

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

O.A.NO.1444 OF 2016

New Delhi, this the 23rd day of May, 2017

CORAM:

HON^{BLE} SHRI RAJ VIR SHARMA, JUDICIAL MEMBER

AND

HON^{BLE} MRS. PRAVEEN MAHAJAN, ADMINISTRATIVE MEMBER

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S.K.Gaur,

Ex-Inspector of Delhi Police,

PIS No.16910086,

Aged about 49 years,

s/o late Sh.G.N.Gaur,

R/o Quarter No.2, Type-IV,

Police Colony Krishna Nagar,

Delhi-51

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Applicant

(By Advocate: Shri Anil Singhal)

Vs.

Govt. of NCT of Delhi through

1. Commissioner of Police,

PHQ, IP Estate, New Delhi.

2. Special Commissioner of Police(Operations),

PHQ, IP Estate, New Delhi

3. DCP (General Admn.),

PHQ, IP Estate, New Delhi

í .. Respondents

(By Advocate: Shri K.M.Singh)

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ORDER

Per Raj Vir Sharma, Member(J):

On the basis of a complaint lodged by one Shri Anil Jaiswal that the applicant collected from him Rs.70,000/- under duress, FIR No.61 of 2010 was registered at PS Crime Branch for the offences punishable under Sections 7,8,13(1)(d) of the Prevention of Corruption Act, 1988 and Section 384, 467, 468, 472, 201 and 120B IPC. After investigation, charge sheet

having been filed before the criminal court, the applicant was placed under suspension w.e.f. 17.5.2010. By judgment dated 20.5.2014 and order of sentence dated 21.5.2014 passed by the learned Special Judge-07 (PC Act Cases of ACB, GNCTD), Central District, Tis Hazari Court, Delhi, in CC No. 44/12 arising out of FIR No.61/10, the applicant-Shri S.K.Gaur was convicted for offence under Section 7 of the Prevention of Corruption Act, 1988, and was sentenced to undergo RI for 2 years and to pay fine of Rs.20,000/-, and, in default of payment of fine, to undergo SI for two months more. On receipt of the aforesaid judgment and the order of sentence, the Special Commissioner of Police (Operations), Delhi, examined the matter and concluded that all the evidence collected against the applicant was sufficient to convict him for the charge under Section 7 of the Prevention of Corruption Act, 1988, and that the applicant committed the gravest act of misconduct and his continued retention in police service was not warranted in the public interest because the Police Department is constituted to serve the people, preserve and protect their right to live peacefully and to make them understand the feeling of safety. It was also observed by the Special Commissioner of Police (Operations) that the society expects the policemen to protect citizens from criminals and crime. The involvement and conviction of a policeman in such a crime has potential to completely erode the faith of the common man in the whole police department. The cases under the Prevention of Corruption Act cannot be viewed lightly because it not only affects the complainant but also affects

the society at large. Therefore, the Special Commissioner of Police (Operations) took the view that the offence committed by the applicant was of such a nature that his further retention in the Department after having been convicted by a court of law was undesirable because his further continuance in the police force might be detrimental to the public interest. Accordingly, the Special Commissioner (Operations), in exercise of the powers conferred by sub-rule(1) of Rule 11 of the Delhi Police (Punishment & Appeal) (Amendment) Rules, 2011, dismissed the applicant from the force with immediate effect and decided to treat the period of his suspension from 17.5.2010 as period not spent on duty, vide order dated 25.11.2014. The appeal made by the applicant against the order dated 25.11.2014(ibid) was rejected by the Commissioner of Police, Delhi, vide order dated 22.1.2016. Hence, the present O.A. under Section 19 of the Administrative Tribunals Act, 1985, was filed by the applicant on 22.4.2016, seeking the following reliefs:

1. To call for the records of the case and quash and set aside the impugned order dt.25.11.2014 and order dt.27.1.2016.
2. To direct the respondents to reinstate the applicant in service with all consequential benefits including promotion/seniority and arrears of pay.
3. To award cost in favour of the applicant and pass any order or orders, which this Hon'ble Tribunal may deem just & equitable in the facts & circumstances of the case.ö

2. Resisting the O.A., the respondents have filed a counter reply on 13.7.2016.

3. We have perused the records, and have heard Shri Anil Singhal, the learned counsel appearing for the applicant, and Shri K.M.Singh, the learned counsel appearing for the respondents.

4. Shri Anil Singhal, the learned counsel appearing for the applicant, produced before us a copy of the judgment dated 3.1.2017 passed by the Hon'ble High Court of Delhi allowing Criminal Appeal No. 680 of 2014 which was filed by the applicant against the judgment dated 20.5.2014 and order of sentence dated 21.5.2014 passed by the learned Special Judge-07 (PC Act Cases of ACB, GNCTD), Central District, Tis Hazari Court, Delhi, in CC No. 44/12 arising out of FIR No.61/10. The relevant/operative part of the judgment dated 3.1.2017(ibid) is reproduced below:

ö18. In the light of above discussion, I am of the considered view that conviction and sentence recorded by the Trial Court on the highly scanty evidence cannot be sustained and are set aside. The appellant deserves benefit of doubt and is acquitted. The appeal is accordingly allowed.ö

Thus, it was submitted by Shri Anil Singhal that as the criminal appeal filed by the applicant has been allowed, the judgment of conviction and order of sentence passed by the trial court have been set aside, and the applicant has been acquitted of the charge, the applicant is entitled to be reinstated in service from the date of dismissal with all consequential benefits.

5. Shri K.M.Singh, the learned counsel appearing for the respondents, did not dispute the said position. He also fairly submitted that keeping in view the judgment of acquittal passed by the Hon'ble High Court

of Delhi, the respondents have to consider the matter afresh and take a decision in accordance with rules.

6. Rule 11 of the Delhi Police (Punishment & Appeal) Rules, 1980, reads thus:

§11. Punishment on judicial conviction.-(1) 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 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 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) **If such police officer is acquitted on second appeal or revision, he shall be reinstated in service from the date of dismissal or removal and may be proceeded against departmentally.**

(3) In cases where the dismissal or removal from service of the convicted police officer is not considered necessary, the disciplinary authority may examine the judgment and take such departmental action as it may deem proper.

(4) When a police officer is convicted judicially and consequently dismissed or removed from service, and it is desired to ensure that the officer dismissed or removed shall not be re-employed elsewhere, a full descriptive roll with particulars of punishments, shall be sent for publication in the Delhi Police Gazette.ö

7. In view of the facts that the applicant was dismissed from service under Rule 11 (1) of the Delhi Police (Punishment & Appeal) Rules, 1980 because of the judgment of conviction and order of sentence passed by the learned Trial Court, and that the criminal appeal filed by the applicant against the said judgment of conviction and order of sentence has been

allowed by the Hon'ble High Court of Delhi and the applicant has been acquitted of the charge, we are of the considered view that the case of the applicant clearly falls within the purview of sub-rule (2) of Rule 11 of the Delhi Police (Punishment & Appeal) Rules, 1980. Therefore, the respondents have to consider the matter afresh and take appropriate decision under sub-rule (2) of Rule 11, *ibid*.

8. In the light of what has been discussed above, we remit the matter back to the respondents to consider the same and take appropriate decision in accordance with sub-rule (2) of Rule 11 of the Delhi Police (Punishment & Appeal) Rules, 1980, within a period of thirty days from today.

9. Resultantly, the O.A. is partly allowed to the extent indicated above. No costs.

(PRAVEEN MAHAJAN)
ADMINISTRATIVE MEMBER

(RAJ VIR SHARMA)
JUDICIAL MEMBER

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