



2025:DHC:5676-DB



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* IN THE HIGH COURT OF DELHI AT NEW DELHI
Date of decision: 15.07.2025

+ W.P.(C) 1923/2024 & CM APPL. 8083/2024

GOVT OF NCT OF DELHI AND ORSPetitioners

Through: Ms. Pratima N. Lakra, CGSC
with Mr. Chandan Prajapati &
Mr. Shailendra Kr. Mishra,
Advs.

versus

SHRI SUBHASH CHANDRespondent

Through: Mr. Sachin Chauhan, Adv.

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

HON'BLE MS. JUSTICE RENU BHATNAGAR

NAVIN CHAWLA, J. (Oral)

1. This petition has been filed by the petitioners, challenging the Order dated 18.08.2023 passed by the learned Central Administrative Tribunal Principal Bench, New Delhi (hereinafter referred to as the 'Tribunal'), in O.A. No. 2469 of 2018, titled ***Subhash Chand v. Govt. of NCT & Ors.***, whereby the learned Tribunal allowed the said O.A. filed by the respondent herein, with the following directions:

“ 12 . In view of the aforesaid facts and circumstances of the present case; we are of the considered view that the instance OA is squarely covered by a catena of cases relied on behalf of the applicant, including the common Order/Judgment dated 10.2.2022 in Ct. Sumit Sharma (supra) and a batch of cases. Therefore, the present OA deserves to



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be partly allowed and the same is partly allowed with the following directions:-

(i) Orders dated 17.3.2016 (Annexure A/1) and dated 9.5.2018 (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.”

2. To give a brief background of the facts in which the present appeal arises, the respondent was appointed as a Head Constable (AWO) in the Delhi Police on 05.12.1989. He was thereafter promoted to the rank of ASI (WO) in the year 2013.

3. On 15.03.2016, upon receiving a complaint regarding the offence of extortion, an FIR No.173/2016 under Sections 384/342/120-B/34 of the Indian Penal Code, 1860 (hereinafter referred to as the ‘IPC’) was registered at Police Station South Rohini (Outer), Delhi. A trap was laid, and it has been alleged that the respondent was also apprehended in the same, and a certain amount of money was also recovered from him.

4. In the preliminary inquiry conducted on 17.03.2016 and 18.03.2016, it was observed that a departmental inquiry would require



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a detailed and time-consuming procedure, necessitating the complainant to confront a police officer, which in all likelihood may not be free, fair, or without fear. It was observed that holding of a long and tedious inquiry could discourage the complainant from deposing against the delinquent officer. Further, the possibility of intimidation or inducement of the victim cannot be ruled out.

5. Forming this opinion, the petitioner sought to dismiss the respondent from service by invoking Article 311(2)(b) of the Constitution of India.

6. On the basis of the above reasoning and opinion, an Order dated 17.03.2016 was passed by the disciplinary authority, dismissing the respondent from service. His appeal against the said order was also rejected by the Appellate Authority *vide* Order dated 09.05.2018.

7. Aggrieved thereby, the respondent filed the above O.A., which has been allowed by the learned Tribunal by placing reliance on the petitioners' own Circular dated 11.09.2007 and observing as under:

"10. Keeping in view the above, we have carefully perused the impugned order(s), 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). 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 despite their best efforts, the respondents would not have been able to produce the witness(es) to lead evidence against the applicant. Further nothing is brought on record that witness(es) has/have been threatened by the applicant or they are



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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 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.

11. Having regard to the above, we are of the view that impugned orders passed by the respondents are not only in violation of the settled law but also of their own circular dated 11.9.2007. The 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 hereinabove."

8. The petitioners have filed the present petition challenging the above Impugned Judgment and directions.

9. The learned counsel for the petitioners submits that the petitioners, for cogent reasons, have invoked the power under Article 311(2)(b) of the Constitution of India, and such a decision cannot be treated as an appealable order by the learned Tribunal. He further submits that the learned Tribunal has failed to appreciate the fact that, since the respondent is a police officer, it would have been a futile exercise to conduct a detailed inquiry against him, especially when he was caught red-handed in a case involving moral turpitude. Therefore, a preliminary inquiry had been conducted, and based on its findings,



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the decision to terminate the respondent from service was taken.

10. The learned counsel for the petitioners has placed reliance on the Judgments of this Court in ***Parveen Kumar v. Commissioner of Police & Ors.***, 2007 SCC OnLine Del 978, and ***C.T. Mukesh Kumar Yadav v. Govt. (NCT of Delhi)***, 2017 SCC OnLine Del 11169.

11. On the other hand, the learned counsel for the respondent submits that merely because the allegations against the respondent are grave in nature, it cannot, by itself, be a reason for dispensing with the inquiry as contemplated under Article 311(2) of the Constitution of India.

12. He further submits that the finding of the competent authority, that the witnesses may be fearful of deposing against the respondent, was based merely on conjectures and without appreciating the fact that the respondent is, in fact, facing a trial in which the witnesses have been deposing.

13. He submits that the petitioners also failed to consider their own Circulars dated 11.09.2007 and 21.12.1993, which require that the disciplinary authority must be satisfied, based on the material produced before it, that an inquiry is not practicable in view of threats, inducement, intimidation, etc. Only after considering the specific circumstances of the case can it be inferred that the witnesses will not depose against the delinquent employee. He submits that such an opinion, however, cannot be formed devoid of facts and merely on conjecture.

