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IN THE HIGH COURT OF DELHI AT NEW DELHI***Date of decision: 13.03.2024***

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W.P.(C) 10452/2023 & CM APPL. 40509/2023 -Stay.**GOVT OF NCT OF DELHI AND ORS****..... Petitioners**

Through: Mrs. Avnish Ahlawat, Standing
Counsel, GNCTD (Services) with
Mrs. Taniya Ahlawat, Mr. Nitesh
Kumar Singh, Ms. Laavanya Kaushik,
Ms. Aliza Alam and Mr. Mohnish
Sehrawat, Advs.

versus

EX CT NAEEM KHAN**..... Respondent**

Through: Mr. Tanvir Ahmad Ansari Advocate.

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 and 227 of the Constitution of India seeks to assail the order dated 21.04.2023 passed by the learned Central Administration Tribunal in O.A.3106/2022.

2. Vide the impugned order, the learned Tribunal, while allowing the original application filed by the respondent/applicant by setting aside the penalty order dated 26.02.2018 and the appellate order dated 25.04.2019, has directed the petitioners to reinstate him along with all consequential benefits. The learned Tribunal has, however, granted liberty to the petitioners to initiate departmental proceedings



against the respondent in accordance with law.

3. We may at the very outset note that while passing the impugned directions, the learned Tribunal has primarily relied on its decision dated 02.08.2022 in O.A.1570/2019 filed by ASI Intikhab Alam who, we find, was initially dismissed by the petitioners along with the respondent vide the same penalty order dated 26.02.2018 passed under Article 311(2)(b) of the Constitution of India.

4. In support of the petition, Mrs. Ahlawat, learned counsel for the petitioner submits that the learned Tribunal has failed to appreciate that in a case like the present, where the witnesses have already turned hostile, it was a fit case where the power under Article 311 (2) (b) of the Constitution of India was exercised by the petitioners. She submits that the learned Tribunal has wrongly relied on the case of ASI Intikhab Alam without appreciating the fact that the roles attributed to the respondent and ASI Intikhab Alam were very different. The complaint by one Sh. Manoj Kumar Gupta was in fact, directed only against the respondent and not against ASI Intikhab Alam and, therefore, there was no similarity before the two cases.

5. Furthermore, even though the respondent was apprehended at the site of the incident itself, he was released on bail only on account of the complainant turning hostile, and filing an application and affidavit before the Court to urge that the respondent had been wrongly implicated due to a case of mistaken identity. She, however, does not deny that the order passed by the learned Tribunal in the case



of ASI Intikhab Alam has been duly implemented by the petitioners and consequently, a departmental enquiry against him is underway. She, therefore, prays that the impugned order be set aside.

6. On the other hand, Mr. Tanveer Ahmad Ansari, who appears on behalf of the respondent, supports the impugned order and contends that once the order passed by the disciplinary authority on 26.02.2018 was a joint order whereunder, both the respondent as also ASI Intikhab Alam were dismissed by resort to Article 311(2) (b) of the Constitution of India, the petitioners cannot now be permitted to urge that the two cases are different. He, therefore, contends that once the petitioners are conducting a departmental enquiry against ASI Intikhab Alam, there is no reason as to why an enquiry cannot be conducted against the respondent. He, therefore, prays that the writ petition be dismissed.

7. Having considered the submissions of learned counsel for the parties and perused the record, we may begin by noting the relevant extracts of the impugned order. We may, therefore, first note para 9 of the impugned order wherein the learned Tribunal has referred to the relevant extracts of the decision dated 10.02.2022 in the case of ASI Intikhab Alam. The same read as under:

“9. The judgment in *Ct. Sumit Sharma vs. Govt. of NCT of Delhi* (supra) was followed in the case of coaccused/delinquent in the case titled *Intikhab Alam* (supra), paras 45 to 48 of *Ct. Sumit Sharma (supra)* which read as under:-

“45. In the cases in hand, it is evident that in most of the cases preliminary inquiry had admittedly been



done and regular enquiry had been dispensed with on the ground of possibility of witnesses likely to be unduly harassed or pressurized by the In delinquent(s). In all the case FIRs, chargesheet had been filed, list of witnesses had been filed, a few witnesses had been examined or after trial the accused(s) had been acquitted. In a few cases, the reason for dispensing with the enquiry had been given that the material had come on record to prove the criminal acts of the applicants. The reason had been also of threat to discipline, integrity and morality of the entire police force. On perusal of the impugned orders, it is evident that either the authorities have passed the orders of dispensing with the enquiry on jumping to the conclusion that delinquency or guilt of the applicants as alleged in the case FIRs stood proved even without regular enquiry in the departmental proceedings or trial in the concerned learned court(s). In most of the cases, conclusion about delinquency and commission of the offence(s) by the applicant(s) had been arrived merely on the basis of the preliminary inquiry report/investigation conducted by them and a copy of which had not been provided to them. In none of the aforesaid cases, there was any evidence/material before the authorities as evident from the impugned orders nor as such had been brought before us, to indicate that the applicants were having terror in their area-and/or were having link with the terrorist(s) and they were involved in any case of espionage. Nothing has been recorded in the order(s) or shown to us that the applicant(s) had ever threatened or harassed any of the witness(es) and/or the prospective witness(es). There is no evidence or document to indicate that in view of the facts and circumstances of the case(s), any efforts was made to summon the witness(es) to lead the evidence against the applicant(s) 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 order(s), 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 efforts, they had not been able to produce the witness(es) to lead evidence against the applicant(s). Rather the respondents have themselves filed the final challan(s)



with a list of witness(es) before the concerned learned Court(s) and in a few cases, the accused(s) had acquitted been as well. In a few cases, witnesses have been examined before the concerned learned Court(s). Moreover, co-delinquent in the cases of **Neeraj Kumar** (supra) and **Ramesh Kumar** (supra), the similar: impugned orders have been set aside by the Tribunal and the orders of the Tribunal have also attained finality.

