

Central Administrative Tribunal, Principal Bench
New Delhi

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O.A. No.14/2001

New Delhi this the 12th day of July, 2002

Hon'ble Mr. Kuldip Singh, Member (J)
Hon'ble Mr. M. P. Singh, Member (A)

Ex. Const. Pitamber Singh,
No.9705/DAP (PIS No.288661722)
S/o Shri Harrpal Singh,
R/o Village & Post Office Dheogote,
P.S. Palwal, Distt. Faredabad,
Haryana.

- Applicant

(By Advocate : Ashwani Bhardwaj)

Versus

1. The Commissioner of Police,
Police Head Quarters,
I.P. Estate, New Delhi.
2. The Joint Commissioner of Police,
Southern Range, New Delhi.
3. The Addl. Dy. Commissioner of Police,
South District, New Delhi.

- Respondents

(By Advocate : Shri Ajay Gupta)

ORDER (ORAL)

Shri Kuldip Singh, Member (J)

We have heard Ashwani Bhardwaj, learned counsel for the applicant and Shri Ajay Gupta, learned counsel for the respondents.

2. The case of the applicant is that he has been dismissed summarily vide orders dated 11.2.2000 and 28.6.2000 (Annexure A-2 and A-1) under Rule 11 of Delhi Police (Punishment and Appeal) Rules, 1980 after his conviction in a case FIR No.302/92 u/s 498-A/406.

3. The applicant has assailed the order passed by the disciplinary authority, which was passed under

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Rule 11 of the Delhi Police (Punishment and Appeal) Rules, on the ground that the disciplinary authority has not properly applied his mind while awarding the punishment of dismissal from service. He has been dismissed from service only because his appeal has been dismissed by the Magistrate as well as by the learned Additional Session Judge. It is stated by the applicant that he had filed a criminal revision petition before the Hon'ble High Court of Punjab & Haryana at Chandigarh vide Criminal Revision Petition No.1286/1999 wherein the aforesaid orders of the Magistrate as well as orders passed by the learned Assitional Session Judge have been challenged and the High Court admitted the Criminal Revision and stayed the orders of the lower courts vide order dated 13.10.1999. Applicant alleges that the respondents have failed to consider the admission of the aforesaid Revision Petition by the High Court and have also failed to appreciate that the applicant has not committed any crime involving moral turpitude or dis-orderly misconduct because criminal case is related with the matrimonial family dispute and as such the orders passed by the respondents are illegal and liable to be quashed. The applicant has also challenged the vires of Rule 11 of the Delhi Police (Punishment and Appeal) Rules, 1980 on the ground that it does not provide proper safeguards and as such it is violative of Fundamental Rights of the applicant.

4. The order of the appellate authority has also been assailed by the applicant and one of the main

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grounds taken by the applicant that despite the fact that against the impugned order, the applicant made an appeal and had made a subsequent request of an opportunity of personal hearing before the appellate authority but the same has not been provided. Hence, on that account the order passed by the appellate authority is liable to be quashed.

5. The OA is contested by the respondents, the respondents in their reply have stated that the disciplinary authority had passed the orders strictly in accordance with Rule 11 of the Delhi Police (Punishment and Appeal) Rules, 1980. After applying its mind, particularly, the applicant had been convicted by the Magistrate and by the learned Additional Session Judge. So the orders passed by the disciplinary authority subsequently mentioned about the conduct of the applicant which led to his conviction before the Magistrate as well as before the learned Additional Session Judge and as such it was observed that the conduct of the applicant is such as to render his further retention in the department undesirable and will set a very bad example for others. That is why the applicant has been dismissed from service.

6. The respondents have also stated that by issuing order under Rule 11 of Delhi Police (P&A), Rules to the applicant, they have not violated any Fundamental Rights of the applicant. It is stated by the respondents that Article 311 of the Constitution of India give powers of dismissal, removal or

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reduction in rank of persons employed in civil capacities under the Union or the State to the respondents. It is further stated by the respondents that Rule 11 (2) of the Delhi Police (Punishment & Appeal) Rules, 1980 takes care of the interest of the applicant, which provides that if such police officer is acquitted on second appeal or revision, he shall be reinstated in service from the date of dismissal or removal and may be proceeded against departmentally.

