



2024:DHC:6350-DB



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

% *Date of decision: 14th August, 2024*

+ W.P.(C) 11276/2024 and CM APPL. 46705/2024, CM APPL.
46706/2024

THE COMMISSIONER OF POLICE & ORS.Petitioners
Through: Mr. Satya Ranjan Swain, Senior
Panel Counsel, Mr. Kautilya Birat &
Mr. Ankush Kapoor, Advocates.

Versus

OM PRAKASH & ANR.Respondents
Through: Mr. Sachin Chauhan, Advocate.

CORAM:

HON'BLE MR. JUSTICE SURESH KUMAR KAIT
HON'BLE MR. JUSTICE GIRISH KATHPALIA

J U D G M E N T (oral)

1. The present writ petition has been filed on behalf of the petitioners under Article 226 of the Constitution of India seeking setting aside of order dated 24.04.2024 passed by the learned Central Administrative Tribunal ('Tribunal'), Principal Bench, New Delhi in O.A. No. 323/2022, whereby orders dated 22.10.2020 and 21.06.2021 passed by the petitioners, have been set aside and a direction has been issued to reinstate the respondent No. 1 into service, with consequential benefits.
2. The background of the case is that respondent No. 1 entered into the service of the petitioners as Constable (Executive) in the year 1990. He was promoted to the rank of Head Constable (Executive) in the year 2016.



3. While working, on 07.10.2020 respondent got involved in a case FIR 365/2020 for the offences punishable under Sections 448/420/468/471/120B IPC registered at police station Rohini, Delhi. After registration of the FIR, an inquiry was conducted by the petitioners and the respondent No. 1 was arrested on 08.10.2020 by the local police and sent to police custody for a day. Thereafter, the said respondent was sent to the judicial custody and while investigation in the case FIR was in progress, the petitioners passed the impugned order dated 22.10.2020 dismissing him from service by invoking the provisions of Article 311 (2)(b) of the Constitution of India.
4. Against his dismissal, the respondent No. 1 submitted a statutory appeal before the Competent Authority, which was rejected by the petitioner vide order dated 21.01.2024.
5. Being aggrieved, respondent No.1 preferred O.A. No. 323/2022 before the learned Tribunal wherein it was pleaded that without any enquiry and in the absence of any verdict of competent court, the Disciplinary Authority has held him guilty of criminal act alleged in the FIR. There was no material or basis to conclude under Article 311 (2) (b) of the Constitution of India that respondent No. 1 had coerced or influenced any witness. Respondent No. 1 pleaded before the learned Tribunal that no document was placed on record by the petitioners for the reason no forgery was committed by him and even Appellate Authority passed the order in a mechanical manner without advertng to the pleas of respondent No. 1.
6. To the contrary, the case of the petitioners before the learned Tribunal was that the respondent No. 1 had been working in a disciplined and uniformed force like the Delhi Police and the act and conduct of the said respondent has tarnished and put a blot on the image of police force in the



society. The petitioners, particularly the Disciplinary and Appellant Authorities are master of facts and the best suited to ascertain the factual matrix whether a regular inquiry is possible or not and in such circumstances. Thus only the Disciplinary Authorities knows as whether regular disciplinary inquiry is to be conducted and/or to be dispensed with.

7. Further submitted that unless the reasoning recorded by the authorities is found to be illegal, indulgence of the Tribunal while exercising the power of Judicial review is not wanted and while exercising the power of judicial review the Tribunal should have taken into consideration that the only jurisdiction available to the Tribunal is to see only the decision making process and not the decision itself.

8. The learned Tribunal vide impugned judgment dated 24.04.2024 observed and held as under:-

“12. From the aforesaid facts, the issue arises:

- (i) as to whether regular inquiry is possible or not can be concluded by the respondents without giving any reasons as to why a regular inquiry is not possible and*
- (ii) by jumping to a conclusion on the basis of registration of a FIR for the serious offence(s), an order can be passed to the effect that the applicant is not fit to be retained in service.*

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14. In view of the aforesaid, we find that the impugned orders are not sustainable in the eyes of law. Accordingly, the OA is allowed with the following order(s):-

- (i) impugned orders dated 22.10.2020 and 21.06.2021 are set aside.*



The applicant shall be reinstated in service forthwith.

(ii) the applicant shall be entitled for all consequential benefits in accordance with relevant rules and instructions on the subject.

