

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

OA 2261/2014

Reserved on 17.12.2018
Pronounced on 03.01.2019

Hon'ble Ms.Nita Chowdhury, Member (A)
Hon'ble Mr. S.N. Terdal, Member (J)

Mahipal Singh, Age 49 years
(Now dismissed) No. 4520/PCR,
S/o Shri Roop Chand,
R/o H.No. 37, Village-Siraspur,
Delhi-42.

... Applicant

(By Advocate: Mr. Rajesh Kumar for Mr. Sachin Chauhan)

VERSUS

1. Govt. of NCT of Delhi through the
Lt. Governor of Delhi, Raj Niwas,
5, Sham Nath Marg, Delhi-110054
2. The Commissioner of Police
Police Head Quarters, IP Estate,
New Delhi.
3. The Addl. Commissioner of Police,
Police Control Room,
Through the Commissioner of Police
Police Head Quarters, IP Estate,
New Delhi.
4. The Addl. Dy. Commissioner of Police,
Police Control Room,
Through the Commissioner of Police
Police Head Quarters, IP Estate,
New Delhi.

... Respondents

(By Advocate: Ms. Sangeeta Tomar)

ORDER

Hon'ble Mr. S.N.Terdal, Member (J):

We have heard Mr. Sachin Chauhan, counsel for applicant and
Ms. Sangeeta Tomar, counsel for respondents, perused the pleadings
and all the documents produced by both the parties.

2. In this OA, the applicant has prayed for the following reliefs:

“(i). To quash and set aside the impugned order dated 26.07.2012 whereby the major punishment of dismissal from service is imposed upon the applicant at A-1 and order dated 05.09.2013 whereby the appeal of the applicant has been rejected by Appellate Authority at A-2 and to further direct the respondent that applicant be reinstated back in service forthwith with all consequential benefits including seniority and promotion and pay and allowances.

(ii). To quash and set aside the rule 11(1) of Delhi Police (Punishment & Appeal) Rules, 2011 amended vide notification dated 30.11.2011.

Or/and

(iii). Any other relief which this Hon’ble Court deems fit and proper may also awarded to the applicant.

3. The relevant facts of the case are that the applicant was dismissed from service under Rule 11(1) of the Delhi Police (Punishment & Appeal) (Amendment) Rules, as the applicant was convicted by the Court of Sh. Gurdeep Singh, ASJ-3 (Outer) Rohini, Delhi vide judgment/order dated 21.04.2012 and sentenced him to undergo rigorous imprisonment for three years and to pay fine of Rs.10,000/- for offence under section 498-A IPC. The brief facts on the basis of which the criminal Court was registered was that along with his brother, the applicant harassed his brother’s wife namely one Sunita D/o complainant Shri Dharambir for dowry and subjected her to cruelty and torture and beaten her and ultimately she committed suicide by hanging herself. The relevant summary of allegations are extracted below:

“The brief facts of the case are that it is alleged against Ex.Const.(Dvr.) Mahipal Singh, No.4520/PCR(PIS No. 28880024) (here-in-after called the appellant) that a case vide FIR No.433/2005 dated 10.06.2005 u/s 498-A/306/34 IPC PS Badli was got registered by Sh.Dharambir S/o Late

Shri Ratten Singh, r/o H. No.230, Vill. Pitampura, Delhi. One Woman namely Sunita w/o Satpal, r/o Vill. Samai Pur Badli committed suicide by hanging herself. In his statement, Shri Dharambir stated that on 15.12.1991, marriage of his daughter Sunita was solemnized with Satpal S/o Ram Chander, Village Samai Pur Badli, Delhi. After marriage, her husband and family members including the appellant, who is the elder brother of Satpal, started harassing her for dowry. She was also subjected to cruelty and torture by them. In order to save from the cruelty on the part of her husband and in-laws, he (Dharambir) paid money at different occasions. When the In-laws continued with torture and harassment, they made a complaint to the police. For the next one and half years, they remained silent but again they started torturing her. They asked her to fetch money for the marriage of younger brother-in-law and also to purchase a bus for delinquent Const.(Dvr.) Mahipal Singh (the appellant) in place of Mini Bus owned by him. He (Dharambir) paid money at different occasions which did not satisfy them. Sunita informed Dharambir on phone that the appellant had beaten her. She also informed him that her husband and in-laws have made her life miserable. During the investigation, the appellant was arrested in this case on 01.08.2005 and bailed out on 30.08.2005. For the above misconduct, he was placed under suspension vide order No. 5131-65/HAP(P-IV)/PCR dated 29.03.2007 w.e.f. 01.08.2005 i.e. date of arrest. He was later on re-instated from suspension vide order No.15246-80/HAP (P-IV)/PCR dated 09.10.2007 without prejudice to the criminal case pending against him.

