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

Date of decision: 23.04.2024

+ W.P.(C) 5562/2024, CAV 181/2024, CM APPL. 22929/2024 -Stay.
CM APPL. 22930/2024 -Ex./LLOD.

COMMISSIONER OF POLICE AND ORSPetitioners

Through: Mrs. Avnish Ahlawat, SC with Mrs.
Tania Ahlawat, Mr. Nitesh Kumar
Singh, Ms. Laavanya Kaushik, Ms.
Aliza Alam and Mr.Mohnish
Sehrawat, Advocates.

versus

SANT RAM Respondent

Through: Mr. Roopansh Purohit and Mr. Harsh
Pahwar, Advocates

CORAM:

HON'BLE MS. JUSTICE REKHA PALLI

HON'BLE MR. JUSTICE SAURABH BANERJEE

REKHA PALLI, J (ORAL)

1. The present writ petition under Articles 226 & 227 of the Constitution of India seek to assail the order dated 06.02.2024 passed by the learned Central Administrative Tribunal (Tribunal) in OA No.14/2018. Vide the impugned order, the learned Tribunal has allowed the original application (OA) preferred by the respondent thereby setting aside the order dated 01.08.2017 passed by the petitioners dismissing the respondent from service under Article 311(2)(b) of the Constitution of India, as also the appellate orders dated 03.11.2017 passed against him. The learned Tribunal has, however, granted liberty to the petitioners to initiate disciplinary proceedings against the respondent in accordance with law.

2. We may begin by noting the brief factual matrix as emerging from the



record.

3. On 04.04.2006, the respondent was appointed as a Constable in Delhi Police. While he was posted at the Police Training College, Jharoda Kalan, New Delhi, a complaint alleging sexual harassment was filed against him on 22.07.2017 by a trainee woman constable. Based on the complaint, a preliminary enquiry against the respondent was conducted by the Chairperson of the Internal Complaints Committee, who submitted her report on 25.07.2017, pursuant where to an FIR under Sections 354(A), 294, and 509 of the IPC was registered against him on the very same day. Consequently, vide order dated 26.07.2017, he was placed under suspension and was soon thereafter dismissed from service vide order dated 01.08.2017 passed under Article 311(2)(b) of the Constitution of India. Being aggrieved by his dismissal, the respondent preferred a statutory appeal, which was rejected on 03.11.2017. The respondent then approached the learned Tribunal by way of the aforesaid O.A, which as noted herein above, has been allowed vide the impugned order by setting aside the dismissal order dated 01.08.2017 as also the appellate order dated 03.11.2017.

4. In support of the petition, learned counsel for the petitioners submits that the learned Tribunal has failed to appreciate the detailed reasons mentioned in the dismissal order passed against the respondent for dispensing with the requirement of holding an enquiry against him. Taking into account the grave nature of charges of sexual harassment leveled against the respondent and the fact that he had threatened the complainant and the witnesses during the course of the preliminary enquiry itself, it would not have been practicable to hold a full-fledged enquiry as the same would have created further fear in the mind of the complainant.



Furthermore, once the respondent had admitted his guilt, there was no requirement to hold an enquiry, which aspect has also been overlooked by the Tribunal

5. On the other hand, learned counsel for the respondent supports the impugned order and submits that the learned Tribunal has quashed the dismissal order after finding that no justifiable reason was provided by the petitioners for dispensing with the departmental enquiry. Once it is the petitioners' own case that the witnesses had given their statements in the preliminary enquiry, their plea that the witnesses were being threatened needs to be outrightly rejected. He contends that the learned Tribunal was therefore justified in holding that the enquiry could not be dispensed with in such a mechanical manner on the mere presumption that the respondent, being a police personnel, will threaten the witnesses. Furthermore, 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.

6. Having considered the submissions of the learned counsel for the parties and perused the record, we may begin by noting the relevant extracts of the impugned order, as contained in paragraph nos. 13 to 15 thereof. The same read as under-

“13 . Having regard to 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 also evident that neither any effort was made by the respondents to conduct an 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 were 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, as no reason at all has been recorded in regard to the finding that the applicant is guilty of committing grave misconduct and was involved in the aforesaid offence. Even in such cases, Section 11 of the Act *ibid* provides that inquiry into the alleged complaint has to be initiated against the applicant in accordance with the rules on the subject before arriving at any final conclusion in the matter.

14. 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 the respondents' 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, including in one referred to hereinabove.

15. 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 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 hence, the same is partly allowed with the following directions:-

- (i) Orders dated 01.08.2017 (Annexure A/ 1) and .dated 3.11.2017 (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 directions 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.

7. From a perusal of the aforesaid, it is evident that the learned Tribunal has allowed the original application 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 01.08.2017, from which, it clearly emerged that the reasons given by the petitioner for dispensing with the enquiry did not fall within the ambit of Article 311(2)(b) of the Constitution of India. The learned Tribunal found that the petitioners' bald statement that the witnesses were threatened by the respondent was not borne out from the record, and no effort appears to have been made by them to conduct an enquiry which was dispensed with in a most mechanical manner.

