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

% **Decision delivered on: 19.09.2024**

+ **W.P.(C) 13191/2024**

COMMISSIONER OF POLICE DELHI AND ORS.

....Petitioners

Through: Mr. Viplav Acharya, Senior Panel
Counsel with ASI Shishu Pal,
Rohini District

versus

RAM KHILARI EX CONST

.....Respondent

Through: Mr. M.K. Bhardwaj, Mrs.
Priyanka M. Bhardwaj and Ms.
Akshita Nain, Mr. Himanashu
Bhardwaj and Mr. Maria Mugesh,
Advocate

CORAM:

HON'BLE MR. JUSTICE SURESH KUMAR KAIT

HON'BLE MR. JUSTICE GIRISH KATHPALIA

J U D G M E N T (O R A L)

CM APPL. 55086/2024

1. Allowed, subject to all just exceptions.
2. Application stands disposed of.

W.P.(C) 13191/2024 & CM APPL. 55085/2024

3. By way of the present writ petition filed under Article 226 and 227



of the Constitution of India, the petitioners have sought the following relief:

“(a) quash and set aside the Impugned order dated 24.04.2024 passed by Central Administrative Tribunal, Principal Bench New Delhi, in O.A No. 2809 of 2024”

4. The respondent joined the services of the petitioners as Constable in the year 2010 and while working as such, his name was involved in one criminal case FIR No. 292/20 for the offences punishable under Section 409 IPC, registered at Police Station, Prashant Vihar, Delhi. The respondent made a complaint to the concerned SHO on 13.11.2020 stating therein that his service pistol was snatched by certain persons. The SHO sent the said complaint dated 13.11.2020 to the concerned DCP for seeking approval and to convert the aforesaid FIR No. 292/20 to Section 392/34. However, the requisite approval was not received from the DCP.

5. Aggrieved by the said action of the petitioners, on his complaint dated 13.11.2020, the respondent approached the Court of Learned Magistrate having jurisdiction on the matter and in view of the order dated 26.07.2022 of the Learned Magistrate, FIR No. 0163 dated 19.04.2023 was registered with Police Station, Prashant Vihar, for the offence punishable under Section 392/34 IPC.

6. It is not in dispute that the reasons for the petitioners passing the order dated 26.11.2020 is apparent on a bare perusal of the same whereby the respondent was dismissed from service while exercising powers



under Article 311(2)(b) of the Constitution of India at the very first instance without following the procedure of regular departmental proceedings, where the affected persons would not be in a position to depose.

7. In the said order, it is not mentioned anywhere that the departmental enquiry was not practically possible, however, the petitioners exercised powers under Article 311(2)(b) of the Constitution of India.

8. Similar and same issue came before this Court in the case of ***The Commissioner of Police & Ors vs Om Prakash & Anr***, in W.P.(C) 11276/2024 delivered on 14.08.2024 whereby it was held as under :

“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”.

9. It is pertinent to mention here that vide para 21 of the order dated 14.08.2024, this Court directed the Commissioner of Police as under:

“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 are



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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”.

10. The present case being similar, which is not disputed by the learned counsel for petitioner, we find no merit in the present petition, and the same is accordingly dismissed.

11. The petitioners are directed to comply with the directions passed by the learned Tribunal vide its order dated 24.04.2024 within four weeks.

(SURESH KUMAR KAIT)
JUDGE

(GIRISH KATHPALIA)
JUDGE

SEPTEMBER 19, 2024/as