



**Central Administrative Tribunal
Principal Bench, New Delhi.**

OA-1552/2015

Reserved on : 13.11.2019.

Pronounced on : 29.11.2019.

**Hon'ble Mr. S.N. Terdal, Member (J)
Hon'ble Mr. Mohd. Jamshed, Member (A)**

Smt. Sumitra Devi, 55 years
Ex. Head Constable (Women)
No. 8720/PCR (PIS No. 29880134)
W/o Late Sh. Ram Kumar,
R/o House No. 10/67 Gali No.5,
Lohiya Gali – Babarpur,
(Shahadra) Delhi-110032. Applicant

(through Sh. G.S. Rana, Advocate)

Versus

1. Commissioner of Police Delhi
Through – The Joint Commr. of Police/
Operations, Police Head Quarters,
I.P. Estate, New Delhi.
2. Addl. Dy. Commissioner of Police/G.A.
Police Control Room, Delhi. Respondents

(through Ms. Harvinder Oberoi, Advocate)

O R D E R

Mohd. Jamshed, Member (A)

The applicant was working with Delhi Police as Head Constable (Exe.). She was arrested on 18.06.2008 by Anti Corruption Branch of Delhi Police in case FIR No.



17/08 u/s 7/8/2013 Prevention of Corruption Act along with others. The applicant and other two officers were placed under suspension due to their alleged involvement in the case. Subsequently, a joint departmental enquiry was ordered on 29.07.2010. The Enquiry Officer (EO) submitted his report holding that the charges have been substantiated against the applicant. The Disciplinary Authority (DA) vide order dated 14.05.2012 imposed penalty of forfeiture of one year approved service temporarily for a period of one year entailing proportionate reduction in applicant's pay with immediate effect, without prejudice to the final outcome of the said criminal case against them. It was also mentioned that this punishment order may be revisited either suo-moto or on the request of the defaulters, after the final verdict of Hon'ble Court. Subsequently, on 25.09.2013, respondent No.2 passed an order dismissing the applicant from service under sub-rule(1) of Rule 11 of Delhi Police (Punishment & Appeal) (Amendment) Rules, 2011 w.e.f. 25.09.2013. An appeal was preferred by the applicant against this order, which was rejected vide order dated 28.07.2014. Aggrieved by the action of the respondents, the



applicant has filed the present O.A. seeking the following reliefs:-

"(a) to quash and set aside the impugned orders of **ANNEXURE A-1 and A-2** passed by respondent No.2 and 1.

(b) to pass any such/other order(s) which this Hon'ble Bench may deem fit and proper in the interest of justice."

2. The applicant has contended that the DA vide order dated 14.05.2012 had imposed penalty of forfeiture of one year approved service temporarily for a period of one year entailing proportionate reduction in her pay with immediate effect. Subsequent order issued by respondent No.2 dated 25.09.2013 dismissing the applicant from service on the same charges is therefore not tenable in law & deserves to be quashed.

3. The respondents opposed the O.A. in the counter affidavit filed by them indicating that the applicant was caught in a trap laid on 18.06.2008 by the Anti-Corruption Branch of Delhi Police. The applicant was arrested along with two others and thereafter placed under suspension w.e.f. 18.06.2008 vide order dated 24.6.2008. Subsequently based on a departmental enquiry, the DA vide order dated 14.05.2012 imposed penalty of forfeiture of one year approved service temporarily for a period of one year entailing proportionate reduction in applicant's pay with



immediate effect, without prejudice to the final outcome of the said criminal case against them. On 10.05.2013, the Hon'ble Court of the Special Judge convicted the applicant and sentenced her to undergo rigorous imprisonment for a period of two years and to pay fine of Rs.5000/- for three months u/s 120-B IPC r/w sec. 7/13 of Prevention of Corruption Act, 1988. In view of the order of the Court, the DA ordered her dismissal from service vide order dated 25.09.2013. The DA was of the considered view that the conduct of the applicant, which led to her conviction on corruption charges in the criminal case is grave in nature, her further retention in police service is undesirable under sub-rule(1) of Rule 11 of Delhi Police (Punishment & Appeal) (Amendment) Rules, 2011.

