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

Reserved on: 19.03.2025
Pronounced on: 22.04.2025

\+ W.P.(C) 10175/2023 & C.M. APPL. No. 39434/2023

COMMISSIONER OF POLICE AND ORS .....Petitioners

Through: Ms. Archana Sharma, SPC

versus

SANJAY KUMAR .....Respondent

Through: Mr. Puneet Singh Bindra, Mr. Vivek Kadyan, Ms. Charu Modi, Mr. Rishabh Gupta, Ms. Kriti Dang, Advs.

CORAM:
HON'BLE MR. JUSTICE NAVIN CHAWLA
HON'BLE MS. JUSTICE RENU BHATNAGAR

J U D G M E N T

RENU BHATNAGAR, J.

1. The present writ petition has been filed on behalf of the petitioners under Article 226 read with Article 227 of the Constitution of India against the Order dated 28.04.2023 passed by the learned Central Administrative Tribunal, Principal Bench, New Delhi (hereinafter referred as 'Tribunal') in Original Application ('OA') 1909/2018 titled ***Sanjay Kumar v. Government of NCTD, through the Chief Secretary, Govt. of NCTD and Ors.,*** whereby the learned Tribunal, while partly allowing the OA set aside the Orders dated

09.07.2016, and 27.11.2017, by which the petitioner had been dismissed from service and his appeal against the same had also been dismissed, giving directions to the petitioners to reinstate the respondent from the date of his dismissal alongwith all consequential benefits in accordance with law. However, the learned Tribunal granted liberty to the petitioners to initiate the disciplinary proceedings against the respondent in accordance with law.

FACTS OF THE CASE

2. In a nut shell, the background of the case is that the respondent/Sanjay Kumar was appointed as a Constable in Delhi Police on 11.09.1989.

3. On 03.07.2016, a complaint was made by Mrs. Jyoti w/o Sh. Vijender Singh, r/o M-34, New Mahabir Nagar, New Delhi, alleging that on 03.07.2016, she was at her residence along with her mother-in-law and daughter, while her husband and father-in-law had gone to the office. On the said day at around 12:30 pm, a lady wearing a blue suit alongwith a boy aged about 20 -25 years rang the doorbell of the house and claimed to be conducting a population census. As soon as Ms. Jyoti opened the door of the house, three more men alongwith the lady and boy forcefully entered her house and pointed a pistol (katta) to her head and threatened to shoot her if she made any noise. The group of 5 then proceeded to tie Ms. Jyoti and her mother-in- law, and forcefully snatched the keys of the almirah from her mother-in-law at gunpoint. The robbers then took gold ornaments, Fixed Deposit

certificates, cash amounting to Rs. 1,32,000/-, title documents of properties, and LIC documents from the said almirah. In pursuance to the complaint, FIR No. 572/2016 dated 03.07.2016 u/s 392/394/34 Indian Penal Code was registered at P.S. Tilak Nagar. It is further alleged that during investigation it was revealed that the Respondent was one of the accused persons and he had conspired with co-accused Ajay Chaudhary (Ex DHG) with whom he shared a longstanding relationship since he was his informer during his posting in Crime Branch.

4. The Respondent was arrested on 07.07.2016 and was suspended from service.

5. When the other co-accused were interrogated, it was revealed that the stolen car allegedly used in the crime was provided by the Respondent and it has been categorically mentioned in the chargesheet that the said car was recovered at the instance of the Respondent. The chargesheet also mentions the role of the Respondent as the Chief Conspirator along with co-accused Ajay Chaudhary in planning the robbery.

6. The Disciplinary Authority concluding that it would not be reasonably practical to conduct a regular departmental enquiry of the respondent given his position and potential influence over witnesses, invoked Article 311(2)(b) of the Constitution of India and dismissed the Respondent from service vide the Order dated 09.07.2016 without holding an enquiry.

