

Supreme Court of India

Chandigarh Administration And ... vs Ex. S.I. Gurdit Singh on 27 March, 1997

Equivalent citations: 1998 (79) FLR 750, JT 1998 (4) SC 253, (1997) 10 SCC 430

Bench: S Agrawal, G Nanavati

ORDER

1. Delay condoned.

2. Special leave granted.

3. The respondent, Gurdit Singh, was employed as Sub-Inspector of Police with the Police Department in the Union Territory of Chandigarh. A complaint was made against him on 20.1.1991 by one Smt. Meenakshi, wife of Shri Nishan Singh, alleging that the respondent had demanded bribe from her for releasing the gold ornaments of her husband and other articles which were retained by him at the Police Station before releasing her husband and her driver who were detained in police custody. On receipt of the said complaint a trap was laid in the presence of two witnesses and the respondent who was in police uniform was caught red-handed on the night of 29.1.1991, at the residence of the complainant while demanding and accepting Rs. 2000 from the complainant for the release of the articles. A criminal case under Section 7 of the Prevention of Corruption Act, 1988 was registered against him and the same was entrusted to CBI for investigation. In the meanwhile a preliminary enquiry was conducted by the Deputy Superintendent of Police, East, Chandigarh and after considering the report of the said preliminary enquiry the Senior Superintendent of Police, Chandigarh passed the following order on 16.2.1991 whereby the respondent was dismissed, from service:

Whereas, you Gurdit Singh are holding the post of Sub-Inspector in the Police Department, Union Territory, Chandigarh.

It has been brought to my notice that you have been indulging in disloyal, dishonest, disobedient and unreliable activities which amounts to grave misconduct on the part of a police officer.

Shri S.C. Abrol, Deputy Superintendent of Police (East), has also conducted an enquiry against you for your aforesaid notorious activities and misdeeds and submitted a report which proves your misconduct.

From the facts and circumstances of your case, I am subjectively satisfied that you have indulged in disloyal, dishonest, disobedient and unreliable activities.

And further, I, Sumedh Singh Saini, Senior Superintendent of Police, Union Territory, Chandigarh, after considering all the facts and circumstances of your case, am satisfied under Sub-clause (b) of the proviso to Sub-section (2) of Article 311 of the Constitution of India, that it is not reasonably practicable to hold an inquiry against you for the reason that the witnesses cannot come forward freely to depose against you in the departmental enquiry on account of fear to their life and property.

Now, therefore, I Sumedh Singh Saini, Senior Superintendent of Police, Union Territory, Chandigarh, your appointing authority hereby dismiss you from government service with immediate effect.

4. In his report the Deputy Superintendent of Police had stated:

I may mention here that this Sub-Inspector is a terror in the area and is a very influential person. No person will come forward to give any statement regarding this incident against him and will serve no purpose to have any departmental enquiry against him. It is recommended that stern disciplinary action be taken against him.

5. The respondent filed a petition [OA No. 414/CH/91] before the Central Administrative Tribunal (hereinafter referred to as "the Tribunal") which has been allowed by the Tribunal by the impugned judgment dated 14.9.1995 and the order of dismissal dated 16.2.1991 has been quashed on the view that the disciplinary authority, viz., the Senior Superintendent of Police, was in error in dispensing with the enquiry on the ground that it was not reasonably practicable to hold an enquiry. The Tribunal has observed:

When the respondents feel that the witnesses can appear to depose against the appellant in the criminal case, it cannot be believed that the witnesses would not appear to depose against the applicant in the regular departmental proceedings if it is held. It may also be mentioned here that in the preliminary enquiry witnesses did appear to depose against the applicant, hence it cannot be presumed that the witnesses would not have appeared had a regular departmental proceedings been held by the respondents. Merely mentioning that the applicant tried to terrify the witnesses so that they may not come forward to depose against him in a regular enquiry does not justify the mandate laid down under Article 311(2)(b) of the Constitution of India.

6. Ms Kamini Jaiswal, the learned Counsel appearing for the appellants, had submitted that the Tribunal was in error in quashing the order of dismissal and that in the facts and circumstances of the present case, the Senior Superintendent of Police could not be said to be not justified in holding that it is not reasonably practicable to hold an enquiry against the respondent. The learned Counsel had placed reliance on the decision of this Court in Union Territory, Chandigarh v. Mohinder Singh as well as in Chandigarh Admn., Union Territory v. Ajay Manchanda .

7. In Union Territory, Chandigarh v. Mohinder Singh similar reason was given by the disciplinary authority for taking the view that it was not reasonably practicable to hold an enquiry. In that case also it was stated that it was not reasonably practicable to hold an enquiry for the reason that the witnesses cannot come forward freely to depose against the delinquent employee in a regular departmental enquiry. This Court pointed out that Clause (3) of Article 311 declares that where a question arises whether it is reasonably practicable to hold an enquiry as contemplated by Clause (2) the decision of the authority empowered to dismiss such person shall be final on that question and that the Tribunal in its order had not referred to Clause (3) at all. In the present case also we find that the Tribunal had not taken note of the provisions of Clause (3) of Article 311.

8. Ms Kamini Jaiswal has submitted that in the criminal case none of the witnesses have supported the prosecution case and have turned hostile which shows that the disciplinary authority was justified in holding that it is not reasonably practicable to hold an enquiry inasmuch as the witnesses cannot come forward freely to depose against the respondent.

9. Having regard to the aforesaid facts and circumstances it cannot be said that the disciplinary authority was not justified in holding that it was not reasonably practicable to hold an enquiry. We are, therefore, unable to uphold the impugned judgment of the Tribunal.

10. The appeal is accordingly allowed, the impugned judgment of the Tribunal is set aside and OA No. 4141/CH/91 filed by the respondent is dismissed. No order as to costs.