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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI
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(6)

O.A.No. 2530/92. Date of decision 28.5.1993

Shri Narain Singh ... Applicant

Vs.

Union of India and Others. ... Respondents

The Hon'ble Shri B.N. Dhoundiyal, Member (A)

The Hon'ble Shri B.S. Hegde, Member (J)

For the Applicant ... Shri Shyam Babu, counsel.

For the Respondents ... Shri S.K. Adlakha, counsel.

(1) Whether Reporters of local papers may be allowed to see the Judgement ?

(2) To be referred to the Reporters or not ?

J_U_D_G_E_M_E_N_T

[Delivered by Hon'ble Shri B.S. Hegde, Member (J)]

The applicant has filed this application under Section 19 of the Administrative Tribunals Act, 1985 challenging the impugned order dated 15th September, 1992 (Annexure 'C') made by the Deputy Commissioner of Police, seeking to quash the said order which is stated to be in contravention of Rule 11 of the Delhi Police (Punishment & Appeal) Rules, 1980. During the pendency of first appeal in the High Court of Delhi against his conviction on the basis of the judgement dated 16.2.1989 passed by the Additional Sessions

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Judge, New Delhi (Annexure 'A').

2. By the aforesaid order, the applicant has been dismissed from service under Article 311(2)(a) of the Constitution of India and the period of the suspension of the applicant from 31.3.1984 to date is treated as period not spent on duty.

3. The applicant joined Delhi Police in the year 1970 as Constable and has been promoted as Head Constable on 12.3.1973. In the year 1984, he was involved in a criminal case resulting in his conviction and a sentence for ten years rigorous imprisonment and a fine of Rs. 10,000/- in default of fine rigorous imprisonment for two years. Against this judgement, the applicant preferred an appeal in the High Court of Delhi in 1989 and the said appeal was admitted by the High Court in

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criminal appeal No. 26/89 and sentence of imprisonment of the applicant was suspended on furnishing a bail bond for a sum of Rs. 5,000/- with one surety to the satisfaction of the Trial Court.

4. The fact of the High Court order was duly informed to the Respondents. Nevertheless, the competent authority did not take any action in view of Rule 11 of the Delhi Police (Punishment & Appeal) Rules, 1980 till September, 1992.

5. The short issue for consideration is whether in view of Rule 11 of the Delhi Police (Punishment & Appeal) Rules, 1980 and in keeping the view of the High Court's direction, the dismissal orders passed by the respondents is sustainable in law or not. In this connection, it is relevant to quote Rule 11 of the Delhi Police (Punishment & Appeal) Rules, 1980 which provides 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

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in a state of drunkenness or in any criminal case, the Disciplinary Authority shall consider the nature and 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 time the result of the first appeal that may have been filed by such Police Officer is known."

In the light of the above, the main thrust of arguements of the Learned Counsel for the applicant is that according to Rule 11 of the Delhi Police (Punishment and Appeal) Rules, 1980 as long as the first appeal is pending in the High Court, order of punishment cannot be imposed against the applicant. Further, the powers available to the Dismissal Authority under the Article 311(2)(a) of the Constitution are general powers, whereas the powers available to the Disciplinary Authority under Rule 11 of the Delhi Police (Punishment & Appeal) Rules, 1980 are specific powers; therefore, the said exercise of powers in view of the aforesaid Rules is not only

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arbitrary but also without jurisdiction.

6. On the other hand, the contention of the Respondents was that the gross misconductof the applicant, showed that he is a deprayed and despearte character and he was placed under suspension w.e.f. 31.3.84. The society expects policemen to protect citizens from criminals and crime but involvement of a policemen in such a crime will totally erode the faith of the common people in the system. His act of involving himself in such a henious crime is most reprehensible and constituting gravest misconduct by a public servant entrusted with the responsibilities of welfare and protection of society. Such criminals in uniform are destroying our social fabric and eating into the vitals of our society and has to be fought tooth and nail. Retention of such convicted police officer in the department is not warranted and he should not continue in service under any circumstances as it will cause severe damage of the police department in the eyes of the public. The applicant had acted in a manner unbecoming of a police officer and the act on his part is not only immoral and reprehensible but a grave misconduct which renders him unfit to be retained in the police department.

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7. Keeping in view of the overall facts and circumstances of the case, the applicant was dismissed from service with effect from 15.9.1992 under Article 311(2)(a) of the Constitution of India. They further contend that such powers vested in disciplinary authority under Article 311(2)(a) of the Constitution has been exercised. The Respondents has not controverted the plea of the Applicant as to whether they are authorised to take action pursuant to Article 311(2)(a) of the Constitution when the 1st appeal against the Constitution is pending in the High Court. The impugned order of punishment dated 15.9.1992 does not speak about preferring of an appeal against the said order.

