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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

OIA.No.1567/91.

DATE OF DECISION 10-4-92.

Attar Singh ...Applicant

Shri Shankar Raju, Counsel for the
Applicant

Versus

Commissioner of Police & Another ...Respondents

Shri M.K. Sharma ...Counsel for the
Respondents

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THE HON'BLE P.K.KARTHA, VICE-CHAIRMAN
THE HON'BLE MR. A.B.GORTHI, MEMBER(A)

1. Whether Reports of local papers may be allowed to see the judgment? *Yes*
2. To be referred to the Reporter or not? *No*

JUDGMENT

(Delivered by Hon'ble Mr. A.B.Gorthi, Member(A))

By means of this application under Section 19 of the Administrative Tribunals Act, 1985, Shri Attar Singh has challenged the validity of the order dated 7-8-1991 dismissing him from the Delhi Police service. His prayer is that the impugned dismissal order be quashed and that he be reinstated in service with all consequential benefits.

2. The applicant joined Delhi Police as a Constable on 6-7-1966. His appointment was made by the

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then Commandant, equivalent in rank to the present Deputy Commissioner of Police(DCP). He was promoted as Head Constable on 21-4-71. On a charge that on 21-4-1978, he demanded and obtained rupees hundred as a bribe from one Shri Darshan Lal, he was suspended from duty. A departmental enquiry was ordered but the applicant did not co-operate. The Enquiry Officer conducted the proceedings ex-parte and came to the finding that the applicant was guilty. A show cause notice was issued calling upon the applicant to answer as to why he should not be dismissed from the service. The notice could not be served upon him as his whereabouts were not known. In the meantime, he stood dismissed on account of another departmental enquiry and hence no further action was taken on the show cause notice. However, as the applicant was reinstated in service in consequence of a judgment of the Tribunal, the disciplinary proceedings in the present enquiry were revived culminating in the impugned order of dismissal.

3. We have heard the learned counsel for both the parties. Although the validity of the disciplinary proceedings was challenged on several grounds enumerated in the application, the main plea advanced by the

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learned counsel for the applicant during the hearing of the case was that the order of dismissal was passed by the Additional DCP who was not competent to do so. The applicant was appointed by an officer of the rank of Commandant and its equivalent now is DCP. Accordingly, the learned counsel for the applicant contended that the Additional DCP being lower in rank to DCP/Commandant, is not empowered to dismiss the applicant in view of the guarantee provided in Article 311(1) of the Constitution.

4. The learned counsel for the respondents while refuting the various contentions raised on behalf of the applicant, relied heavily on Rule 4 of the Delhi Police (Appeal and Recruitment) Rules, 1980 in which ~~an~~ Additional DCP is shown as one of the authorities to whom the power of appointment in respect of a Constable/Head Clerk has been delegated. He has not, however, been able to refute the fact that the applicant was indeed appointed by the Commandant and that its equivalent rank is DCP.

5. Section 21 of the Delhi Police Act, 1978 specifies that the various punishments enumerated therein, including dismissal, may be awarded by the Commissioner of Police, Additional Commissioner of

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Police, DPC, Additional DCP etc. But this Section itself states that it is subject to the provisions of Article 311 of the Constitution. Article 311(1) of the Constitution provides, *inter alia*, that no person shall be dismissed by an authority subordinate to that by which he was appointed.

6. In the result, it is clear that the impugned order of dismissal in the instant case was passed by an authority lower in rank than that of the authority by which he was appointed. The order of dismissal cannot, therefore, be sustained and we hereby set aside the same. The respondents are directed to reinstate the applicant in service within one month from the date of communication of this order. The applicant shall be deemed to have continued in service and will be entitled to all consequential benefits. It will, however, be open to the respondents to proceed further in the matter in accordance with law.

7. The application is allowed in the above terms but we make no order as to costs.

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(A.B. GORTHI)
MEMBER (A)

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OCT 4/92
(P.K. KARTHA)
VICE CHAIRMAN