
(2018) 09 CAT CK 0129

In the Central Administrative Tribunal

Case No : Original Application No. 2446 Of 2013

HC Khushi Ram

APPELLANT

Vs

Govt Of NCTD And Ors

RESPONDENT

Date of Decision : 13-09-2018

Acts Referred:

Prevention Of Corruption Act, 1988 — Section 7, 13
Delhi Police Act, 1978 — Section 147

Citation : (2018) 09 CAT CK 0129

Hon'ble Judges : V. Ajay Kumar, J;A.K. Bishnoi, Member (A)

Bench : Division Bench

Advocate : Sachin Chauhan, Sumedha Sharma

Final Decision : Dismissed

Judgement

V. Ajay Kumar, J

1. The applicant, a Head Constable in the respondent-Delhi Police, filed the OA seeking the following reliefs:-

"(i) To quash and set aside the impugned order dated 30.11.2012 whereby the major punishment of dismissal from service is imposed upon the applicant at A-2 and order dated 27.05.2013 whereby the appeal of the applicant has been rejected by Appellate Authority at A-3 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) To quash and set aside the order of initiation of DE dated 06.07.2011.

(iv) To quash and set aside the finding of Enquiry Officer.

(vi) To quash and set aside the summary of allegation.

(vii) Any other relief which this Hon'ble Court deems fit and proper may also be awarded to the applicant".

2. The brief facts, as narrated in the OA, are that while the applicant was working as Head Constable, a criminal case in FIR No.4/2000 under Section 7/13 of the Prevention of Corruption Act (POC Act in short), 1988 was registered against him at PS AC Branch, Delhi. He was placed under suspension vide order dated 11.02.2000. The Hon'ble Court of Shri A.S. Yadav, Special Judge, Delhi, vide his judgment dated 07.09.2009 found the applicant guilty for the charges levelled against him and convicted him and sentenced, with the following punishment:-

"(A) RI for a period of two years & a fine of Rs.10,000/- u/s 7 of POC Act 1988 and in default of payment convict shall undergo SI for a period of four months.

(B) Convict is further sentenced to undergo RI for a period of two years & fine of Rs.10,000/- u/s 13 (2) of the POC Act, and in default of payment of fine, convict shall further undergo SI for a period of four months".

3. The applicant filed criminal appeal No.720/99 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.

4. The respondents vide Annexure A-1 order dated 06.07.2011, initiated departmental enquiry against the applicant. In pursuance of the same, a departmental enquiry was conducted and the Inquiry Officer vide his Annexure A-4 findings dated 11.09.2012, which were communicated to the applicant on 11.09.2012, held that the charge levelled against the applicant is found fully proved. The Disciplinary Authority, after considering the representation of the applicant, vide Annexure A-2 order dated 30.11.2012 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-3 order dated 27.05.2013.

5. Heard Shri Sachin Chauhan, learned counsel for the applicant and Ms. Sumedha Sharma, learned counsel for the respondents and perused the pleadings on record.

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.720/99, 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 their Annexure A-4A 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 Annexure A-4A 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 Annexure A-4A 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 Annexure A-4A 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 A-4A 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 want 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 Annexure A-4A 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. Rule 11 is an additional power of the authorities and hence it cannot be said that if the respondents have chosen not to invoke power under Rule 11, cannot punish erring officials after following due procedure under other rules. 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.

13. It is the settled principle of law that once a power is vested with the authority to take a particular action and once the said power is exercised after

following due procedure and after providing due opportunity to the concerned employee, wrong mentioning or non-mentioning of a particular provision, does not vitiate the order passed by the authority.

14. It is not in dispute that the respondents followed the due procedure of conducting the regular departmental enquiry against the applicant and basing on the findings of the Inquiry Officer, they have passed the impugned order of dismissal from service on the applicant. 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.

15. 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 Annexure A-4A 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. In this view of the matter, the challenge to the Annexure A-4A Notification will be academic only, which we are not proposing to undertake in the present case.

16. 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.

17. Original record submitted by the respondents shall be returned.