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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

OA No.104/90

Date of decision: 3.9.1993.

Shri Izhar Ahmed

...Petitioner

Versus

Delhi Administration & Anr.

...Respondents

Coram:- The Hon'ble Mr. I.K. Rasgotra, Member (A)
The Hon'ble Mr. B.S. Hegde, Member (J)

For the petitioner Shri J.P. Verghese, Counsel.

For the respondents Shri O.N. Trisal, Counsel.

Judgement(Oral)
(Hon'ble Mr. I.K. Rasgotra)

We have heard Shri J.P. Verghese and Shri O.N. Trisal, learned counsel for the petitioner and the respondents respectively.

2. The petitioner was appointed as a Constable in the Delhi Police on 19.8.1974. He was placed under suspension with effect from 15.5.1978 by order dated 19.5.1978 in consequence of having been involved in a criminal case (FIR No.593 dated 12.10.1977) under Section 379 I.P.C. He was kept under judicial custody. The suspension order was revoked on 4.6.1987 with effect from 3.3.1987 on the petitioner having been acquitted in the criminal case by order dated 3.3.1987. In the meanwhile, he had been issued a chargesheet on 4.6.1984 on the charge that he has absented himself from duty during the period commencing from 18.8.1980 to 4.9.1983 on 14 occasions, totaling to about 75 days. The disciplinary proceedings were initially held in abeyance but were commenced after

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the acquittal of the petitioner from the criminal charge by the Metropolitan Magistrate vide order dated 3.3.1987. The respondents also passed an order on 24.7.1987 treating the period of suspension of the petitioner as spent on duty for all purposes and intents. On conclusion of the disciplinary proceedings the petitioner was dismissed from service vide order dated 29.7.1987. The petitioner filed an appeal on 14.8.1987. The said appeal was rejected vide order of the appellate authority dated 26.2.1988. Thereafter he filed a revision petition on 6.5.1988 which was rejected by the revisionary authority on 18.1.1989. It was in this background that the petitioner filed this O.A. on 18.1.1990 praying that the impugned order of dismissal dated 29.7.1987 be set aside and quashed and the petitioner reinstated w.e.f. 29.7.1987 with all consequential benefits, including arrears of pay forthwith. The petitioner has also prayed for relief by way of declaration of Rules 15 and 16 of the Delhi Police (Punishment and Appeal) Rules, 1980 being ultra vires to Sections 21, 22 and 148 of the Delhi Police Act and violative of Articles 14, 16 and 311 of the Constitution of India.

3. Shri J.P. Verghese, the learned counsel for the petitioner pointed out that the petitioner was charged for absence from duty for the period when he was under suspension. Further the period of absence is covered by the respondents' order dated 24.7.1987, according to which the period of suspension from 15.5.1978 to 2.3.1987 was treated

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as spent on duty for all purposes and intents. The learned counsel submitted that once the said period had been treated as spent on duty for all purposes and intents the charge memo for being absent from duty during ^{and for} the same period is not tenable. Further the order suspending the petitioner consequent to his arrest by the Police in a criminal case launched against him under Section 379 nowhere mentioned that he was required to attend the office during the period of suspension. In absence of any stipulation in the said order the petitioner was not expected to report to any authority during the period of suspension. The charge memo issued to the petitioner and the subsequent action taken, culminating in the dismissal of the petitioner from service, under the circumstances is not legally sustainable.

4. The stand of the respondents on the other hand is that in accordance with the provisions made in Rule 16.21 of Punjab Police Rules the petitioner was required to "attend roll calls....." and "to perform such duties and to attend such parades as the Superintendent may direct...." The learned counsel for the respondents Shri O.N. Trisal urged that the Punjab Police Rules continue to remain in force after the coming into force of the Delhi Police Rules and the rules framed thereunder in accordance with Section 149 of the Delhi Police Act. Section 149, which is relevant is extracted below:-

"Cesser of operation of certain enactments and savings-

(1) On the commencement of this Act the enactments specified in Schedule II shall cease to be in force in Delhi:

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Provided that--

(i) all rules and standing orders made (including the Punjab Police Rules, as in force in Delhi), appointments made, powers conferred, orders made or passed, directions and certificates issued, consent, permit, permission or licence given, summons or warrants issued or served, persons arrested or detained or discharged on bail or bond, search warrants issued, bounds forfeited and penalties incurred under any such enactments shall in so far as they are consistent with this Act, be deemed to have been respectively made, conferred, passed given, issued, served, arrested, detained, discharged, forfeited or incurred under this Act."

High Court


Relying on the judgement of the Delhi/ between Sukhbir Singh v. The Deputy Commissioner of Police, New Delhi and Ors. reported in 1984(2) SLR 149 the learned counsel submitted that since Rule 16.21 of Punjab Police Rules is inconsistent with the provisions made in the Delhi Police Rules the same continues to remain in force and such action of the respondents in dismissing the petitioner after due process of law was legally valid. The above argument has been refuted by the learned counsel for the petitioner Shri Verghese first on the ground that Section 24 of the Delhi Police Act makes a specific provision to the effect that "Every police officer not on leave or under suspension shall for all purposes of this Act be deemed to be always on duty....." (Emphasis supplied).


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Confirmation) Rules, 1980 and Delhi Police (Appointment and Recruitment) Rules, 1980. We are also in agreement with the learned counsel for the petitioner that in the face of substantive provisions made in Section 24 of the Delhi Police Act in regard to the status of the police officer when under suspension, no action can be taken under Rule 6.21 of the Punjab Police Rules against the petitioner.

6. In view of the above facts and circumstances of the case the impugned orders passed by the disciplinary authority on 29.7.1987, dismissing the of petitioner from service and upheld by the order/the appellate authority vide order dated 26.2.1988 and the revision order passed by the revisionary authority on 18.1.1989 are set aside and quashed. In consequence thereof the petitioner shall be reinstated in service with effect from the date he was dismissed from service. He shall also be entitled to all consequential benefits. The respondents are directed to implement the above orders with utmost expedition and preferably within a period of three months from the date of communication of this order. No costs.


(B.S. HEGDE)
MEMBER(J)


(I.K. RASOTRA)
MEMBER(A)

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