

## IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW DELHI

(2)

O.A. No. 2692/90  
Fax No.

199

DATE OF DECISION 19-8-91.

Shri Chand Singh	Petitioner Applicant.
Shri Mukul Talwar	Advocate for the Petitioner(s) Applicant.
Versus	
Union of India	Respondent
Shri Dinesh Kumar	Advocate for the Respondent(s)

## CORAM

The Hon'ble Mr. P.K. KARTHA, VICE-CHAIRMAN(J)

The Hon'ble Mr. B.N. DHOUNDIYAL, MEMBER(A)

1. Whether Reporters of local papers may be allowed to see the Judgement ? Yes
2. To be referred to the Reporter or not ? No
3. Whether their Lordships wish to see the fair copy of the Judgement ? No
4. Whether it needs to be circulated to other Benches of the Tribunal ? No

JUDGEMENT(ORAL)

(JUDGEMENT OF THE BENCH DELIVERED BY HON'BLE VICE-CHAIRMAN  
SHRI P.K. KARTHA)

We have heard the learned counsel of both parties. The applicant who has worked as Head constable in the Delhi Police is aggrieved by the impugned order of dismissal passed by the disciplinary authorities on 21.4.89. The impugned order has been passed in exercise of the powers conferred by Rule 11 of the Delhi Police Punishment and Appeal Rules, 1980 which reads as under:-

"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*

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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. The aforesaid rule is somewhat similar to the provisions of Article 311(2)(a) of the Constitution according to which no enquiry need be held and a government servant could be dismissed on the ground his conviction on a criminal charge.

3. The respondents have proceeded on the footing that adjudication proceedings which had been initiated by the Customs Authorities against the applicant are criminal proceedings. The Asstt. Collector of Customs had imposed a penalty of Rs.10,000/- on the applicant. The proceedings before the Asstt. Collector of Customs cannot be treated on par with the proceedings in a criminal court for a criminal offence. The Asstt. Collector or the Collector of Customs has no powers of a criminal court to pass an order of conviction. The Supreme Court has observed in Asstt. Collector of Customs V/s L.R. Melwani, AIR 1970 SC 962 that adjudication before a Collector of Customs is not a prosecution nor the collector of Customs a Court.

4. The respondents have also commenced criminal proceedings in a Court of Law against the applicant for the alleged offence of smuggling and the said proceedings are still pending.

5. We are, therefore, of the view, that Deputy Commissioner of Police had no power to dismiss the ~~applicant~~ <sup>appellant</sup> who is not a member of the Delhi Police merely on the ground that the Asstt. Collector of Customs had imposed a penalty on him for violation of Customs Laws. In this view of the matter, we are of the opinion that the applicant is entitled to succeed in the present application. We, therefore, set aside and quash the impugned order dated 21.4.89 passed by the Deputy Commissioner of Police and the ~~appellee~~ <sup>appellant</sup> order dated 4.1.90. The respondents are directed to re-instate the applicant immediately as Head constable. The applicant would also be entitled to all

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consequential benefits including arrears of pay, continuity of service, seniority etc.

6. We, however, direct that after the criminal proceedings have been concluded, the respondents will be at liberty to review the matter in the light of the decision given by the Criminal Court. The application is disposed of accordingly at the admission stage itself.

Let a copy of this order be given to both the parties immediately.

B. N. DHOUDIYAL  
(B.N. DHOUDIYAL)  
Member (A)

*Arvind*  
(P.K. KARTHA)  
Vice-Chairman (J)