8. We have gone through the pleadings of the parties and perused the records. It is not in dispute that though the applicant was convicted by a court of law in the year 1989, no action has been taken by the respondents either to dismiss or to remove him from service till 1992. Further, in the impugned order the respondents have specifically stated " whereas on 1989 defaulter Head Constable, had filed an appeal against his conviction in the Hon'ble High Court of Delhi vide criminal appeal No. 26/89 and the same has not been decided as yet".

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The Delhi Police Rules, referred to above, is very clear that no such order of removal or dismissal shall be passed till such time the result of first appeal that may have been filed by the said police officer is known. It was open to the respondents to take appropriate action pursuant to Article 311(2)(a) immediately after the pronouncement of the judgement of the Additional District Judge in the year 1989 which had been communicated to the competent authority, curiously enough, they did not care to take any action, reasons for which is not known.

9. In this connection it is relevant to quote the O.M.No. F.43/57/64-AVD (III), dated 29.11.1967 issued by the Ministry of Home Affairs which reads as follows :-

> " In a case where a Government servant has been convicted in a court of law for an offence which is such as to render further retention in public service of the Government servant undesirable, action to dismiss, removal or compulsory retirement from service should not be taken before the period for filing an appeal has elapsed or if an appeal has been filed, before the result of the first appeal is known."

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The aforesaid O.M. of the Ministry of Home Affairs is similar to that of Rule 11 of the Delhi Police (Punishment and Appeal) Rules, 1980.

10. It is also not in dispute that the service conditions of the applicant are governed by the Delhi Police (Punishment & Appeal) Rules, 1980, which is a self-contained code. Since the respondents have not challenged the virus of their own rules i.e. Delhi Police (Punishment & Appeal) Rules, 1980, which was framed or enacted on the similar lines with that of Article 309 of the Constitution and is not in contradiction of the provisions of the Constitution. If the impugned order is upheld by virtue of Article 311(2)(a) of the Constitution which will render the provisions of Rule 11 of the Delhi Police (Punishment & Appeal) Rules, 1980 totally redundant which is not the intention of the rule-making authority. Having noticed the appeal preferred by the applicant against his conviction in the dismissal order, it is improper on the part of the respondents to take hasty decision in dismissing him when the appeal is pending in a High Court. In this connection it is relevant to quote certain decisions of the High Courts in AIR 1960 Allahabad 538 - R.S. Das vs.

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Divisional Superintendent. It was held that the words " led to conviction' mean not merely to bring a criminal charge against the deliquent servant but further imply that as a result or consequence it has ended in conviction also. A proceeding will not be said to have led to his conviction if it has not resulted ultimately in conviction or, as a consequence or appeal, has ended in an acquittal. Hence, where the dismissal orders against certain Railway employees were passed when appeals against their convictions under the Penal Code by the trial court were already pending before the Appellate Court which ultimately allowed them, the case of the employees is not covered by Art. 311(2), proviso (a)(2) of the Constitution. Similar stand was taken by Allahabad High Court in a Division Bench in AIR 1961 Allahabad 336. In that decision it has confirmed the view taken by the single judge in earlier decision by saying that the words " led to his conviction on a criminal charge" in Proviso (a) to Art. 311(2) can only mean a criminal charge which has finally resulted in the conviction of the person proceeded against. The proceedings in the appellate court are nothing but a continuation of the proceedings

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in the trial court. The order of the appellate court supersedes and sweeps away the order of the trial court altogether etc. In AIR 1961, Madras 486 the Court held" in order to sustain an order of dismissal from service of a civil servant under Proviso(a) to Art.311(2), there must be a conviction of that person on a criminal charge by a competent court. Once the conviction is set aside or quashed, the dismissal order must fall to the ground. Similar view has been taken by the Constitution Bench of the Supreme Court in U.P. State Electricity Board Vs U.G.V.Electricity Supply Co.(1966). The aforesaid decision does not pertain to CCS(CCA) Rules but termination effected pursuant to UP Industrial Dispute Act. The ratio dissideni of this decision equally applicable to the facts of this case wherein it is held that termination proved to be wrong and his appeal was admitted, bail was granted to him, there was no final judgement against him. Two options are opened to the authorities either the applicant should have been allowed to continue in his post of his service could have been terminated after proper charge and enquiry by not following either course and resisting his efforts to his reinstatement. The termination of the applicant's service become illegal from the beginning etc.

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11. In this conspectus of facts of the case, we are satisfied that the impugned order dated 15th September, 1992, which is at Annexure 'C' requires to be quashed. Accordingly, we quash and set aside the order passed by the respondents dated 15th September, 1992 and allow the O.A. and direct the respondents to take appropriate action after the result of the first appeal is known and treat his continuance in service in accordance with law. The O.A. is accordingly disposed of with no order as to costs.

(B.S.HEGDE) 28/5/93
MEMBER(J)

(B.N.DHOUNDIYAL) 28/5/93
VICE CHAIRMAN(A)