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

Date of decision: 22.04.2024

+ W.P.(C) 15229/2023 & CM APPL. 60951/2023 -Stay
COMMISSIONER OF POLICE & ORS.

..... Petitioners

Through: Mr.Yeeshu Jain, ASC, GNCTD with
Ms.Jyoti Tyagi, Adv.

versus

EX. CONST. JATIN KUMAR, EXE.

..... Respondents

Through: Mr.Saurabh Ahuja & Mr.Deepak
Hastir, Advs.

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 & 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.610/2023. Vide the impugned order, the learned Tribunal has allowed the OA preferred by the respondent, thereby setting aside the dismissal order dated 27.07.2021 passed by the petitioners dismissing the respondents from service without holding any enquiry, as also the appellate order dated 13.01.2023 passed against them. The learned Tribunal has, however, granted liberty to the petitioners to initiate disciplinary proceedings against the respondent in accordance with law.



2. The brief factual matrix as maybe necessary for adjudication of the present petition may be noted at the outset.
3. The respondent was appointed as a Constable (Exe) in the Delhi Police in the year 2009. On 21.5.2021, an FIR no.296/2021 was registered against him under sections 393 and 34 of IPC and consequently he was arrested on 25.05.2021. Vide order dated 25.05.2021 passed by the petitioners, the respondent was placed under suspension w.e.f. 22.05.2021. Pursuant thereto, a preliminary enquiry was held and consequently, vide order dated 27.07.2021, the respondent was dismissed under Article 311(2)(b) of the Constitution of India without holding any enquiry. Aggrieved, the respondent filed an appeal before the appellate authority, which was rejected on 13.01.2023.
4. In these circumstances, the respondent approached the learned Tribunal by way of the aforesaid OA, which has been allowed by the learned Tribunal under the impugned order.
5. In support of the petition, learned counsel for the petitioners has vehemently urged that the learned Tribunal has failed to appreciate that the respondent was a police personnel involved in a very serious offence of dacoity and therefore 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.
6. 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.

7. Having considered the submissions of the learned counsel for the parties and perused the record, we may begin by noting the relevant extract of the impugned order, para 11 to 14 thereof which reads as under,

“11. Keeping in view the above, we have perused the impugned orders, 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 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. 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 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 and there is a possibility that witness(es) may not come forward to depose against the applicant despite the facts that the relevant witnesses had participated in the criminal trail initiated pursuant to the said FIR case. Besides, even before the conclusion of trail, the respondents have reached to the conclusion of applicant to have committed the grave offence and misconduct.

12. Having regard to the above, we find that such acts/orders of the respondents are not only in violation of the settled law but also of their own aforesaid instructions/ dated 21.12.1993. 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 are referred to herein above.

13. In the above facts and circumstances of the present case, we are of the considered view that this case is squarely covered by decision of this Tribunal in common Order/Judgment dated 10.2.2022 in Sumit Sharma (supra) and a catena of similar cases were decided by this Tribunal on the basis of the decision of this Tribunal in Sumit Sharma. Therefore, the present OA deserves to be partly allowed and the same is partly allowed with the following directions:-

- (i) Orders dated 27.07.2021 (Annexure A/1) and dated 13.01.2013 (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.

14. However, in the facts and circumstances, there shall be no order as to costs.”

8. 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 27.07.2021, 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 27.07.2021 for dispensing with the enquiry. The relevant extract of the order dated 27.7.2021 reads as under:-

“A preliminary enquiry was ordered into the matter under Rule 15(1) of Delhi Police (Punishment & Appeal) Rules-1980 vide this office order No. 10140 / HAP(P- l) / North Distt. dated 12 / 06 / 2021 and entrusted to Sh.Veer Singh , ACP/ PG-Cell/ North District. The P.E. report is placed alongside which revealed that Const. Jatin Kumar, No. 1807 / N has involved himself in criminal case of heinous crime. As such, he was arrested in case FIR No. 296 / 21 dated 21.05. 2021 u / s 393/ 34 IPC , PS Wazirabad and during the investigation of the case, section 393 IPC was replaced with section 395/ 120-B IPC which is a grave offence and serious misconduct on his part. He has indulged himself in an abominable act which is not expected from the personnel of a uniformed force. The shameful act committed by him has not only tarnished the image and brought disgrace to the organization but also demoralized other police officers / staff . It is clear instance of a law enforcer turning the law breaker has thereby projected a



very bad image of Delhi Police in the eyes of the general public which shall tend to erode the faith in police department. Hence it is an apt case where exemplary punishment needs to be awarded to the defaulter so that it proved an eye opener to the others.

Through the facts surfaced during the preliminary enquiry , coaccused persons ,Ct.Amit No.768/ SDH and Ravi are absconding and running away from the process of law. On the analysis of the CDR details of the mobile phone of Ct. Jatin , it is revealed that he was present at the spot of incident / nearby at about 9.00 PM to 09.50 PM . During this period he was in constant touch with mobile number of the co-accused Naresh and other two JCLs were also in touch with each other. The location of 4 mobile phones is at the spot of incident and nearby Ct. Jatin played active part in the commission of crime and he is the main conspirator.

