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**(2000) 09 AHC CK 0110**  
**In the Allahabad High Court**  
**Case No : C.M.W.P. No. 513 of 1998**

Constable Firoz Khan

APPELLANT

Vs

Inspector General of Police, Bareilly and others

RESPONDENT

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**Date of Decision :** 13-09-2000

**Acts Referred:**

Constitution of India, 1950 — Article 311, 311(2)  
Penal Code, 1860 (IPC) — Section 323, 452, 504, 506

**Citation :** (2000) 4 AWC 2954 : (2000) 87 FLR 452 : (2000) 3 UPLBEC 2456

**Hon'ble Judges :** A.K. Yog, J

**Bench :** Single Bench

**Advocate :** Raj Kumar Khanna, for the Appellant;

**Final Decision :** Allowed

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## Judgement

A. K. Yog, J.—All the respondents are represented by the standing counsel and writ petition can be disposed of finally as the time likely for final hearing of the case will be the same as or deciding "stay application" ; I propose to decide the writ petition finally as contemplated under Chapter XXII of the Rules of Court.

2. No counter-affidavit has been filed by the respondents in spite of several opportunities being given by the Court.

3. On perusing the petition and the documents annexed therewith, it is apparent that the facts stated in the petition are matter of record.

4. Heard learned counsel for the petitioner and the learned standing counsel.

5. Petitioner was employed as constable in the Department of Police. U. P. Government. At the relevant time, he was serving as constable (No. 88] ever since, he was appointed in the year 1968. He completed 28 years of his service with unblemished record as stated in (paras 4 and 5 of the writ petition).

6. According to the petitioner, there was some dispute with his landlord about residential accommodation in his tenancy and a Crime Case No. 346 of 1989

under Sections 323, 452, 504 and 506, I.P.C. was registered against him or) the basis of the first information report lodged at the police station, Civil Lines, district Moradabad on 9.3.1989. Petitioner alleges that the said first information report was lodged by the landlord to implicate him falsely out of enmity.

7. In the aforesaid crime case, the IVth Additional Chief Judicial Magistrate, Moradabad found him guilty of committing offence u/s 323, I.P.C., imposed fine of Rs. 250 and in case of failure to deposit the same within the stipulated period he had to serve one week's rigorous imprisonment. He was found not guilty of other offence. In appeal, the 1st Additional District and Sessions Judge, dismissed the appeal vide judgment and order dated 7.3.1995 and confirmed the judgment of the Additional Chief Judicial Magistrate. Petitioner preferred Criminal Revision No. 1330 of 1995 before this Court which has been admitted on October 20, 1995 and pending (para 8 of the writ petition).

8. It is contended that the impugned order of termination (Annexure-1 to the writ petition) suffers from manifest illegality as the same has been passed without notice and without affording opportunity of hearing (para 9 of the writ petition).

9. Perusal of the impugned order dated 3.6.1996 passed by the Superintendent of Police, Rampur indicates that the said authority had imposed punishment of termination of service on the basis of Government Order dated October 12, 1979, which according to the impugned order in question, permits termination in case of a Government employee being found guilty of criminal offence by a criminal court, without waiting for final decision in appeal. No other reason or circumstance has been disclosed therein. Assuming the Government Order dated October 12, 1979 permits dismissal/termination of a Government employee without waiting for final decision of appeal (if Government employee is convicted by a trial court), the impugned order does not disclose that such a termination can be passed without complying with the requirement of procedure like giving notice and opportunity under Article 311(2), Constitution of India or as contained in relevant service rules. Against aforesaid impugned order dated 3.6.1996, appeal preferred by the petitioner was dismissed vide impugned order dated 28.4.1997 (Annexure-3 to the writ petition) passed by the Deputy Inspector General of Police, Moradabad Zone, Moradabad.

10. The appellate authority also failed to refer to the specific pleas raised by the petitioner in his defence in the memorandum of appeal. Review petition has also been dismissed vide his order dated 28.11.1997 (Annexure-4 to the writ petition). The said order is far from being satisfactory as it does not disclose the details of the rulings cited before it.

11. Learned counsel for the petitioner has placed reliance on the decisions in the following cases :

(i) State of Uttar Pradesh through Director N.C.C. v. Sri Sadanand Misra and another 1984 (2) LCD 294 (Paragraphs 3 and 4). In the said case, learned single

Judge while dealing with requirement of Article 311 of the Constitution of India in which case a Government employee being terminated from service having been punished by a criminal court, held that an enquiry under clause (a) of Article 311(2) may not be held when order of removal from service is passed on the ground of conduct which has led to conviction on a criminal charge, but the enquiry is not dispensed with where the order is based merely on the conviction recorded by the criminal court. The Court observed that when removal from service on the ground of conduct which has led to his conviction on a criminal charge but on the ground of conviction itself. In my opinion, therefore, the inquiry which the principles of natural Justice require to be held could not be dispensed with.

(ii) *Dost Mohammad v. Union of India*. 1980 ACJ 270 (DB) para (9). In the aforesaid case, a Division Bench of this Court observed "a perusal of the impugned order clearly shows that the disciplinary authority did not apply his mind objectively to the question as to whether the conduct which led to the petitioner's conviction was sufficient to impose the penalty against him and if at all, what penalty should be imposed on him. It appears that the disciplinary authority mechanically exercised its power under Rule 19 to remove the petitioner from service merely because the petitioner had been convicted of a criminal offence u/s 323. I.P.C. In our opinion, the disciplinary authority acted in violation of the principles of natural justice as well as in excess of his jurisdiction. The appellate authority also acted in the same manner and it failed to apply its mind to the question raised by the petitioner in appeal.

12. In view of the above, the impugned order dated 28.11.1997 is set aside and the matter is remanded back to the appellate authority (respondent No. 1) to decide the appeal afresh in the light of the observations made above within three months of the receipt of a certified copy of this Judgment provided it is filed within two months from today. It is made clear that the appellate authority shall decide the appeal without being prejudiced or influenced" by any of the observations made in this judgment particularly and in accordance with material before him and in accordance with law.

13. Writ petition is allowed and the case is remanded back to respondent No. 1 appellate authority for deciding appeal in accordance with law.