14. In rebuttal, the learned counsel for the petitioners submits that,



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at the stage when the opinion was formed to invoke Article 311(2)(b) of the Constitution of India against the respondent, the criminal trial had not yet commenced. He, therefore, submits that, keeping in view the nature of the allegations made against the respondent and on the basis of the material available, the decision to dispense with the inquiry cannot be faulted.

15. We have considered the submissions made by the learned counsels for the parties.

16. The *Note* justifying the invocation of Article 311(2)(b) of the Constitution of India to dispense with an inquiry against the respondent read as under:

“ The possibility of intimidation, inducement of the victim can also not be ruled out. Therefore in my opinion this is a fit case for dismissal under Article 311(2) (b). The misconduct of ASI Subhash Chand has put the whole Ops and Communication Unit in shame and seriously affected the overall image of Delhi Police. He does not deserve to be punished though a process of departmental enquiry. Such misconduct need to be dealt with (illegible) hand so that message goes to other people. I consider this to be a fit case for dismissal under 311(2)(b) on the basis of preliminary report received from DCP/Outer and overall gravity of the offence committed by ASI Subhash Chand.”

17. From a reading of the above noting, it would be evident that the inquiry has been dispensed with on the ground that it may be a detailed and time-consuming procedure. We find that this cannot constitute a valid ground to dispense with an inquiry against the



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delinquent employee as mandated under Article 311(2) of the Constitution of India.

18. Furthermore, the observation that, in all likelihood, the inquiry may not be free and fair and without fear is also based merely on conjecture, and without any consideration of whether the witnesses were, in fact, unwilling to depose against the delinquent employee. It does not even reflect if any effort had been made to contact the witnesses and they had refused to depose against the respondent. In fact, the learned counsel for the respondent submits that the decision was taken within two days of the respondents' apprehension, and there is no reference to any attempt made by the disciplinary authority, or to any input received by it, indicating that the witnesses would not be willing to depose against the delinquent employee, that is, the respondent.

19. In **Govt. of NCT of Delhi & Ors. v. Dushyant Kumar**, 2024 SCC OnLine Del 1136, this Court, while taking note of the Circulars dated 21.12.1993 and 11.09.2007, had observed as under:

“ 12. We find that in support of the petition, learned counsel for the petitioners has simply submitted that once the Appellate Authority has, after giving an opportunity of hearing to the respondent, come to a conclusion that it was a fit case where the respondent should be dismissed without any enquiry, the learned Tribunal could not have interfered with the said decision. We are, however, unable to agree. No doubt, it is for the Disciplinary Authority to decide whether in a case it is not reasonably practical to hold an enquiry, but this decision has to be necessarily based on cogent reasons. Learned counsel for the



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petitioners has not been able to provide any reason, much less to say any cogent reasons, not to hold any enquiry against the respondent. There is neither any plea that the respondent is in any influential position nor any plea of threat to or intimidation to the witnesses by him.

14. In the light of the aforesaid, we have no hesitation in concurring with the Tribunal that the petitioners' decision to dispense with the enquiry was wholly unsustainable. The petitioners appear to have proceeded on an erroneous presumption that merely because a criminal case has been registered against the respondent, he was to be treated as guilty of the misconduct. No doubt, the respondent is a police officer, whose misconduct can never be condoned, but this would not imply that the principles of natural justice should be given a complete go by. As noted hereinabove, the petitioners have not given any valid reason for dispensing with the enquiry except for repeatedly stating that the respondent is guilty of serious misconduct. This course of action, in our view, is completely impermissible."

20. In **Parveen Kumar** (supra), the respondent therein was involved in several criminal cases registered at various police stations under various provisions of the IPC and the Arms Act. In view of the same, the disciplinary authority came to the conclusion that the petitioner therein, instead of discharging his responsibility and upholding the rule of law, had committed a heinous crime, being a highly abhorrent act, and had tarnished the image of the police. The Court found that, based on the material on record, namely the interrogation in the



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dacoity case revealing the involvement of the petitioner therein, as also the fact that he was facing five criminal cases in which charges had been framed, along with other attending circumstances, the disciplinary authority had reached the conclusion that the petitioner therein was a desperate person with criminal propensities. His association with other criminals and his discharge in one case due to non-identification by the witnesses and lack of availability of other evidence shows the prospect of witnesses shying away from proceedings and not deposing against him due to fear of severe reprisal at his hands. This was treated as a genuine apprehension and not only a mere possibility. The facts in that case spoke for themselves and are distinguishable from the facts presented before us in the present petition.

21. In ***C.T. Mukesh Kumar Yadav*** (supra), the Court found that the complainant, the victim, and other independent witnesses had turned turtle and retracted from their earlier incriminating statements, including those which were made before the Magistrate. There were other attending circumstances as well, which the Court found to be adverse to the petitioner therein, and which the petitioner could not explain. It was on those facts that the Court held that, as the Impugned Order has been passed by a high-ranking police officer, the opinion formed and the assessment made could not be lightly brushed aside. The facts of that Judgment are, therefore, again distinguishable.

22. Keeping in view the above, we find no infirmity in the Order passed by the learned Tribunal.



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23. The petition, along with the pending application, is accordingly dismissed.

NAVIN CHAWLA, J

RENU BHATNAGAR, J

JULY 15, 2025/pr/sm