Whereas, the Hon'ble Court of Sh. Gurdeep Singh, ASJ-3 (Outer) Rohini, Delhi vide judgment dated 21.04.2012 convicted Const.(Dvr.) Mahipal Singh No. 4520/PCR (the appellant) and vide order dated 28.04.2012 sentenced him to undergo(A) rigorous imprisonment for three years and to pay fine of Rs.10,000/- for the offence under section 498-A IPC. In default of payment of fine, he shall further undergo simple imprisonment for three months.

In view of the above, the disciplinary authority was of the considered view that conduct of the appellant, which led to his conviction on harassment charges in the above said criminal case is too much grave in nature that further retention of the appellant in police service who has been convicted by the court of law, is prima facie undesirable. Therefore, the disciplinary authority has ordered dismissal of the appellant from the service with immediate effect under the provision of sub rule (1) of Rules-11 of Delhi Police (Punishment & Appeal) (Amendment) Rules, vide order No. 13453-552/HAP(P-IV)/PCR, dated 26.07.2012. His suspension period from 01.8.2005 to 08.10.2007 was

also decided as period not spent on duty for all intents and purposes. Hence, this appeal.”

4. The disciplinary authority following the relevant procedural rules and principles of natural justice, gave the applicant an opportunity of making representation against the proposed penalty under Rule 11(1) of the Delhi Police and thereafter after considering his representation held that the conduct of the applicant was gravest act of misconduct and his continued retention in police service is not warranted in public interest as the police department is constituted to serve the people and to protect their life and safety and that the involvement and conviction of the applicant as a police man in a case of dowry harassment and ultimate suicide of an innocent lady would totally erode the faith of the common people in the police department and on those grounds passed the above order of dismissal from service vide impugned order dated 26.7.2012. The appeal filed by the applicant was considered by the appellate authority and after considering his appeal and hearing the applicant in orderly room on 20.08.2013 dismissed the appeal vide order dated 05.09.2013.

5. The counsel for the applicant vehemently and strenuously contented that the amended rule 11(1) is unconstitutional. As per the old rules until his appeal is disposed of, no punishment should have been imposed. As such, the impugned penalty order and the appellate authority order having been passed under the amended rule 11 (1) require to be set aside.

6. In so far as the legality of the amended rule 11 (1) is concerned, a Co-ordinate Bench of this Tribunal in the case of **Khushi**

Ram Vs. NCTD through the Commissioner of Police and Others (OA 2446/2013) has held that the amendment does not suffer from any illegality. In another case of **ASI Tej Singh Vs. Govt. of NCTD through the Hon'ble L.G. GNCTD and Others** (OA 2930/2013), **Ravi Karan Vs. Govt. of NCTD through the Hon'ble L.G. GNCTD and Others** (OA 3892/2016) and **ASI Dalip Pawar Vs. Govt. of NCTD through the Hon'ble L.G. GNCTD and Others (OS 1155/2013)** this Bench following the reasoning in the said order of the Co-ordinate Bench in the case of Khushi Ram's (supra) have upheld the legality of the said amendment. Following the reasoning in the said orders we uphold the validity of the amended rule 11(1). As such the submissions made on the amendment to rule 11 (1) requires to be rejected.

7. The counsel for the applicant further submitted that the offence for which he has been tried and convicted is concerning dowry harassment under section 498-A of IPC and that the said offence has nothing to do with the discharge of his official function and that moreover, the lady who committed suicide is not his wife also. In the circumstances, he submitted that the entire departmental proceeding and the impugned orders should be set aside. But, however, rule 11 (1) empowers the respondents authorities to impose punishment in the case of conviction of the delinquent employees are concerned, the above submissions of the counsel for the applicant cannot be countenanced. As the legality of Rule 11(1) is not challenged.

8. The counsel for the applicant further submitted that applicant had put in 24 years of unblemished qualifying service as such

imposing dismissal from service for only one misconduct stated above is grossly disproportionate and the respondents be directed to take a lenient view. But however there are catena of judgments of the Hon'ble Supreme Court which have laid down the law that in so far as the imposition of penalty is concerned, it is for the respondents authorities to decide, unless the punishment is grossly disproportionate so as to shock the conscience of the court. In this case, we are of the opinion that the punishment imposed is not shockingly and grossly disproportionate.

9. In the above facts and circumstances of the case, the impugned orders do not require to be interfered with.

10. Accordingly, OA is dismissed. No order as to costs.

(S.N.Terdal)
Member (J)

(Nita Chowdhury)
Member (A)

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