077) in exercise of the powers vested in me by virtue of the Provisions of Second Proviso to Article 311 (2) of The Constitution of India - 1949 do hereby impose the punishment of dismissal to Const. Kopil, No. 2266/OND (PIS No. 28102077) from service with immediate effect. His suspension period w.e.f. 12.07.2019 to the date of issue of this order is also hereby decided period as 'Not Spent on Duty' for all purposes and intents which will not be regularized in any manner which would meet to the end of justice. He is not in possession of govt. quarter. He will deposit all his government belonging including identity cord and clothing /store articles."

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



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proceedings against the respondent as per law.

14. 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.

(REKHA PALLI)
JUDGE

(RAJNISH BHATNAGAR)
JUDGE

APRIL 22, 2024
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