
(2018) 12 CAT CK 0073

In the Central Administrative Tribunal

Case No : Original Application No. 1155 Of 2013

ASI Dalip Pawar

APPELLANT

Vs

Govt. Of NCTD Through And Ors

RESPONDENT

Date of Decision : 12-12-2018

Acts Referred:

Indian Penal Code, 1860 — Section 120B
Prevention Of Corruption Act, 1988 — Section 7, 13(1), 13(1)(d), 13(2)
Delhi Police (Punishment And Appeal) Rules, 1980 — Rule 11(1)
Constitution Of India, 1950 — Article 20(2), 311(2)(b)

Citation : (2018) 12 CAT CK 0073

Hon'ble Judges : Nita Chowdhury, Member (A), S.N. Terdal, J

Bench : Division Bench

Advocate : Sachin Chauhan, Sumedha Sharma

Final Decision : Dismissed

Judgement

S.N. Terdal, J

1. Heard Mr. Sachin Chauhan, counsel for applicant and MRs. Sumedha Sharma, 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 28.8.12 whereby the major punishment of dismissal from service is imposed upon the applicant at A-1 and order dated 4.3.13 whereby the appeal of the applicant has been rejected by Appellate Authority at A-2 and to further direct the respondent that applicant be reinstate 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 and 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 a departmental enquiry was initiated against the applicant on the allegation that the applicant along with another Police Official demanded Rs. 1,00,000/- (Rs. One lac) as illegal gratification for helping the accused in a NDPS case. The said allegation is as under:

"....that ASI Dalip Pawar, IO and Constable Yogender Kumar of PS Narcotics Kamla Market, New Delhi demanded a bribe of Rs. One lac as illegal gratification from him for helping him in a case under NDPS Act registered against him in October, 2005 in which he has been in prison for about 3 months but released on interim bail for about one and a half month which was to expire on 28.02.2006. The complainant also alleged that the said officials had asked him to meet them at Pandara Road Market, New Delhi alone between 4.15-4.30 PM on 25.02.2006 with the demanded amount."

A case FIR No. RC-AC2 2006 A0004 dated 27.02.2006 u/s 120-B IPC & Section 7 POC Act was also registered by the CBI, Delhi against the applicant and the said police official. Vide order dated 27.02.2006 by invoking the provisions of Article 311 (2)(b) of the Constitution of India, the applicant and other police official were dismissed from service. The applicant and the said police official filed a OA before this Tribunal and in compliance with the orders of this Tribunal dated 12.12.07 and 14.12.07, the applicant was reinstated in service and joint departmental enquiry was initiated and after holding the departmental enquiry a punishment of withholding of next increment for a period of five years with cumulative effect was passed vide order dated 11.03.2011. In the above referred FIR ultimately the Court of Shri Dinesh Kumar Sharma, Special Judge (PC Act) (CBI), Saket Court, New Delhi vide its judgment dated 01.08.2012 found the applicant guilty of the offence under Section 120-B IPC & Section 7, 13 (1)(d) r/w 13 (2) of the PC Act r/w Section 120-B IPC and convicted him with imprisonment and fine also. After conviction as per Rule 11(1) of the Delhi Police (Punishment and Appeal) Rules, 1980, as the case involved moral turpitude, considering the nature and gravity of the offence and holding that prima-facie retention of the applicant in service undesirable and contrary to public interest dismissed the applicant from service with immediate effect. The relevant portion of the order of the disciplinary authority order dated 28.08.2012 is extracted below:-

".....Whereas now the criminal case FIR No.RC-AC2 2006 A0004 dated 27.02.2006 u/s 120-B IPC & 7 POC Act registered by CBI, Delhi against ASI Dalip Pawar No. 1049/Crime and Const. Yogender Kumar No. 188/DRP, 274/DRP (now 316/DAP) has been finalized by the Hon'ble Court of Sh. Dinesh Kumar Sharma, Spl. Judge (PC Act)(CBI), Saket Court, New Delhi vide its judgment dated 01.08.2012 has been found them guilty of offence under Section 120-B IPC &

Section 7, 13 (1) (d) r/w 13 (2) of the PC Act r/w Section 120-B IPC in above case and convicted them accordingly. The Hon'ble Court has also passed the following order on sentence on 07.08.2012:-

"Convict Dalip Pawar:-

1. Under Section 7 of the POC Act r/w Section 120-B IPC- RI for 3 years and 6 months and fine of Rs. 15,000/-in default of payment of fine, SI for 6 months.
2. Under Section 13(1) (d) r/w Section 13 (2) of PC Act r/w Section 120 IPC- RI for 3 years and 6 months and fine of Rs. 15,000/-in default of payment of fine, SI for 6 months.
3. Under Section 120-B IPC- RI for 3 years and fine of Rs. 10,000/- in default of payment of fine, SI for 6 months.