7. On 08.08.2016, the Respondent preferred an appeal, which was rejected by the Appellate Authority *vide* the Order dated 27.11.2017.

8. Thereafter, on 11.05.2018, the Respondent preferred the subject OA seeking setting aside of the Orders dated 09.07.2016 and 27.11.2017, which came to be allowed by the learned Tribunal *vide* the Impugned Order dated 28.04.2023 holding as under:-

> *"17. Having regard to the aforesaid, impugned orders of the respondents are not only in violation of the settled law but also of their own aforesaid instructions/ 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 cases are referred to hereinabove.*
>
> *18. In view of the aforesaid facts and circumstances of the present case, we are of the considered view that this case 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 9.7.2016 (Annexure A-1) and dated 27.11.2017 (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.

19. However, in the facts and circumstances, there shall be no order as to costs."

9. The aforesaid Impugned Order dated 28.04.2023 of the learned Tribunal passed in OA 1909/2018 is the subject matter of the present Writ Petition.

CASE OF THE PETITIONERS

10. The challenge by the petitioners to the Impugned Order passed by the learned Tribunal is on the ground that the learned Tribunal has wrongly relied upon the Judgment passed in OA 1383/2020 and has failed to appreciate that in the present case disciplinary proceedings is not viable as the witness are friends/co-accused with the Respondent and are themselves accused of criminal intimidation, and armed robbery, because of which they are not going to depose against the Respondent. The victim is also likely to intimidated due to the position that the respondent held in the police.

11. The Disciplinary Authority, while passing the Order dated 09.07.2017, gave a plausible view and provided subjective satisfaction that it is not reasonably practicable to hold the inquiry, and therefore passed a detailed speaking order dismissing the Respondent under Article 311(2)(b) of the Constitution of India. The same should, therefore, not have been interfered with by the learned Tribunal.

12. This is a case where the Respondent, inspite of being an official of Delhi Police has planned and committed an armed robbery. Moreover, the fact that the Respondent has, by exercising undue

influence managed to get his name removed from the list of accused, even though a detailed chargesheet was filed against him is testament to the fact that it is not reasonably practicable to conduct a regular enquiry. The learned Tribunal failed to appreciate the law laid down by the Constitutional Bench of the Supreme Court in ***Union of India v. Tulsiram Patel,*** (1985) 3 SCC 398, as followed in ***Ikramudin Ahmed Bohra v. Superintendent of Police, Darrang & Ors.,*** 1988 (Supp) SCC 663.

13. It is further stated on behalf of petitioners that the learned Tribunal failed to appreciate that the effective thumb rule prescribes that whenever the Disciplinary Authority comes to the conclusion that it is not reasonably practicable to hold an enquiry, he must record at length, cogent and legally tenable reasons for coming to such conclusion. It further states that only in the absence of valid reasons, duly reduced in writing, will the Order of dismissal under Article 311(2)(b) of the Constitution of India be unsustainable in law.

14. The learned Tribunal failed to appreciate that that the decision to dispense with the departmental enquiry is subject to the satisfaction of the concerned authority, and it is incumbent on those who support the Order to show that the satisfaction is based on certain objective facts and is not the outcome of the whim or caprice of the concerned officer. Reference in this regard was made to the decision of the Supreme Court in ***Jaswat Singh vs. State of Punjab & Ors.***, (1991) 1 SCC 362. In the present case, it is clear from the Impugned Order and reply filed by the petitioners before the learned Tribunal that the

decision of the Disciplinary Authority is substantiated by the objective facts.