7. We have also gone through the records. As far as the vires of the Rule 11 of the Delhi Police (Punishment & Appeal) Rules, 1980 is concerned, we find that it is inconfirmity with Article 311 (2) (b) of the Constitution of India which is a part of the Constitution itself. It cannot be said that this Rule is ultra vires of the Constitution nor the same violates the Fundamental Rights of the applicant.

8. As regards the merits of the case is concerned, the main plea of the applicant is that the disciplinary authority has not applied his mind and had not discussed the nature and gravity of the offence, which was required to be discussed as per Rule 11 of the Delhi Police (Punishment and Appeal) Rules, 1980. According to the applicant, it shows that the disciplinary authority has passed the impugned order in a mechanical manner without applying his mind properly. In support of his contention, learned counsel for the applicant relied upon the judgement of the Hon'ble Supreme Court in the case of

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Shanker Dass Vs. Union of India and Another (AIR 1985 SUPREME COURT 772) wherein the Hon'ble Supreme Court has observed as follows:-

"7. Clause (a) of the second proviso of Article 311 (2) of the Constitution confers on the Government the power to dismiss a person from service "on the ground of conduct which has led to his conviction on a criminal charge." But that power like every other power has to be exercised fairly, justly and reasonably."

9. Since the disciplinary authority had not provided any opportunity of hearing nor had exercised the powers fairly, justly and reasonably, the orders passed by the disciplinary authority should be set aside. In our view, this contention of the learned counsel for the applicant has no merit because in the case of Shanker Dass (Supra) wherein it has been held that where a Govt. servant was convicted of a criminal charge, he could not be said to be not liable to be dismissed in view of Provisions of Sec.12 of the Probation of Offenders Act when he is released under the beneficial provisions of that Act. This judgement had recognised that the power of dismissal in a reasonable manner is available to the appointing authority, but the same has to be exercised in fairly, justly and reasonably. But in the present case before us, the applicant has himself annexed the orders passed by the Magistrate as well as by the learned Additional Session Judge convicting the applicant and on the perusal of the same, we find that the applicant was convicted and sentenced to undergo simple imprisonment for one year and the same was also

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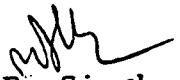
affirmed by the learned Additional Session Judge. If a person, who has been convicted for such a punishment of simple imprisonment of one year it can be reasonably said that it is not desirable to retain such like person in service. So we find that the disciplinary authority has rightly stated that the conduct of the applicant which led to his conviction is such as to render his further retention in the department undesirable and will set a very bad example to other. We find that these observations recorded by the disciplinary authority is inconfirmity with Rule 11 of the Delhi Police (Punishment & Appeal) Rules, 1980.

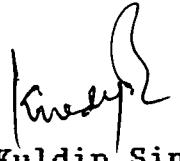
10. As far as the challenge to the orders passed by the appellate authority is concerned, we find that in the appeal preferred by the applicant, he had specifically requested for an opportunity of personal hearing before the appellate authority. But the orders of the appellate authority does not show that an opportunity of personal hearing had ever been afforded to the applicant. There is no averment on the record which suggest that the applicant was asked to appear before the appellate authority to make submissions before the appellate authority. It is a well settled law, whenever an employee, who has been dismissed from service makes an appeal and demands for an opportunity of personal hearing then the appellate authority is bound to afford an opportunity of personal hearing and thereafter the same has to be decided, as such the same is liable to be quashed.

Ans

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Accordingly we quash and set aside the order passed by the appellate authority and the appeal of the applicant is remitted back to the appellate authority to consider the same afresh and provide an opportunity of personal hearing to the applicant. The aforesaid directions shall be complied with within a period of two months from the date of receipt of a copy of this order. If any grievance still survives, the applicant is at liberty to approach this Tribunal by filing a fresh OA in accordance with law, if so advised. No costs.


(M.P. Singh)
Member(A)


(Kuldip Singh)
Member(J)

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