(iii) the aforesaid directions shall be complied with by the respondents as expeditiously as possible and preferably within a period of four weeks from the date of receipt of a copy of this order.

(iv) the respondents shall be at liberty to initiate disciplinary proceedings against the applicant if they are so advised, of course in accordance with rules and instructions on the subject.”

9. The challenge to the impugned judgment passed by the learned Tribunal by the petitioners is on the ground that the learned Tribunal did not appreciate that Article 311(2)(b) of the Constitution of India, 1950 accords the powers to the appointing/disciplinary authority to record in writing that it is not reasonably practicable to hold an enquiry.

10. During the course of hearing, learned counsel appearing on behalf of the petitioners has submitted that the Disciplinary Authority has come to the conclusion that a detailed enquiry is not possible because the forged papers could not be found. However, there was other incriminating evidence available against respondent No. 1 which the learned Tribunal has not taken into consideration.

11. Learned counsel further submitted that the learned Tribunal did not appreciate that respondent No. 1 and his family has encroached upon the plot and constructed boundary wall on it and so letting respondent No. 1 continue to work in a disciplined force like Delhi Police is detriment to the morale of other employees. Thus, setting aside of impugned judgment is sought by the petitioners.



12. Upon hearing learned counsel for the parties and on perusal of impugned judgment as well as other material placed on record, this Court finds that subsequent upon a preliminary report dated 15.10.2022 written by Additional DCP in respect of alleged misconduct of respondent No. 1 in respect of his involvement in FIR No. 365/2020, the Disciplinary Authority passed the impugned order dated 22.10.2022 wherein it is observed and held as under:-

“In view of above facts, it has been revealed that the above criminal act of HC Om Prakash amounts to grave misconduct and dereliction of duty and unbecoming of police officer is liable to be punished. The misconduct of alleged HC (Exe.) Om Prakash No.1031/OD (PIS No.28901017) is of such a grave nature that warrants an exemplary punishment of dismissal in order to send a clear message to such undesirable person and to prevent the recurrence of such crime. His act and conduct tarnished the image of National Capital Police. His misconduct is found to be unbecoming of a police official. Being part of a disciplined force, his misconduct clearly shows his criminal intention.

HC Om Parkash No. 1031/OD had forcible occupied a plot of land in Village Karala, PS Kanjhawala and started illegal construction of a boundary wall. He also forged papers related to this land. HC Om Parkash No. 1031100 was arrested alongwith his family members. This criminal misconduct has led to demoralisation of the Police personnel and has tarnished the image of Delhi Police. In order to send a clear message to the other personnel not to indulge in such acts strict disciplinary



action needs to be taken. A proper detailed enquiry is impracticable, the forged papers could not be found. Hence, such corrupt, indiscipline, misuse of official position cannot be tolerated and he should be immediately dismissed from service.

The facts and circumstances of the case are so serious that it will not be reasonably practicable to conduct a regular departmental enquiry against HC Om Parkash, as there is a reasonable belief that the defaulter will influence the statements/deposition of witnesses. I am personally satisfied that conducting a regular DE against HC (Exe.) Om Parkash will take a considerable long period and it is not practicably possible.”

13. With aforesaid finding, the Disciplinary Authority did not conduct departmental enquiry in respect of allegations levelled against Head Constable Om Prakash, respondent No. 1 herein and proceeded to suspend him from his services on 09.10.2020.

14. The statutory appeal preferred by respondent No. 1 against dismissal order dated 09.10.2020, was rejected by the Competent Authority vide order dated 21.06.2021 *inter alia* holding as under:

“As per material on record, it is evident that the appellant and his family had encroached upon a plot and constructed the boundary wall. The complainant is a civilian while the appellant being a police officer is in a position to exert pressure on him. There are reasonable grounds to infer that holding a regular DE would be an exercise in futility due to his position to pressurize the complainant. The criminal case against the appellant is still under pending investigation and at this stage it would



not be prudent to interfere with the order of disciplinary authority.