15. Reference has also been made to the Judgment of the Apex Court in ***Ved Mitter Gill vs. Union Territory Administration and Ors.*** (2015) 8 SCC 86**,** wherein it has been held that the reasons for dispensing with the departmental enquiry cannot be dependent upon the holding or not holding of criminal proceedings against the petitioners therein. It is also stated that learned Tribunal did not consider the fact that the disciplinary authority while passing the Order dated 09.07.2016 gave a plausible view and subjective satisfaction that it is not reasonably practicable to hold the inquiry, and the Appellate Authority gave a categorical findings that after registration of the FIR, the Respondent and co-accused were arrested and taken to judicial custody, charge sheet has been filed and criminal proceedings are still pending against the Respondent and that none of the accused persons are going to depose against the respondent as it will amount to accepting their guilt.

16. Hence, it is prayed to set aside the Impugned Order dated 28.04.2023 passed by the learned Tribunal in OA 1909/2018.

CASE OF THE RESPONDENT

17. On the other hand, it is pleaded on behalf of the respondent that respondent was falsely implicated in criminal case FIR No. 572/2016 dated 03.07.2016 under Sections 392/394/34 IPC registered at Tilak Nagar.

18. It is contended that during the pendency of the Impugned OA filed before the learned Tribunal against the Orders dated 09.07.2016 and 27.11.2017 of the Disciplinary Authority and the Appellate Authority respectively, the respondent stands discharged in the aforesaid FIR *vide* the Judgment dated 02.12.2021 (pronounced on 04.12.2021) of the learned Addl. Sessions Court, Tis Hazari, in S.C. No. 58212/2016 titled ***State vs. Sanjay and Ors.,*** and he is also acquitted in the second criminal case bearing FIR No. 276/2010 which is an offshoot of the 1st criminal case, *vide* the Judgment of the Metropolitan Magistrate, Karkardooma Courts in CIS No. 1712/2018 dated 06.03.2023, though the same was not the basis of invoking of power under Article 311(2)(b) of the Constitution of India.

19. It is stated that the plea of the petitioners that witnesses would not come forward to depose against the respondent owing to his influential position, is unfounded and without any basis and in fact, most of the witnesses in criminal case are much higher rank than of the respondent. Further, no material is placed on record to suggest that witnesses/material witness/complainant were directly or indirectly intimidated, induced or influenced by the respondent. It is further stated that there is no reason for not holding the departmental enquiry or coming to the conclusion that a Departmental Enquiry is not reasonably practicable. It is contended that graver the allegations against the respondent, more opportunity should be given to him to defend himself. It is further stated that it is settled law that gravity of a misconduct may have a nexus with the quantum of punishment but the

gravity of a misconduct cannot form basis to come to a conclusion that a regular departmental enquiry is reasonably practicable or not.

20. The learned counsel for respondent has further placed reliance on Judgments passed by the Supreme Court in ***Tarsem Singh*** (supra), ***Jaswant Singh v. State of Punjab,*** (1991) 1 SCC 362; and ***Union of India & Anr. v. Ram Bahadur Yadav,*** 2022 (1) SCC 389; and by this Court in ***Commissioner of Police v. Kaushal Singh***, W.P. (C) No. 11694/2018; ***Commissioner of Police v. Ashwani Kumar***, W.P.(C) No. 4078/2017; ***Commissioner of Police v. Daya Nand***, W.P.(C) 3940/2008; ***Ex-Constable Mahabir Singh & Anr. v. Union of India and Ors***., W.P.(C) 7068/2000; and by High Court of Allahabad in ***Lokendra Pal Singh v. State of U.P. and Ors.***, W.P.(C) No. 25018/2018 in support of his submissions.

21. It has also been contended that as per the Circular of the Joint Commissioner of Police dated 11.09.2007 as was further clarified on 18.04.2018, it was mandatory for the Disciplinary Authority to conduct a preliminary enquiry and to take the consent of the Spl. Commissioner of Police prior to resorting to its powers under Article 311(2)(b) of the Constitution of India. The said procedure was not followed in the present case.

ANALYSIS AND FINDINGS

22. Submissions of the learned counsel for parties have been considered. We have perused the material placed on record as well as the Impugned Order.

