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

Date of decision: 29.04.2024

+ W.P.(C) 16009/2023, CM APPL. 64419/2023-Stay

COMMISSIONER OF POLICE DELHI AND ORS Petitioners

Through: Mrs. Avnish Ahlawat, Standing Counsel,
GNCTD (Services)

versus

YASH VIR SINGH

..... Respondent

Through: Mr. S.K.Gupta, Adv.

CORAM:

HON'BLE MS. JUSTICE REKHA PALLI

HON'BLE MR. JUSTICE SAURABH BANERJEE

SAURABH BANERJEE, J (ORAL)

1. As per facts, the respondent was working as a Constable in Delhi Police and was posted at P.S. Badarpur, Delhi, when he was alleged to be involved in commission of an offence of robbery and was arrested by the Anti-Robbery Cell, Crime Branch, Delhi in FIR No.86/2014 dated 08.04.2014 registered under Sections 393/365/34 of the Indian Penal Code, 1860 at P.S. Hauz Qazi and cash to tune of Rs.15.5 lacs was recovered at the instance of the respondent from his house. The petitioners after holding a preliminary enquiry dismissed the respondent from service vide order dated 17.11.2014 under Article 311(2) of The Constitution of India, without holding a departmental enquiry.

2. Aggrieved by the order of the Disciplinary Authority, the respondent first preferred an appeal before the Appellate Authority which was dismissed vide order dated 29.10.2015, finding no relief therefrom, he filed

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an Original Application before the learned Central Administrative Tribunal (hereinafter referred to as “CAT”). The CAT, vide the impugned order set aside the orders dated 17.11.2014 and 29.10.2015 of the petitioners and reinstated the respondent with all consequential benefits, albeit granting a liberty to the petitioners for initiating a departmental proceeding against the respondent.

3. Aggrieved therefrom, the petitioners have filed the present petition under Articles 226 and 227 of The Constitution of India seeking to quash the order dated 17.05.2023 in O.A. No. 3201/2016 passed by the CAT.

4. Learned counsel for the petitioners submits that the respondent was involved in a grievous act of robbery which is highly unbecoming of a police officer and wherein a chargesheet has already been filed and the trial is pending. Furthermore, taking into account that the respondent was police personnel, no witness would have come forward to depose against him. Learned counsel for the petitioners further relying upon *Union of India vs Tulsiram Patel* (1985) 3 SCC 398 submits that the dismissal order of the respondent is a well-reasoned speaking order as such no further departmental enquiry was required.

5. *Per-contra*, learned counsel for the respondent supporting the impugned order submits that the CAT has quashed the dismissal order having found that the said order was not reasoned sufficiently for dispensing with the departmental enquiry against the respondent. Furthermore, relying upon *Govt. of NCT of Delhi & Ors. v. Dushyant Kumar* 2024:DHC:1247-DB, learned counsel for the respondent submits that once a preliminary enquiry has been conducted, there is no reason why a regular departmental enquiry on the serious charges levelled against him could not be conducted. Moreover, the CAT having set aside the dismissal order passed by the *W.P.(C) 16009/2023*



petitioners, granted them liberty to initiate disciplinary proceedings against the respondent.

6. We have heard the learned counsel for the parties and perused the documents on records.

7. While considering the submissions made by the learned counsel for the parties and also perusing the record before us, we thus deem it appropriate for reproducing the relevant extracts of the impugned order contained in paragraph nos.12 to 14 thereof, as under:-

“12. 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 facts that the relevant witnesses are participating in the criminal trail initiated pursuant to the said FIR case

13. In view of the aforesaid, the reliance placed by the respondents on the decision of the Hon'ble High Court of Delhi in Manohar Lal (supra) is of no help to them as in the said case during the preliminary inquiry, the complainant/witness of the case was severely traumatised by the egregious act of criminals, especially the police personnel involved therein due to their close association with hardened criminals and in the appeal filed by the petitioner therein, he has not denied that he is not involved in the alleged offence of robbery-cum-burglary, which is not the case in hand

14. In view of the above, impugned orders of the respondents are not only in violation of the settled law but also of the respondents' own instructions on the subject. The reasons given by the respondents for



dispensing with the enquiry are not also 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."

8. As evident from the aforesaid, the learned CAT has passed the impugned order by following its earlier decision dated 10.02.2022 in O.A. No. 1383/2020 titled **Ct. Sumit Sharma v. Govt. of NCT of Delhi and Ors.** and also, after perusing the dismissal order dated 17.11.2014, from which, it emerged that the reasons given by the petitioners for dispensing with the enquiry did not fall within the ambit of Article 311(2)(b) of The Constitution of India. The relevant extract of the order dated 17.11.2014 containing the reasons for dispensing with the department enquiry are reproduced as under:-

"Const. Yash Vir Singh, No.1218/80 (PIS No.28910918) was placed under suspension w.e.f. 18.04.2014 i.e. the date of his arrest in case FIR No.96/14, dated 08.04.2014 u/s 392/365/34 UPC, PS Haur Qazi, Delhi vide this office order No.4642- 92/HAP/SD(P-II) dated 23.04.2014.

