
(2018) 11 CAT CK 0104

In the Central Administrative Tribunal

Case No : Original Application No. 2930 Of 2013

ASI Tej Singh

APPELLANT

Vs

Govt. Of NCTD Through And Ors

RESPONDENT

Date of Decision : 13-11-2018

Acts Referred:

Prevention Of Corruption Act, 1988 — Section 7, 13, 13(2), 13(1)(d)
Delhi Police Act, 1978 — Section 147, 148
Code Of Criminal Procedure, 1973 — Section 428
Delhi Police (Punishment And Appeal) Rules, 2011 — Rule 11, 11(1)
Delhi Police (Punishment And Appeal) Rules, 1980 — Rule 16, 18

Citation : (2018) 11 CAT CK 0104

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

Bench : Division Bench

Advocate : Sachin Chauhan, P.K.Gupta

Final Decision : Dismissed

Judgement

S.N. Terdal, J

1. Heard Mr. Sachin Chauhan, counsel for applicant and Mrs. P.K. Gupta, counsel for respondents, perused the pleadings and all the documents produced by both the parties.

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

"(i) To quash and set aside the impugned order dated 3.10.12 whereby the major punishment of dismissal from service is imposed upon the applicant at A-1 and order dated 24.5.13 whereby the appeal of the applicant has been rejected by Appellate Authority at A-2 and to further direct the respondent that applicant be 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 and Appeal) Rules 2011 amended vide notification dated 30.11.2011.

(iii) Any further 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 while the applicant was working as Assistant Sub Inspector, a criminal case was filed in FIR vide RC No. 16(A)/2009 dated 24.2.2009 under Section 7/13 of the Prevention of Corruption Act (POC Act), CBI. ACB, New Delhi. He was placed under suspension vide order dated 25.02.2009. The Hon'ble Court of Shri Dharmesh Sharma, Special Judge-03, CBI New Delhi District vide his judgment dated 22.08.2012 found the applicant guilty for the charge levelled against him and convicted him and sentenced, with the following punishment:-

"(a) Rigorous imprisonment for a period of four years u/s Section 7 of PC Act and also pay a fine of Rs. 25,000/- in default to further undergo RI for a period of six months.

(b) RI for a period of four years u/s 13(2) r/w 13(1)(d) of PC Act and also pay fine of Rs. 25,000/- in default to further undergo RI for a period of six months. Both sentences shall run concurrently.

(c) Convict the applicant remained in Judicial custody w.e.f. 25.2.2009 to 16.4.2009 and benefit u/s 428 Cr. PC for the period he remained in judicial custody shall be given to the convict."

4. The applicant filed criminal appeal No. 1138/2012 against the said conviction and sentence before the Hon'ble High Court of Delhi, which is pending as on today. However, the sentence imposed on the applicant has been suspended vide order dated 27.11.2012.

5. The respondents vide order dated 27.10.2009, initiated departmental enquiry against the applicant. The disciplinary authority after considering the facts established before the criminal court found that applicant committed the gravest act of misconduct and his continued retention in Delhi Police is not warranted in public interest. The disciplinary authority after considering the above facts, vide Annexure A-1 order dated 03.10.2012 imposed the punishment of dismissal on the applicant, in exercise of its powers conferred under Rule 11(1) of the Delhi Police (Punishment & Appeal) (Amendment) Rules, 2011. The appeal preferred by the applicant against the said order was also dismissed by the Appellate Authority vide its Annexure A-2 dated 24.05.2013.

6. Shri Sachin Chauhan, the learned counsel appearing for the applicant, while admitting that the applicant's conviction under Sections 7/13 of POC Act is still subsisting, though the sentence was suspended in view of the pendency of the criminal appeal No.1138/2012, even as on today, however, submits that the action of the respondents in initiating and imposing the punishment of dismissal, when the criminal appeal against the conviction is pending, is bad, illegal and against the Delhi Police (Punishment & Appeal) Rules, 1980.

