

(6)

Central Administrative Tribunal
Principal Bench, New Delhi

Regn.No.OA-1333/88

Date: 14-12-88

Shri Sawaran Dass

..... Applicant

Versus

Addl. Commr. of Police
& Others

..... Respondents

For the Applicant

..... Shri L.K. Gaur, Advocate.

For the Respondents

..... Shri M.M. Sudan, Advocate.

CORAM: Hon'ble Shri P.K. Kartha, Vice-Chairman(Judl.)
Hon'ble Shri D.S. Misra, Administrative Member.

1. Whether Reporters of local papers may be allowed to see the Judgement? *yes*
2. To be referred to the Reporter or not? *No*

(Judgement of the Bench delivered by Hon'ble
Shri P.K. Kartha, Vice-Chairman)

The applicant, who had been working as an Assistant Sub-Inspector, filed this application under Section 19 of the Administrative Tribunals Act against the Additional Commissioner of Police, Delhi (Respondent No.1), the Delhi Administration (Respondent No.2), and Union of India (Respondent No.3), praying that the impugned order dated 6.2.1985 passed by the Deputy Commissioner of Police, whereby he was dismissed from service, be quashed and that the respondents should be directed to reinstate him with full back wages and continued service.

2. The facts of the case in brief are that the applicant was arrested on 14.6.1977 in case of F.I.R.669, dated 24.6.1977 under Section 325/201/217/221 I.P.C., P.S., Gandhinagar, Delhi. He was placed under suspension by an order dated 24.7.1978. He was sentenced by the Court of Metropolitan Magistrate, Shahdara, on 1.6.1983 as under:-

"(i) U/S 325, IPC he was sentenced to RI for one year. He was also fined Rs.500/-. In default of payment of fine, he shall further undergo RI for three months.

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(ii) U/S 217 IPC, he was sentenced to RI for 6 months. He ^{also} fined Rs.200/-. In default of payment of fine, he shall further undergo RI for 1 month.

(iii) U/S 221 IPC, he was sentenced to RI for 6 months. He was also fined Rs.200/-. In default of payment of fine, he shall further undergo RI for 1 month."

3. The applicant filed an appeal against conviction in the Court of Additional Sessions Judge, Delhi, who rejected the same vide his judgement dated 15.3.1984. In view of this, the Deputy Commissioner of Police passed the impugned order dated 6.2.1985 dismissing him from service.

4. The applicant has stated that he filed a revision petition in the Delhi High Court against the order passed by the Addl. Sessions Judge. The said petition has been admitted by the High Court on 25.5.1984 and is still pending before that court. While admitting the revision petition, the High Court passed the following orders:-

"Crl. Rev. 57/84

Admitted.

Crl. M.No.667/84

Petitioner is ordered to be released on bail till the disposal of this revision petition subject to his furnishing a personal bond of Rs.5000/- with one surety in the like amount to the satisfaction of the trial court."

5. The applicant has further stated that he has filed an appeal against the order of dismissal to the Addl. Commissioner of Police under Rule 23 of the Delhi Police (Punishment and Appeal) Rules, 1980. That appeal also was rejected vide order dated 16.5.1985. In the appellate order, it has been stated that according to the rules on the subject, after dismissal of the first appeal, the punishing authority is left with no option

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but to dismiss the employee in a criminal case involving moral turpitude or on charge of disorderly conduct, or in any criminal case.

6. The relevant rule is Rule 11 of the Delhi Police (Punishment and Appeal) Rules, 1980 which reads as follows:-

"11.(1) Punishment on judicial conviction - (1) When a report is received from an official source, e.g., a court or the prosecution agency, that a subordinate rank has been convicted in a criminal court of an offence, involving moral turpitude or on charge of disorderly conduct in a state of drunkenness or in any criminal case, the disciplinary authority shall consider the nature and the gravity of the offence and if in its opinion that the offence is such as would render further retention of the convicted police officer in service, prima facie undesirable, it may forthwith make an order dismissing or removing him from service without calling upon him to show cause against the proposed action provided that no such order shall be passed till such time the result of the first appeal that may have been filed by such police officer is known.

(2) 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.

(3) In cases where the dismissal or removal from service of the convicted police officer is not considered necessary, the disciplinary authority may examine the judgement and take such departmental action as it may deem proper.

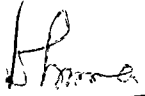
(4) When a police officer is convicted judicially and consequently dismissed or removed from service and it is desired to ensure that the officer dismissed or removed shall not be re-employed elsewhere, a full descriptive roll with particulars of punishments, shall be sent for publication in the Delhi Police Gazette."

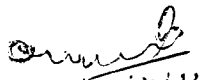
7. The applicant has submitted that the aforesaid rule is violative of the provisions of Articles 14 and 16 of the Constitution insofar as it confers arbitrary powers on the punishing authority without any guidelines.

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8. We have carefully gone through the records of the case and have heard the learned counsel for both the parties. The admitted factual position is that the conviction and sentence passed by the trial Court have not been stayed by the Delhi High Court. The Supreme Court has held in *Union of India Vs. Tulsi Ram Patel*, 1985(3) S.C.C. 398 that the disciplinary authority is empowered under clause (a) of the second proviso to Article 311(2) of the Constitution to dismiss a Government servant who has been convicted on a criminal charge. The only remedy available to him is to agitate the matter in appeal, revision or review. It is not necessary for the respondents to wait until the disposal of the revision petition filed by the applicant in the High Court (vide *State of U.P. Vs. Mohd. Nooh*, A.I.R., 1958, S.C. 86).

9. In the facts and circumstances of the case, we see no merit in the present application and the same is dismissed in limine at the admission stage itself. We would, however, add that if the conviction is ultimately set aside by the High Court or the Supreme Court, on appeal or otherwise, the order of dismissal would cease to have effect and the applicant would be entitled to be reinstated and for consequential benefits. The parties will bear their own costs.


(D.S. Misra) 14.12.88
Administrative Member


(P.K. Kartha) 14/12/88
Vice-Chairman (Judl.)