46. It is found that the authorities while passing the impugned orders have. very casually come to the conclusion that it would not be possible to conduct the departmental enquiry against the delinquent(s): and there being a possibility that witness(es) may not come forward to depose against the applicant(s). Such acts/orders of the respondents are not only in violation of the settled law but also of their own aforesaid circulars dated 21.3.1993 and 11.9.2007 as well. 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.

47. 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.

48. In view of the aforesaid, we are of the considered view that the aforesaid OAs deserve to be partly allowed and the same are partly allowed with the J following directions:-

(i) Order(s) passed by the disciplinary and appellate authorities in the aforesaid OAs are set aside with all



consequential benefits to the applicants in accordance with the relevant rules and law on the subject; and

(ii) However, the respondents shall be at liberty to initiate disciplinary proceedings against the applicant(s) in accordance with law.”

8. We may now note hereinbelow the relevant extracts of para 11 of the impugned order wherein the learned Tribunal has given its findings as to why the action of the petitioners dismissing the respondent without holding an enquiry was unsustainable;

“11. However, 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 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. It is also not the case of the respondents that resorting to regular enquiry, the relation with foreign countries was likely to be adversely affected. 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 had not been able to produce the witness(es) to lead evidence against the applicant and 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 despite the fact that the said complainant lodged DD entry and made a Statement that the applicant is not the person who has fired a shot and his name was taken by him and got recorded in the FIR due to some misunderstanding and to this effect an affidavit is stated to have been filed before the District and Session Judge, Karkardooma Court. This fact has not been considered by the Appellate Authority while passing the impugned order.”



9. In the backdrop of the aforesaid findings of the learned Tribunal, we have considered the submission of Mrs. Ahlawat that since the roles attributed to the respondent and to ASI Intikhab Alam in the incident which took place in the night of 24.02.2018 were different, no reliance could be placed on the order passed by the learned Tribunal in the case of ASI Intikhab Alam. We are, however, unable to appreciate this plea as we find that this Court is not dealing with the question regarding the guilt or misconduct of either the respondent or of ASI Intikhab Alam. The only question which arises for consideration of this Court is, as to whether there were sufficient grounds for the petitioners to dispense with the departmental enquiry and pass a dismissal order against the respondent under Article 311 (2)(b) of the Constitution of India.

10. Taking into account that it was the own case of the petitioners that the respondent as also ASI Intikhab Alam were involved in the very same incident, it is evident that the witnesses qua the incident in respect of both, would necessarily be the same. As noted hereinabove, in fact, the petitioners had themselves initially passed a common order on 26.02.2018 dismissing both the respondent and ASI Intikhab Alam on the ground that it would not be reasonably practicable to conduct the regular departmental enquiry against them which conclusion was found to be unsustainable by the learned Tribunal in the case of ASI Intikhab Alam. In these circumstances, we are of the view that once the petitioners themselves had treated the case of the respondent and ASI Intikhab Alam at par for the purposes



of determining as to whether it was a fit case for dispensing with the enquiry, they cannot now be permitted to urge that the case of the respondent is not covered by the decision of the learned Tribunal in the case of ASI Intikhab Alam, which decision as noted hereinabove has been duly implemented.

11. We are, therefore, unable to accept the plea of the petitioners that the cases of the respondent and ASI Intikhab Alam are in any manner different insofar as they relate to the question regarding the feasibility of holding a departmental enquiry. Their role in the alleged incident and the misconduct attributed to them may be different but this would not be a material factor to determine as to whether a departmental enquiry against the respondent should be dispensed with. In our considered view, once the petitioners have initiated a departmental enquiry against ASI Intikhab Alam, there is no reason as to why such an enquiry cannot be initiated against the respondent especially when the witnesses to the incident, in which both the employees are alleged to have been involved, is the same. Even though, Mrs. Ahlawat has vehemently urged that the witnesses were being threatened by the respondent and, therefore, it was not reasonably practicable to hold an enquiry against him, however as has also been noted by the learned Tribunal, we find that nothing has been placed on record to substantiate this bald plea. Merely because some witnesses are alleged to have turned hostile, cannot, in our view, be a ground not to hold a departmental enquiry and that too when an enquiry based on the same incident is being held against a co-delinquent.



12. We have also considered the decisions in *CT. Mukesh Kumar Yadav Vs. Govt. (NCT of Delhi), 2017 SCC OnLine Del 11169*; *Parveen Kumar Vs. Commissioner of Police, 2007 (98) DRJ 433 (DB)* and *Manohar Lal Vs. Commissioner of Police being WP(C) 1309/2023 decided on 02.02.2023*, relied upon by the petitioners but find that the same turn on their own facts. In none of these cases, the Court was dealing with a situation like the one in the present case where enquiry pertaining to the same incident is being held against a co-delinquent. Even otherwise, merely because the respondent happens to be police personnel, it cannot be said that a departmental enquiry cannot be held against him. Similarly, the nature of cases, where the enquiry can be dispensed with, cannot be put in a straight jacket formula; every case is, therefore, required to be considered on its own facts. In the present case, we have no hesitation in agreeing with the learned Tribunal that no ground was made out for dispensing with a regular departmental enquiry against the respondent.

13. For the aforesaid reasons, we find absolutely no merit in the petition, which is accordingly dismissed along with all accompanying applications.

REKHA PALLI, J

RAJNISH BHATNAGAR, J

MARCH 13, 2024/ib