7. The learned counsel further submits that at the first instance he is challenging

Rule 11(1) of the Delhi Police (Punishment & Appeal) Rules, 2011, as amended vide Notification dated 30.11.2011. If the said prayer is accepted, the impugned dismissal order should also be quashed as the same was passed by invoking power under Rule 11(1) of the Rules as amended. Even if the said prayer is not accepted also, the initiation of disciplinary proceedings and imposition of the punishment of dismissal is liable to be quashed for the other grounds raised by him.

8. The original Rule 11 of the Delhi Police (Punishment & Appeal) Rules, 1980, before the impugned amendment, reads as under:-

"11. Punishment on judicial convicted. - (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 provided that no such order shall be passed till such time 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".

9. The respondents vide Notification dated 30.11.2011 amended the aforesaid Rule 11 and thereby deleted last part of Rule 11, i.e., "provided that no such order shall be passed till such time result of the first appeal that may have been filed by such police officer is known". The learned counsel for the applicant submits that impugned Notification was issued in exercise of the powers conferred under Section 147 of the Delhi Police Act, 1978. i.e., the power conferring on the Administrator to make rules for carrying out the purposes of the Act, but Section 148 of the Act prescribes that every rule and regulation made under the Act shall be made by Notification in the Official Gazette and the same shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session and both the Houses should agree to the said

rule, as per the procedure envisaged therein. The learned counsel submits that since the impugned Notification was not yet agreed by both the Houses of Parliament till date, the said Notification has no force and that the respondents cannot invoke the same and accordingly the impugned dismissal order passed by invoking the said Notification which did not come into force, is without power and jurisdiction and accordingly liable to be quashed.

10. The learned counsel further submits that Rule 11(1) empowers the respondents to either dismiss or remove a subordinate rank officer, if he was convicted in a criminal court for an offence involving moral turpitude, after issuing show cause notice, even as per the impugned Annexure Notification, i.e., after amendment of Rule 11. Rule 11(3) provides that 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. Accordingly, he submits that if the respondents wants to dismiss a subordinate rank officer, who was convicted in a criminal case, they can do so under Rule 11(1) after issuing a show cause notice, but once they initiated departmental action, they cannot dismiss or remove an employee on the ground of his conviction. The respondents having chosen not to dismiss or remove the applicant exclusively on the basis of his conviction, and having initiated the disciplinary proceedings against him, cannot dismiss him from service under Rule 11(3).

11. Ms. Sumedha Sharma, the learned counsel appearing for the respondents submits that the said Notification was laid before the Parliament during the Parliament Sessions of July and August, 2014 and though not yet been approved but it cannot be said that it will not come into effect till the approval of the Parliament. The learned counsel further submits that once the Notification is issued amending any rule by the competent authority, the same comes into effect from the date of publication of the same in the Official Gazette. Unless the Parliament refuse to agree or modify the same, it cannot be said that the notified amendment has no force.

12. The learned counsel further submits that the respondents are empowered to take appropriate action for proved misconduct on any of its officers under various rules of the Delhi Police (Punishment & Appeal) Rules, 1980. The learned counsel further submits that once the applicant was imposed with the penalty of dismissal after following due procedure contemplated under Rule 16 read with Rule 18 and eventually after considering the fact of conviction of the applicant by competent criminal court, this Tribunal cannot interfere with the same, in exercise of its power of judicial review. The learned counsel further submitted that the impugned order was not passed solely on the fact of conviction of the applicant, it is only one of the factors considered by the Disciplinary Authority while imposing the punishment.

13. We also agree with the submission made by the learned counsel for the respondents that Rule 11 does not take away the power of the respondents

under the other rules. Hence, there is no need to go into the question whether the impugned amendment came into force or not as it is found that the respondents were empowered to pass the dismissal order under the other rules applicable to the applicant and that there is no violation in invoking the said rules. Indeed the question that is urged in this case has already been decided by a co-ordinate Bench of this Tribunal in the case of HC Khushi Ram Vs. Govt. of NCTD through the Commissioner of Police and Ors (OA 2446/2013) and we do not find any ground to differ.

14. In the circumstances and for the aforesaid reasons, we do not find any merit in the OA and accordingly the same is dismissed. No costs.