23. In this case, the Disciplinary Authority dismissed the respondent without holding an enquiry, referring to Article 311(2)(b) of the Constitution of India. Article 311(2)(b) has been reproduced below for ready reference:

> *"(2)No such person as aforesaid shall be dismissed or removed or reduced in rank except after an inquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges:*
>
> *Provided that....*
> *Provided further that this clause shall not apply-*
> *xxx*
> *(b) where the authority empowered to dismiss or remove a person or to reduce him in rank is satisfied that for some reason, to be recorded by that authority in writing, it is not reasonably practicable to hold such inquiry, or".*

24. The Disciplinary Authority has passed the Order dated 09.07.2016, wherein it was observed as under:

> *"After having committed above gravest misconduct of criminal activity, if the defaulter Const. (Exe.) Sanjay Kumar, No.6158/Sec. (posted in E-Block/Security unit) is allowed to continue in police force, it would be detrimental to public interest and further tarnish the image of the police force in the society. His misconduct has put the entire police force to shame. Such misconduct cannot be tolerated in a 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 Const. (Exe.) Sanjay Kumar, No. 6158/Sec. as there is a reasonable belief that the witness*

<u>would not come forward to depose against him due to intimidation, inducement and affiliation of material PWs by the defaults Const. (Exe.) It also calls for great courage to depose against desperate person and that task becomes more acute and difficult were 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.</u>

The misconduct of accused Const. (Exe.} Sanjay Kumar, No.6158/Sec. who has been arrested in a case of robbery 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 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 Const. (Exe.) Sanjay Kumar, No.6158/Sec. 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 sensitivity of the matter, I, Parwaiz Ahmed, Dy. Commissioner of Police, Security (SG), New Delhi do hereby DISMISS Const. (Exe.) Sanjay Kumar, No. 6158/Sec. (PIS No.28890545 from service under clause (b) of Second Provision of Article 311(2) of the Constitution of India with immediate effect. His suspension period from 07.07.2016 (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."

(Emphasis supplied)

25. Before reaching the above conclusion for invoking Clause (b) of the second Proviso to Article 311 of the Constitution of India, the Disciplinary Authority is not stated to have conducted any preliminary inquiry on the availability of the witnesses and whether they are willing to depose against the petitioner. The above conclusion has been reached by the Disciplinary Authority on basis of presumption and surmises.

26. The Appellate Authority before whom respondent no. 1 had preferred the Statutory Appeal, rejected the appeal and upheld the Order of dismissal passed by the Disciplinary Authority holding as below:-

> *"I have carefully perused the contents of the appeal submitted by the appellant, impugned order issued by the Disciplinary Authority and the material evidence on record. I have also heard the appellant in O.R. on 20/11/2017, in accordance with principle of natural justice. During O.R, the appellant reiterated the plea taken in the appeal. He says that the car which has been shown to have been recovered at his instance was actually recovered somewhere else and he has CCTV footage to prove the same. Also, he does not know any of the 9 co-accused except Ajay Choudhary, ex-HDG who was his informed during his posting in Crime Branch. There is nothing on record to show that he was in contact with them.*
>
> *I have gone through the chargesheet filed by West Distt. in the case. The chargesheet clearly mentions the role of the appellant which has been revealed during the interrogation of other accused persons and the stolen car allegedly used in the crime was provided by the appellant and it has also been*

> *shown to have been recovered at the instance of the appellant. The chargesheet also mentions the role of the appellant as the chief conspirator alongwith accused Ajay Choudhary and planned the crime.*
>
> *The case is pending trial in the trial court and arguments on charge are currently going on. At this stage, accepting the plea of the appellant and debunking the entire police investigation is not possible. The appellant has not presented any compelling proof to show his complete innocence and non-involvement in the crime. The reason given by the appellant that he had enmity/differences with SI Charan Singh and that is why he was falsely implicated as an accused is also not found convincing. SI Charan Singh was not the IO of the case and the reason behind the differences with him (disagreement and heated arguments on asking for fair treatment to an accused) is also not found convincing.'*