8. Since, learned counsel for the petitioner has vehemently urged that the impugned order is liable to be set aside as there were sufficient reasons in the dismissal order dated 01.08.2017 for dispensing with the department enquiry, it would be apposite to now refer to the reasons recorded therein. The relevant extract of the said order reads as under:-

“On perusal of above sequence of events it became clear that Const. (Exe.) Sant Ram, . No. 324/PTC has committed most disgusting and condemnable act and lowered the sacred image of the organization in the eyes of public and he has put the entire police force to the shame, especially when such a force is responsible for the safety and security of the women and citizens. What will be fate of the society, if the custodian of law becomes law breaker? Being a policeman his conduct has also violently shaken the faith of the citizens from the police force. The act committed by Constable Sant Ram, No.324/PTC is a shameful, abominable, disgusting and the most deplorable act of moral turpitude and unbecoming of a public servant.

Ordinarily a departmental enquiry should be conducted before imposing major punishment including dismissal against the defaulter but the facts and circumstances of the present case and the preliminary enquiry report of Smt. Kusum Sharma, ACP-cum-Chairperson, Internal Complaints Committee, Police Training College, Jharoda Kalan, New Delhi are such that it would not be reasonably and practicable to conduct a regular departmental enquiry against the defaulter as there is a reasonable belief of threat, intimidation and inducement to the complainant and thereby creating the possibility of tempering



of the vital evidence. Therefore, holding regular departmental enquiry in this case shall create fear in the mind of the complainant, witnesses and discourage her/them from deposing against the defaulter during the enquiry. Further, an extended enquiry into the matter would only be caused more trauma to the complainant/victim. (Emphasis Supplied) Under these given set of compelling circumstances, action under Article 311 (2)(b) of the Constitution of India is invoked against Constable (Exe.) Sant Ram, No.324/PTC in this case.

Hence, considering the above facts in totality, further retention of Constable (Exe.) Sant Ram, No.324/PTC in police force is undesirable and absolutely unwarranted. Therefore, I Michi Paku, Deputy Commissioner of Police/Principal, Police Training College, Jharoda Kalan, New Delhi, being competent authority hereby dismiss Constable(Exe.) Sant Ram, No.324/PTC (PIS No. 28060573) from the Delhi Police force under Article-311 (2)(b) of Constitution of India with immediate effect. His suspension period upto the date of issue of this order is hereby decided as period not spent on duty for all intents and purposes.”

9. A bare perusal of the aforesaid reasons contained in the dismissal order makes it clear that the primary reason for the petitioners not holding any enquiry against the respondent was their presumption that the respondent would threaten or intimidate the complainant and other witnesses. The petitioners were further of the view that a prolonged enquiry would cause more trauma to the complainant. It is also evident from the dismissal order that the petitioners had, on the basis of the evidence led in the preliminary enquiry, already made up their mind that the respondent was guilty of serious misconduct and had lowered the image of the police force in the eyes of the public.

10. In our considered view, even though the charges against the respondent are very serious and the interest of the complainant deserves to be protected, it does not imply that the principles of natural justice as also the provisions of section 11 of The Sexual Harassment of Women at



Workplace (Prevention, Prohibition and Redressal) Act, 2013 should be given a complete go by on the basis of mere presumptions. Only because the respondent is a police personnel, would in our view, not be a ground either to presume that the witnesses will not come forward to depose against him in a regular enquiry or to hold him guilty without conducting the statutorily prescribed departmental enquiry and that too in a matter like the present where the complainant and the witnesses are also police personnel. In fact, what emerges is that on the basis of the report of the preliminary enquiry itself, the petitioners presumed that the respondent was guilty of serious misconduct and therefore deserved to be dismissed at the earliest. This in our considered view, as has been rightly held by the learned Tribunal, could not be treated as a ground to reach a conclusion that it was not reasonably practicable to hold an enquiry against the respondent. This course of action, in our considered opinion, was clearly violative of Article 311(2)(b) of the Constitution of India.

11. 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 the requirement of an enquiry on absolutely vague grounds. As noted hereinabove, the petitioners have given no reason whatsoever in the impugned order for dispensing with the inquiry. The impugned order of dismissal proceeds on the basis that the respondent's guilt had already been proved in the preliminary enquiry and had also been admitted by him. We therefore have no hesitation in agreeing with the learned Tribunal that the petitioners have dispensed with the enquiry only on the basis of a perceived notion that the respondent being a police personnel,



would threaten the witnesses and holding of an enquiry would cause trauma to the complainant. Furthermore, we find that it is not as if the respondent has been let off without any departmental action being taken against him. As is evident from the impugned order, the learned Tribunal, while setting aside the dismissal order, has granted time to the petitioners to initiate departmental proceedings against him as per law.

12. For the aforesaid reasons, we find no reason to interfere with the impugned order. The writ petition being meritless is dismissed along with all accompanying applications.

(REKHA PALLI)
JUDGE

(SAURABH BANERJEE)
JUDGE

APRIL 23, 2024/So