4. Heard the learned counsel for both sides.
5. Learned counsel of the applicant in support of his arguments has relied on the judgment of the Hon'ble Delhi High Court in the case of **Naresh Kumar Yadav Vs. Union of India and Ors.** [WP(C)-7607/2014] dated 27.01.2015. The facts of the case, quoted are however quite different from the facts of the present O.A. The applicant herein was caught in a trap case by Anti Corruption Branch of Delhi police and was placed



under suspension. An FIR was also lodged against the applicant and two others. A disciplinary enquiry was subsequently conducted. The EO concluded that the charges levelled against the applicant are substantiated. Representation was submitted by the applicant against the findings of the EO. DA considered the EO's findings, the representation of the applicant and vide a detailed speaking order imposed the punishment of forfeiture of one year approved service temporarily for a period of one year entailing proportionate reduction in applicant's pay with immediate effect, without prejudice to the final outcome of the said criminal case against her. In the impugned order dated 14.05.2012, it is clearly mentioned that "However, this punishment order may be revisited either suo-moto or on the request of the defaulters, after the final verdict of Hon'ble Court in case FIR No. 17/2008 dated 18/06/2008 u/s 7/8/13 POC Act, P.S. Anti Corruption Branch, Delhi. " Subsequently, the Hon'ble Court of Special Judge vide order dated 10.05.2013 convicted the applicant and sentenced her to undergo rigorous imprisonment for a period of two years and fine of Rs.5,000/- u/s 120-B IPC r/w sec. 7/13 of Prevention of Corruption Act, 1988. The conviction



order was considered by the competent authority and vide order dated 25.09.2013, the respondent No.2 dismissed the applicant from service with immediate effect under sub-rule(1) of Rule 11 of Delhi Police (Punishment & Appeal) (Amendment) Rules, 2011 w.e.f. 25.09.2013 and the suspension period from 18.06.2008 to 20.06.2012 was also decided as period 'not spent on duty'. An appeal was preferred against these orders by the applicant, which was rejected by the AA vide order dated 28.07.2014. The applicant has challenged the order of dismissal from service dated 25.09.2013 and the rejection of her appeal vide order dated 28.07.2014. It has been argued that once the DA has got the disciplinary enquiry conducted and punishment had been imposed, there is no justification for passing another order by the same authority dismissing her from service.

6. Respondents have reiterated that the applicant is governed by the Delhi Police (Punishment & Appeal) (Amendment) Rules, 2011. These Rules categorically prescribe as under:-

"(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 or removing him from service without calling upon him to show cause against the proposed action."

7. It was also argued that Article 20(2) of the Constitution of India debars prosecution and punishment for the same offence more than once. This has also been clarified in various judgments clearly indicating that initiation or starting of proceedings of a criminal nature before a Court of Law or a judicial tribunal is not conviction and therefore the concept of double jeopardy does not apply in the instant case. Rule-11 of the Delhi Police (Punishment & Appeal) Rules is very clear about the action to be taken on conviction and this aspect had also been clearly indicated by the DA in his order dated 14.05.2012 that the punishment order would be without prejudice to the final outcome of the said criminal case pending against the applicant and that the punishment order may be revisited either *suo-moto* or on the request of the defaulters, after the final verdict of Hon'ble Court.

8. We are of the view that detailed orders have been passed by the DA dated 25.09.2013 after the Court order of conviction was received. This has also



been considered by the AA and the appeal against these orders had been rejected. We thus find that the action of respondents for dismissing her from service is well within the Rule 11 of Delhi Police (Punishment & Appeal) Rules. Due opportunity was also provided to the applicant for making representations, which have been considered by the DA and AA. We do not find any infirmity in the actions of the respondents. We are of the view that the present O.A. is devoid of merit and the same is accordingly dismissed. No order as to costs.

(Mohd. Jamshed)
Member (A)

(S.N. Terdal)
Member (J)

/Vinita/