The appellant has further taken the plea that the Disciplinary Authority has taken such a major decision without conducting proper departmental enquiry. This plea of the appellant carries no weight in the overall facts and circumstances of the case. Article 311 (2) (b) of the Constitution of India accords the powers to the Appointing/Disciplinary Authority to dismiss a person if satisfied that for some reasons, to be recorded by the authority in writing, it is not reasonably practicable to hold an inquiry. The impugned punishment order is a speaking order as mandated by Article 311 of the Constitution of India. The Disciplinary Authority has delineated the grounds, in detail, to explain as to why it was not reasonably practicable to hold a D.E. in case of the appellant. The disciplinary authority had opined that the conduct of the appellant was such that his continuation in a disciplined force like Delhi Police was detrimental to overall discipline and morale and any enquiry in overall circumstances would be futile exercise. No new circumstances have since emerged so far to differ with the Disciplinary Authority. There is, as such, no ground to interfere with the impugned order."

15. It is relevant to note here that while rejecting the statutory appeal preferred by respondent No.1, the competent authority upheld the order passed by the Disciplinary Authority merely observing that the reasoning put forth by the disciplinary authority was justified and in the facts of the case holding enquiry was not reasonably practicable. Even though, the competent authority took note of the fact that investigation in the FIR in



question was pending, however, upheld the order of the Disciplinary Authority.

16. In our considered opinion, the right approach should have been to consider the fact that proceedings in the FIR were pending and so, an opportunity should have been given to respondent No. 1 to put forth his case by holding an enquiry. It is also relevant to note that the forged documents based upon which FIR in question was registered, were never placed before the competent authority.

17. This Court in ***Commissioner of Police and Ors Vs. Ashwani Kumar And Ors.*** AIR ONLINE 2019 DEL 2187 wherein the issue was whether the impugned order removal from service was illegal, inasmuch as it was passed without holding an enquiry and incidental to that question was the issue whether there were sufficient grounds for dispensing with the enquiry. This Court observed that before dispensing with an enquiry, a subjective satisfaction is to be arrived at by the Disciplinary Authority and the reasons must be based on an objective criterion and not on whims and fancies of the Disciplinary Authority. The Court in the facts of the said case, where a video footage was available, held that without making an effort to investigate the matter, decision to not hold an enquiry and removal from service, was unsustainable in law.

18. The learned Tribunal in the impugned judgment has also relied upon another decision passed by this Bench in ***Commissioner of Police and Ors. Vs. Shri Karam Pal*** 2024 SCC OnLine Del 4906 wherein the respondent was a Head Constable in Delhi Police, who was allegedly caught red handed while accepting bribe at Police Booth of Lado Sarai in jurisdiction of PS



Saket, so both of them were arrested and consigned to judicial custody in RC 0023022A0065 dated 13.11.2022 of CBI/ACB/New Delhi. The issue for consideration before this Court was the issue before us is as to whether dismissal of the respondents from service through invocation of powers under Article 311(2)(b) of the Constitution of India is sustainable in the eyes of law. This Court in the facts of the said case held that except writing an essay on corruption by police, nothing has been stated in the said dismissal orders on the basis whereof the concerned authority arrived at a satisfaction that it would not be reasonably practicable to hold Departmental Enquiry against the respondents.

19. Even in the case in hand, the Disciplinary Authority has observed that *the conduct of the appellant was such that his continuation in a disciplined force like Delhi Police was detrimental to overall discipline and morale and any enquiry in overall circumstances would be futile exercise*. Therefore, by exercising powers under Section 311(2)(b) of the Constitution of India, the petitioners cannot be permitted to take action against officers posted in Delhi Police without an opportunity of being heard. In our opinion, in the absence of any documentary evidence and without holding any disciplinary enquiry against respondent No. 1, his dismissal from service has rightly been turned down by the learned Tribunal.

20. Accordingly, finding no error in the impugned order passed by the learned Tribunal, the present petition is dismissed.

21. Before parting with this matter, we hereby direct the Commissioner of Police, Delhi to personally look into such matters and take proper decision so that Courts/Tribunals are not burdened with a case where departmental inquiries can be initiated. We hereby make it clear that if such like petitions



2024:DHC:6350-DB



are filed in future wherein dismissal or suspension orders are passed without holding any enquiry without any plausible reasoning, certainly heavy cost will be imposed and that too, will be recovered from the Officer, who takes such type of unwarranted decision.

22. A copy of this order be transmitted to the Commissioner of Delhi Police for information and compliance.

(SURESH KUMAR KAIT)
JUDGE

(GIRISH KATHPALIA)
JUDGE

AUGUST 14, 2024

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