Convict Yogender Kumar-

1. Under Section 7 of the POC Act r/w Section 120-B IPC- RI for 3 years and 6 months and fine of Rs. 10,000/- in default of payment of fine, SI for 6 months.
2. Under Section 13 (1) (d) r/w Section 13 (2) of PC Act r/w Section 120 IPC- RI for 3 years and 6 months and fine of Rs. 10,000/- in default of payment of fine, SI for 6 months.
3. Under Section 120-B IPC- RI for 3 years and fine of Rs. 5,000/- in default of payment of fine, SI for 6 months.

All the sentences in case of both the convicts shall run concurrently."

Whereas the Rule 11(1) of Delhi Police (Punishment & Appeal) Rules, 1980 has been amended by GNCT, Delhi through a notification issued vide No. F.13/28/2011/HP-1/Estt./3891-3897 dated 30.11.2011 which has been circulated by PHQ vide endst. No. 05-105/Spl.Cell/PHQ dated 09.01.2012 which is as under:-

Amendment of rule 11"(1) In the Delhi Police (Punishment and Appeal) Rules, 1980 in rule 11 for sub rule (1), the following shall be substituted namely:-

Rule 11 "(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."

Since ASI Dalip Pawar No. 1049/Crime and Const. Yogender Kumar No. 188/DRP, 274/DRP now 316/DAP have been convicted in POC Act which amounts gravest

misconduct. Keeping them in service is undesirable due to their misconduct being contrary to public interest as a police man is supposed to protect persons and stop crime but they were involved in a corruption case. So keeping in view above amendment in Rule 11 (1) of Delhi Police (Punishment & Appeal) Rules, 1980 and gravity of their misconduct I, M.M. Tiwari, Deputy Commissioner of Police, Ist Bn. DAP, Delhi do hereby award the punishment of dismissal upon ASI Dalip Pawar No. 1049/Crime (PIS No.28750181) and Const. Yogender Kumar No. 188/DRP, 274/DRP now 316/DAP (PIS No. 28980907) from the service of Delhi Police with immediate effect. Their suspension period from 27.02.2006 to 16.07.2012 is also decided as period not spent on duty for all intents & purposes."

The appeal filed by the applicant was dismissed vide order dated 04.03.2013 by the appellate authority. The applicant has challenged the amendment to Rule 11(1) of the Delhi Police (Punishment & Appeal) Rules, 1980. A Co-ordinate Bench of this Tribunal in the case of HC Khushi Ram Vs. Govt. of NCTD and Others (OA 2446/2013) upheld the constitutional validity of the amended Rule 11(1) of the Rules. In another order dated 13.11.2018 in the case of ASI Tej Singh Vs. Govt. of NCTD and Others (OA 2930/2013) we have also held that there is no infirmity in amendment of Rule 11 (1) of the said Rules.

4. The counsel for the applicant vehemently and strenuously submitted that having held the departmental enquiry and imposed the penalty of withholding next increment for a period of five years vide order dated 11.03.2011 on the same set of facts which were considered in the criminal case, the respondents are prevented from imposing the penalty of dismissal after the conviction in the criminal case. The impugned punishment order of dismissal amounts to double jeopardy and violative of Article 20 (2) of the Constitution of India.

5. The counsel for the respondents equally vehemently submitted that the imposition of penalty of dismissal by the impugned order dated 28.08.2012 does not amounts to double jeopardy and that has been passed under Rule 11(1) of the Delhi Police (Punishment and Appeal) Rules, 1980, she has submitted that the respondents have rightly exercised their power under rule 11(1) and that from the perusal of the said provisions it is crystal clear that there is no bar under Rule 11(1) regarding passing of dismissal order after the conviction in a criminal case particularly if moral turpitude of a police official of a subordinate rank is involved and the disciplinary authority is of the opinion that the retention of the convicted police official in service prima facie not desirable without calling upon him to show cause against the proposed action. The said Rule 11(1) is extracted below:-

Rule 11 "(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."

6. The counsel for the respondents submitted that the applicant is not prosecuted and punished twice. Unless the applicant is prosecuted and as a consequence of that prosecution punished once and thereafter if he was sought to be prosecuted once over again on the same set of facts and as a consequence of second prosecution if he sought to be punished once over again then only he can seek the protection of Article 20(2) of the Constitution. In view of the facts narrated above, the applicant is not prosecuted twice as stated above. The relevant portion of the Article 20 (2) of the Constitution of India is extracted below:-

"20. Protection in respect of conviction of offences:-

(1) xx xx

(2) No person shall be prosecuted and punished for the same offence more than once."

The counsel for the respondents further submitted that the applicant has not challenged the above said Rule 11 (1). The respondents have exercised the obligation enjoined upon them under Rule 11 (1) and as such the applicant cannot challenge the impugned order so long as the Rule 11 (1) is existing.

7. In view of the facts and circumstances and analysis made above, we are of the opinion that the impugned orders cannot be interfered with.

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