

12

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI.

O.A. 2840 of 1992

DATE OF DECISION 02.02.1994

Shri Kishan Sarup Applicant(s)

Versus

Delhi Administration & Others Respondent(s)

(For Instructions)

1. Whether it be referred to the Reporter or not? *yes*.
2. Whether it be circulated to all the Benches of the Central Administrative Tribunal or not? *NO*

Sud
(S.K. DHAON)
VICE CHAIRMAN
02.02.1994

(13)

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

O.A. 2840 of 1992

New Delhi this the 2nd day of February, 1994

Mr. Justice S.K. Dhaon, Vice-Chairman
Mr. B.K. Singh, Member

Shri Kishan Sarup
R/o Village & Post Office Aklimpur,
P.S., Sadar Gurgaon, District Gurgaon,
(Haryana).

..Applicant

None for the applicant

Versus

1. Delhi Administration, Delhi
through its Chief Secretary,
5, Sham-Nath Marg,
Delhi.
2. Commissioner of Police, Delhi,
Police Headquarters, I.P. Estate,
New Delhi.
3. Deputy Commissioner of Police,
Police Control Room,
Delhi.

...Respondents

By Advocate Shri Vinay Sabharwal

ORDER (ORAL)

Mr. Justice S.K. Dhaon, Vice-Chairman

The applicant, a Constable in the Delhi Police challenges the legality of the order dated 21.09.1992 passed by the Deputy Commissioner of Police dismissing him from service.

2. A counter-affidavit has been filed on behalf of the respondents. Learned counsel for the respondents has been heard.

3. The uncontroverted facts, as material, are these. On 07.08.1991, the Sessions Judge, Gurgaon convicted the applicant alongwith others for an offence under Section 302 read with 34 of the Indian Penal Code in Sessions Case No.7 of 1990. The sentence of Life Imprisonment and also a fine of Rs.20, 000/- was imposed on the applicant. On 28.09.1991, the applicant preferred an appeal in the High Court of Punjab & Haryana. There is nothing on record to indicate as to what happened to the appeal. On 21.09.1992, the impugned order was passed.

Sy

4. The only contention advanced in support of this application is that the Deputy Commissioner of Police could not pass the impugned order during the pendency of the appeal of the applicant. Section 21 of the Delhi Police Act, 1978 (the Act), inter alia, provides that subject to the provisions of Article 311 of the Constitution and the rules, the Deputy Commissioner of Police may award to any police officer of subordinate rank any of the punishments enumerated therein from (a) to (g), including dismissal. In Section 2(q) the rules are defined to mean rules made under the Act. The Delhi Police (Punishment & Appeal) Rules, 1980 have admittedly been framed under the Act. Rule 11 has the marginal note: "punishment on judicial conviction". The said rule provides, inter alia, that when a report is received from an official source that an official of the 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 gravity of the offence and if in his 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. Sub-rule(2) of Rule 11 talks of the second appeal or revision preferred by a delinquent Police Officer. Sub-rule(1) of Rule 11 is clear that the order of punishment has to await till the result of the first appeal preferred by the delinquent, that may have been filed, is known to the officer passing the order of punishment. The fact of the filing of the first appeal and its pendency, therefore, restricts the power given under

Sy

.3.

sub-rule(1) of Rule 11. The officer empowered to pass the order has to hold his hands till a decision in the first appeal preferred by the delinquent is made known to him. In the instant case, it is to be seen that the order of dismissal was passed hardly after six weeks of the passing of the order of the conviction of the applicant by the Trial Court. We have already indicated that the applicant filed an appeal on 28.09.1991 before the High Court concerned. The conclusion, therefore, is inevitable that the powers of dismissal could not be exercised on account of the operation of the provisions of sub-rule(1) of Rule 11.

4. Section 21 of the Act confers upon the officers mentioned therein, including the Deputy Commissioner of Police, the power of awarding punishments, including dismissal from service. Such a power is not absolute. It is hedged in-with the fulfilment of the requirements of Article 311 and the rules. To put it differently, the exercise of the power under Section 21 is conditional upon the compliance of the provisions as contained in Article 311 of the Constitution and as contained in the rules. The rules, in detail, lay down the procedure to be adopted for the purpose of holding an enquiry against a delinquent employee with a view to punish him. The rules are in conformity with the requirements of Article 311-2.

5. In order to salvage this situation, learned counsel for the respondents has urged that the impugned order should be treated to have been passed under Article 310 of the Constitution. He urges that the exercise of power under the said Article cannot be controlled by Section 21 of the Act. If the power could really be exercised under Article 310, the argument is certainly tenable. We have, therefore, to examine as to whether the power, in fact, was exercised under Article 310. We may, therefore, read

Singh

the impugned order in that light. The relevant portion of the order may be extracted:

".....Keeping in view the overall facts and circumstances of the case, I, M.S. Upadhyay, DCR/PCR, Delhi hereby ordered that Kishan Sarup No.3583/PCR is dismissed from service with immediate effect under Article 311(2)(a) of the Constitution of India.....".