27. A reading of the above would show that the defence of the petitioner was rejected without giving him an opportunity to lead evidence or be subjected to a disciplinary inquiry. It is settled law that a subjective satisfaction is to be arrived at by the Disciplinary Authority for dispensing with an enquiry and the reasons should be based on objective criteria and not on the whims and fancies of the Disciplinary Authority. The concerned Authority is required to come to a subjective satisfaction that it is not reasonably practical to hold a Departmental Enquiry against the respondent justifying the exercise of powers under Article 311(2)(b) of the Constitution of India. Reliance to this effect can be placed on the Judgements of the Supreme Court in ***Jaswant Singh v State of Punjab,*** (1991) 1 SCC 362, ***Reena Rani v.***

State of Haryana, (2012) 10 SCC 215**.** This view is also reiterated by the Co-ordinate Bench of this Court in ***The Commissioner of Police v. Om Prakash and Anr.*****,** W.P.(C) 11276/2024**,** wherein the observations made in another Judgement of this Court in ***Commissioner of Police and Ors v. Ashwani Kumar And Ors.,*** 2019:DHC:6865-DB, were also quoted.

28. In the present case, at hand, there is no evidence or document on the record before the learned Disciplinary Authority to indicate that the respondent had ever threatened or harassed any of the witnesses or the prospective witnesses. Further, no effort was made to conduct the enquiry nor were any evidences collected by the Disciplinary Authority that despite best efforts, the witnesses could not be produced against the respondent or that the witnesses have been threatened by the respondent or they are scared of respondent to come forward in the enquiry proceedings to depose against respondent. Except writing a passage on corruption of Police, nothing substantial has been stated in the Order passed by the Disciplinary Authority to justify how it was not reasonably practicable to hold a Departmental Enquiry against the respondent.

29. The Circular dated 11.09.2007 sets out the relevant circumstances which have to be borne in mind while invoking proviso (b) to Article 311(2) of the Constitution of India. The same have been reproduced below:

> *"…Only in cases where Disciplinary Authority is personally satisfied on the basis of material available on file that the case is of such a nature that it is not*

practicable to hold an enquiry in view of threat, inducement, intimidation, affiliation with criminals etc. and keeping in view the specific circumstances of the case it is not possible that PWs will depose against the defaulter and disciplinary authority has no option but to resort to Article 311(2)(b) should such an action be taken. Prior to such an order, a PE has to be conducted and it is essential to bring on record all such facts. It has also been decided that before passing an order under Article 311(2)(b) of the constitution, Disciplinary Authority has to take prior concurrence of Spl. CP/Admn."

30. The same was again reiterated in the Circular dated 18.04.2018.

31. In the present case, no prior approval from the Spl. CP/Admn. was sought nor was any preliminary enquiry conducted. It has been held by this Court in ***Govt. of NCT and Ors. vs. Neeraj Kumar***, 2024 SCC OnLine Del 7472, that in such situations the government is bound by the circulars issued by it and that it is mandatory for the petitioners to follow the conditions laid down in the same.

32. Admittedly, when the Disciplinary Authority has passed the Order of dismissal, the proceedings in the FIR were pending (in which respondent is discharged by the Court, as is claimed by the respondent) and so the opportunity should have been given to the respondent to put forth his defence by holding an enquiry instead of exercising the powers under Article 311(2)(b) of the Constitution of India. The petitioners cannot be permitted to hold the officers posted in Delhi Police guilty of the offence charged without an opportunity of being heard and without holding any enquiry and only on the ground that the witnesses would not be willing to depose against them.

33. Accordingly, finding no error in the Impugned Order passed by the learned Tribunal, the present petition along with the pending application is dismissed.

RENU BHATNAGAR, J.

NAVIN CHAWLA, J.

APRIL 22, 2025/p