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

Date of decision: 28.05.2024

+ W.P.(C) 7826/2024

COMMISSIONER OF POLICE DELHI & ORS. Petitioners

Through: Mr. Yeeshu Jain, ASC with Ms. Jyoti Tyagi, Mr. Hitanshu Mishra and Mr. Rachit Gupta, Advocates

versus

PRADEEP Respondent

Through: Mr. Sachin Chauhan, Ms. Ridhi Dua, Mr. Abhimanyu Baliyan and Mr. Himanshu Raghav, Advs.

CORAM:

HON'BLE MS. JUSTICE REKHA PALLI

HON'BLE MR. JUSTICE SAURABH BANERJEE

REKHA PALLI, J (ORAL)

CM APPL. 32419/2024 (exemption)

1. Allowed, subject to just exceptions.
2. The application is disposed of.

W.P.(C) 7826/2024, CM APPL. 32418/2024

3. The present writ petition under Article 226 of the Constitution of India seeks to assail the order dated 23.02.2024 passed by the learned Central Administrative Tribunal (Tribunal) in OA No. 3487/2017. Vide the impugned order, the learned Tribunal has allowed the OA preferred by the respondent, thereby setting aside the dismissal order dated 04.01.2017 passed by the petitioners dismissing the respondents from service under Article 311(2)(b) of the Constitution of India, as also the appellate order dated 24.08.2017 and has directed the respondent will be entitled to all consequential benefits in accordance with the relevant rules. The learned



Tribunal has, however, granted liberty to the petitioners to initiate disciplinary proceedings against the respondent in accordance with law.

4. The brief factual matrix as is necessary for adjudication of the present petition maybe noted at the outset.

5. The respondent was appointed as a Constable in the Delhi Police since 07.06.2010. On 16.12.2016, upon a complaint being made by one Mr Pawan Kumar, an FIR under Section 384/120-B was registered against him at PS Crime Branch Delhi. Pursuant to the FIR, the respondent was on 19.12.2016 arrested and was placed under suspension on the very same date. Subsequently, based on the findings of a preliminary enquiry purported to have been held by the petitioners in respect of the incident, he was dismissed from service vide order dated 04.01.2017 by invoking Article 311(2)(b) of the Constitution of India.

6. Being aggrieved by his dismissal from service without any departmental enquiry having been held against him, the respondent preferred a statutory appeal which came to be rejected on 24.08.2017. The respondent then approached the Tribunal by way of OA No.3487/2017, which OA has been allowed vide the impugned order. It is in these circumstances that the petitioner has approached this Court by way of the present petition.

7. 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 serious offence and therefore no witness would have come forward to depose against him, especially when the respondent was related to the complainant with whom he appeared to have now entered into an amicable settlement. 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 wherein no witness was likely to depose. He therefore, prays that the impugned order be set aside.

8. On the other hand, learned counsel for the respondent who appears on advance notice, supports the impugned order and submits that the learned Tribunal has rightly quashed the dismissal order after finding that no reasons were provided by the petitioners for dispensing with the departmental enquiry against the respondent. He contends 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. Furthermore, once a preliminary enquiry had already been conducted by the petitioners, there was no reason as to why a regular departmental enquiry could not be conducted against the respondent. 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**. He further contends that in any event, 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.

9. Having considered the submissions of the learned counsel for the parties and perused the record, we may begin by noting the following extracts of the impugned order:-

“9. The judgment of the Hon’ble High Court in the case of Ct. Mukesh Kumar Yadav vs. GNCTD & others in WP (C) No.6005/2017, on which reliance has been placed by the learned counsel for the respondents, has been considered and dealt with by this Tribunal in Ct. Sumit Sharma (supra).



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 the respondents 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 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.

11. Having regard to the above, we are of the considered 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.

12. In view of the aforesaid facts and circumstances of the present case, we are of the considered view that the instant 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 be partly allowed and the same is partly allowed with the following directions:-

- (i) Orders dated 4.1.2017 (Annexure A-1) and dated 24.8.2017 (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”.



10. From a perusal of the aforesaid, it appears that the learned Tribunal has allowed the original application filed by the respondent 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 04.01.2017, from which, it opined 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. Since, learned counsel for the petitioners has vehemently urged that there were sufficient reasons in the dismissal order for dispensing with the departmental enquiry, it would be apposite to note the reasons recorded in the dismissal order dated 04.01.2017 for dispensing with the enquiry. The relevant extracts of the order dated 04.01.2017 reads as under:-

“After having committed the above gravest misconduct of criminal activity, if the defaulter Ct. Pardeep, No. 2944/N is allowed to continue in the police force, it would be detrimental to public interest and further tarnish the image of the police force in the society, ills misconduct has put the entire police force to shame. Such misconduct cannot be tolerated in disciplined organization like police whose basic duty is to protect the life of citizens in the society.

The facts and circumstances of the case are that it would not be reasonably practicable to conduct a regular departmental enquiry against the defaulter Ct. Pardeep, No. 2944/N, as there is a reasonable belief that the witnesses would not come forward to oppose against him due to intimidation, inducement and affiliation of material PWs by the defaulter Constable, The complainant is relative of the Constable who has been arrested. This fact has come to light during the interrogation and investigation. The chances of the complainant turning hostile during DE proceedings are quite high being relative of delinquent. It also calls for great courage to depose against desperate person and that task becomes more acute and difficult where the defaulter is police official who may use his job to influence the statement/deposition of the witnesses. Further an



extended enquiry would only cause more trauma to the victim.

The misconduct of accused Ct. Pardeep, No. 2944/N who has been arrested in a case of extortion of money is 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 crimes. Taking into account the holistic facts and circumstances of the case as mentioned above, the undersigned is of the firm opinion and satisfied that the acts and grave misconduct of accused Constable Pardeep, No. 2944/N attract the provisions of article 311(2)(b) of the constitution of India and make him completely unfit for police service.

Keeping in view the facts of the case and overall implication of such misconduct for disciplined force and sensitive of the matter, I, Jatin Narwal, IPS, Dy. Commissioner of Police/North Distt. do hereby dismiss Constable Pardeep, No. 2944/N from service under article-311(2)(b) of Constitution of India with immediate effect. His suspension period from 19.12.16 (i.e. date of arrest) to the date of this order is hereby decided as not spent on duty for all intents and purposes which may not be regularized in any manner.”

11. A bare perusal of the aforesaid reasons contained in the dismissal order makes it clear that, the petitioners appear to have proceeded on a presumption that the respondent being a police personnel, he might use his influence to threaten witnesses and therefore it would not be practicable to hold an enquiry against him. The presumption that the respondent being a police personnel was likely to threaten witnesses as a ground to come to a conclusion that it was not reasonably practicable to hold an enquiry against him was in our considered view, rightly rejected by the learned Tribunal. We are of the considered 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.



12. 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. 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.

13. 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 had dispensed with enquiry against the respondent without any justifiable reason. We, therefore, find no reason to interfere with the impugned order.

14. For the aforesaid reasons, the writ petition is dismissed along with all pending applications.

(REKHA PALLI)
JUDGE

(SAURABH BANERJEE)
JUDGE

MAY 28, 2024/So