The above said act on the part of Const. Yash Vir Singh No. 1218/8D (PIS No.28910918) shows his criminal propensity and immoral attitude. He, being member of disciplined force is responsible for protecting the society and citizens of this country from immoral and illegal activities but instead of discharging his duty honestly and sincerely, he has not only tarnished the image of Delhi Police but also has rudely shaken the faith of the citizens on the entire police force which is supposed to be their protector. He has acted in a most reprehensible manner, which is unexpected from the members of the disciplined force and which is undoubtedly extremely prejudicial to the personal safety and security of the citizens

The involvement of Const. Yash Vir Singh, No.1218/SD (PIS No.28910918) in such a shameful act has eroded the faith of common people in police force and his continuance in the force is likely to cause irreparable loss to the functioning and credibility of Delhi Police The defaulter Const. has acted in a manner highly unbecoming of a police official

After such act of serious misconduct if the defaulter Const. Yash Vir Singh, No 1218/SD is allowed to be continued in police force, it would be detrimental to public interest. The facts and circumstances of the case are such that it would not be reasonably practicable to conduct a regular departmental enquiry against the defaulter Const. as there is a reasonable belief that no witness/complainant would come forward to depose against



him

In the backdrop of the position explained in the foregoing paras, it is crystal clear that. Const. Yash Vir Singh No. 1218/SD is public servant of immoral, bent of mind and there in every possibility that the witness, complainant would not come forward to depose against him in case a departmental enquiry is initiated against him. Under these compelling circumstances, the rules under Article 311(2)(b) of Constitution of India are invoked in this case for the sake of justice. Corat. Yash Vir Singh, No.1216/8D has become a liability to the department and should be dismissed. It would be both in the interest of general public and society as well as for the establishment of rule of law, which is expected by public and society at large. In my opinion, he is unfit to be retained in the police force any more. Therefore, I P.S. Kushwah, Addl. Dy. Commissioner of Police, South Distt., New Delhi do hereby DISMISS defaulter Const. Yash Vir Singh, No 1218/SD (FIS No.28910918) from service with immediate effect under Article 311(2)(b) of the Constitution of India. His suspension period from the date of suspension to the date of issue of this order is treated as period not spent on duty for all intents and purposes. He will depose all Government belongings Le. Identity Card, COHS Card and uniform articles with the departmental forthwith."

9. Thus, in our view, the findings by the CAT in the impugned order is based on the earlier findings arrived at by the CAT in **Ct. Sumit Sharma** (*supra*) under similar facts and circumstances as also, since the petitioners were wrong in dispensing with conducting of a disciplinary enquiry and that too without any cogent, proper and/ or substantive reasons for doing so, more so, whence the dispensation of the disciplinary enquiry is without any reasons whatsoever and, well and truly against the basic enshrined principles of natural justice.

10. Also in our opinion, if the petitioners were of the view that it was a fit case for dispensing with the inquiry, they were required to pass a well-reasoned speaking order recording the same, instead of passing dismissal order of the respondent mechanically. Having not done so, the order passed by the petitioners is vague showing non-application of mind leaving too many dots left to be joined.



11. Alas! We find that the petitioners have been passing similar orders in similar situations from time to time. We hope that, henceforth, the petitioners will not only take note of the same but also be mindful and wary of not doing so again.

12. In fact, this Court while dealing with similar facts and circumstances involving the very same petitioner herein, has in *Commissioner of Police and Ors v. Sant Ram*, 2024:DHC:3181-DB and *Commissioner of Police Delhi Police and Ors v. Manjeet*, 2024:DHC:3132-DB repeatedly dismissed similar claims of the petitioners herein from time to time against similar orders passed by the learned CAT.

13. In any event, we cannot ignore the fact that the learned CAT has, despite setting aside the dismissal order passed by the petitioners, granted liberty to the petitioners to initiate disciplinary proceedings against the respondent. It is also for this reason as well that we do not disagree with the findings of the learned CAT.

14. In view of the aforesaid reasons and discussions, there is no occasion for us to interfere and set aside the impugned order under challenge. Accordingly, the present writ petition is dismissed along with accompanying application.

(SAURABH BANERJEE)
JUDGE

(REKHA PALLI)
JUDGE

APRIL 29, 2024/rr