The second proviso to Article 311-2, which is material, states that a reasonable opportunity, as envisaged in the said sub-article need not be given to a delinquent where he is dismissed, removed or reduced in rank on the ground of conduct which has led to his conviction on a criminal charge. Article 311-2 does not confer the power of awarding the punishment of either dismissal or removal or reduction in rank. It, however, controls the exercise of the power for awarding punishments and mandates that a reasonable opportunity should be given to a delinquent Government servant to defend himself in the disciplinary proceedings. The second proviso to Article 311-2 enables the disciplinary authority to do away with the inquiry as contemplated in the said provision, if the other conditions enumerated in the proviso exist. The Deputy Commissioner of Police while exercising the power of dismissal from service under Section 21 of the Act did away with the requirement of holding an enquiry etc. and the giving of an opportunity to the petitioner to defend himself in that enquiry by taking resort to the provisions, as contained in Article 311-2(a). As already indicated by us, power could be exercised by the Deputy Commissioner under Section 21 only in accordance with the rules, including sub-rule(1) of Rule 11. It is settled law that Article 311-2 of the Constitution

Shy

restricts the operation of Article 310. But for the provisions contained in Article 311, the doctrine of pleasure as contained in Article 310, would have had its full play. It follows that whenever a person to whom Article 311-1 is applicable is either dismissed or removed or reduced in rank the procedural safeguard as guaranteed in Article 311-2 have to be complied with. The observations of the Supreme Court in Union of India Vs. Tulsi Ram Patel, AIR 1985 SC page 1417, paragraph 45 on which reliance has been placed by the learned counsel for the respondents are:

"45. It is thus clear that the pleasure doctrine embodied in Article 310(1), the protection afforded to civil servants by clauses (1) and (2) of Article 311 and the withdrawal of the protection under clause (2) of Article 311 by the second proviso thereto are all provided in the Constitution on the ground of public policy and in the public interest and are for public good".

These observations, in our opinion, do not advance the case of the respondents. On the contrary, they forfeit our views.

6. Section 5 of the Act, amongst others, provides that subject to the provisions of the Act, the recruitment to, and the pay, allowances and all other conditions of service of the members of the Delhi Police shall be such as may be prescribed. Section 2(n) defines "prescribed" to mean prescribed by rules. On 17.12.1980, the Administrator by a notification, in the exercise of the powers conferred by Section 5 of the Act prescribe a number of rules and orders, as amended or revised from time to time to be applicable to all subordinates, civilian and class-IV employees of the Delhi Police in addition to the rules and regulations made under the Act. In all 22 rules and orders were applied. However, CCS(CCA) Rules, 1965 are not one of the rules prescribed. Indeed, it is nobody's case that the CCS(CCA) Rules are applicable to the Police Force in Delhi. That is why, the Act and the rules contain elaborate provisions in the matter of awarding punishment to the members of the Delhi Police. We have already stated that the rules are a product of the Act. No rules have been framed in relation to the members of the Delhi Police under the proviso to Article 309 of the Constitution. The Deputy Commissioner of Police, therefore, is

Sd/-

not a disciplinary authority created under any rule framed under the proviso to Article 309. He is a creation of the Act and derives power of awarding punishment, including dismissal from service from Section 21 thereof.

7. Under Article 310 of the Constitution, the President or the Governor, as the case may be, is not expected to pass an order personally. The combined effect of Articles 154, 162 and 166 of the Constitution is that a Governor rarely passes an executive order personally. He acts through his Ministers and offices subordinate to him. An authority duly empowered by the Governor under the Rules of Business framed in accordance with the provisions of the Constitution can exercise the power of dismissing a civil servant under Article 310. In the present case, there is not even a whisper in the counter-affidavit that the Lt. Governor of Delhi had empowered the Deputy Commissioner of Police to exercise the power of dismissing a Constable of the Delhi Police.

8. We may re-read the impugned order. Obviously, it has not been passed in the name of the Lt. Governor. In it, no attempt whatsoever has been made to comply with the provisions of Article 166-1 of the Constitution. The respondents, therefore, cannot press into service the argument that there is a presumption that the impugned order was passed by the Deputy Commissioner of Police while exercising power under Article 310.


9. We have already stated that nothing has been brought to our notice as to what happened to the first appeal of the applicant. If the appeal has been dismissed that will be the end of the matter. If, however, the appeal is still pending, the applicant has to be reinstated in service and in the event of the dismissal of the appeal, it will be open to the authority concerned to pass a fresh order, if so advised, on merits and in accordance with law.

10. The petition succeeds and is allowed. The

Sy

impugned order dated 21.09.1992 is quashed. The applicant shall be reinstated in service but without back wages.

11. There shall be no order as to costs.


(B.K. SINGH)
MEMBER (A)


(S.K. DHAON)
VICE CHAIRMAN

RKS