The involvement of Ct. Jatin in the aforesaid heinous crime and the fact that complainant of the case did not identify him during the course of judicial TIP proceedings reflects his desperate character. Needless to say that he is a goon in police uniform. His act of indiscipline is of the highest degree which warrants stern action.

The above act of the defaulter Const. Jatin Kumar, No. 1807/ N is unbecoming of police personnel. His involvement in such type of crime creates a humiliating appearance of Delhi Police Personnel before the public. Further , a morale of other official of Delhi Police has been effected.

Through the facts surfaced during the preliminary enquiry, it has been observed that the facts and circumstances of the case are so serious that it will not be reasonably practicable to conduct a regular departmental enquiry against the defaulter, as there is a reasonable belief that the witnesses may not come forward to depose against him owing to his influential position. It also calls for great courage to depose against the desperate police personnel and the task becomes more acute and difficult where the police personnel use his job to influence the statement /deposition of the witnesses. It is also highly probable that during the entire process of departmental



proceedings, the complainant and witnesses would be put under constant of threat to their person and property from the defaulter. Under these circumstances, I am personally satisfied that conducting a regular D.E. against the defaulter is not practicably possible.

The defaulter, being a public servant, serving in a disciplinary force, with certain powers in order to maintain law and order with utmost honesty has betrayed his duty and responsibility. He has not only cast a stigma on himself but also to the esteem of the department and cannot be tolerated under any circumstances. He deliberately indulged himself in the company of robbers and committed the crime. If exemplary punishment is not awarded to such police personnel, it will encourage other members of the force to follow suit and flout disciplinary norms.

After completing the Preliminary Enquiry, in compliance of the Circulars issued from PHQ into the matter vide Nos 5545-645/P.Cell/Vig. Dated 11.09.2007 and 2513-2612/P.Cell(P.Misc) /Vigilance dated 18.04.2018, the enquiry report was forwarded to Spl.CP/CR, Delhi for seeking his concurrence to dismiss the defaulter under Article 311(2)(b) of the Constitution of India and the same has been approved by the competent authority.

Taking into account the totality of facts and circumstances of above mentioned case, it is amply clear that the defaulter committed one of the gravest acts of misconduct which cannot be tolerated in any disciplined organization like police whose basic duty is to protect the life and liberty of citizen in the society. He indulged himself in such an abominable act which is not expected from personnel of a uniformed force. The shameful act committed by him has not only tarnished the image of the police force and brought disgrace to the organization but has also demoralized other police officers/staff. It is a clear instance of a law enforcer turning into the law breaker and has thereby projected a very bad image of the Delhi Police in the eyes of the general public which shall tend to erode the faith in police department. Therefore, the undersigned is satisfied that the act and grave



misconduct of defaulter Const. Jatin Kumar No.1807/N (PIS No.28092422) attracts the provisions of Article 311 (2) (b) of the Constitution of India and makes him completely unfit for police service.

Therefore, in order to maintain discipline as well as to prevent recurrence of such an incident, it has become absolutely imperative to dismiss the defaulter as he is completely unfit for police service . Moreover, his further retention in the department after his involvement/ arrest in the above mentioned case is absolutely detrimental to public interest.

Therefore, Keeping in view of the sensitivity of the matter, I Anita Roy, Addl. DCP-I / N, Delhi hereby order to dismiss the defaulter Const. (Exe.) Jatin Kumar No. 1807/N (PIS No.28092422) from Delhi Police under Article 311(2) (b) of the Constitution of India with immediate effect. His suspension period since date of arrest in the case i.e. 22.05.2021 to the date of issuing this order is hereby decided as "period not spent on duty" for all intents & purposes and the same will not be regularized in any manner."

9. A bare perusal of the aforesaid reasons contained in the dismissal order makes it clear that the primary reason for the petitioners not holding any enquiry against the respondent was 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 deserved to be dismissed at the earliest. Further, the petitioners appear to have proceeded on a presumption that the respondent being a police personnel, might use his influence to threaten witnesses and therefore it would not be practicable to hold an enquiry against him. This presumption that the respondent being a police personnel was likely to threaten witnesses was, in our considered view, rightly rejected by the learned Tribunal as being a ground to come to a conclusion that it was



not reasonably practicable to hold an enquiry against him. We are of the opinion that the petitioners are not expected to dispense with a departmental enquiry in such a mechanical and casual manner, only on the basis of a perceived notion that no witness would depose against a police personnel.

10. 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 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. In the light of the aforesaid and following the ratio of our decision in *Dushyant Kumar (supra)*, we are of the view that the learned Tribunal has correctly upheld that the petitioners has dispensed with enquiry against the respondent without any justifiable reason. We, therefore, find no reason to interfere with the impugned order.

11. 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. The impugned order has proceeds merely on the basis that the respondent's guilt had been proved in the preliminary enquiry. This course of action was in our view not permissible. 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 the petitioners time to initiate departmental proceedings against the respondent as per law.

12. 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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