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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **W.P.(C) 4085/2015**

Date of Judgment : 13.08.2015

COMMISSIONER OF POLICE

..... Petitioner

Through : Mr. Santosh Kumar Tripathi, ASC for
GNCTD.

Versus

RAM KISHAN

..... Respondent

Through : Mr. Anil Singhal, Advocate.

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

G.S.SISTANI, J. (ORAL)

1. The petitioner has filed the present petition under Articles 226 & 227 of the Constitution of India for quashing the order dated 18.02.2015 passed by the Central Administrative Tribunal.
2. The respondent herein was posted at the PCR Van. He was placed under suspension on the ground that he had kept a forged log-book for his private motorcycle and procured petrol from Delhi Police Petrol Pump located at Shahdara on the basis of which act forged vouchers were repeated 8 to 9 times. A criminal case was registered against him under Sections 420/411 of the Indian Penal Code vide FIR No. 348/96 dated 16.07.1996 at Police Station – Shahdara, Delhi. Simultaneously, a regular departmental enquiry was also initiated against the respondent by an order dated 12.08.1996. The proceedings initiated against the respondent culminated with an order no. 19486-510/HAP (P-II)/PCR dated 25.09.1998 passed by the

disciplinary authority imposing upon him the penalty of withholding of next increment for a period of two years with cumulative effect. Also, the period during which the applicant remained under suspension was treated as not spent on duty. In the criminal case, the learned trial court found the respondent guilty and sentenced him to Rigorous Imprisonment for three years each for the offence under Section 411 of the Indian Penal Code as well as Section 420 of the Indian Penal Code as also a fine of Rs. 5,000/- for offence under Section 420 of the Indian Penal Code. In the event of default in payment of fine, he was to undergo further Simple Imprisonment for six months. The appeal preferred by the applicant against the order of the learned trial court was partially allowed to the extent that the respondent was found guilty for the offence under Section 411 of the Indian Penal Code and was let off with the imprisonment already undergone with fine of Rs. 5,000/- and Simple Imprisonment of two months in the event of default in payment of the fine. For the offence under Section 420 of the Indian Penal, the penalty was reduced to that of imprisonment already undergone and fine of Rs. 10,000/- with further Simple Imprisonment for four months in the event of non payment of fine. Subsequent to the passing of the order of learned trial court, the disciplinary authority passed office order no. 3299-3367/HAP/SED (P-1) dated 16.05.2012 dismissing the respondent from service. An appeal preferred against the penalty order was rejected vide office order no. 4504-08/SO/SER (AC-II) on 06.12.2012 and corrigendum no. 4621-25/SO/SER (AC-II) dated 17.12.2012. The respondent filed an OA which was allowed by the Central

Administrative Tribunal.

3. The learned counsel for the petitioner submits that the Central Administrative Tribunal has failed to appreciate that Rule 11 (1) of the Delhi Police (Punishment and Appeal) Rules, 1980 (hereinafter referred to as Rule 11) would come into play only after the passing of the judgment by the learned trial court.
4. It is also contended that merely because the petitioner had imposed upon the respondent withholding of next increment for a period of two years with cumulative effect would not debar the petitioner under Rule 11 (1) of the Delhi Police (Punishment and Appeal) Rules, 1980 to take further action against the petitioner after the passing of the order by the criminal court.
5. Counsel contends that once the respondent was convicted, Rule 11 (1) empowered the petitioner to impose such punishment as provided.
6. The present petition is opposed by the counsel for the respondent. Learned counsel for the respondent submits that the respondent cannot be punished twice by the petitioners. At the first instance, the petitioner conducted a departmental enquiry on the same very charge and imposed upon him the penalty of withholding of next increment for a period of two years with cumulative effect. Counsel further contends that at this stage, after a gap of 14 years it was not open for the petitioner to impose a second punishment on an identical charge.
7. We have heard the learned counsel for the parties.
8. Since the arguments of the counsel for both the parties revolve around Rule 11 (1) of the Delhi Police (Punishment and Appeal) Rules, 1980, we deem it appropriate to reproduce the same.

"Rule 11.Punishment on judicial conviction : -

(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 the 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. A reading of this rule would show that this would come into play after a report is received that a person stands convicted in a criminal court

for 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 the offence is such as would render further retention of the convicted police officer in service, prima facie undesirable, it may, make an order dismissing or removing him from service. A copy of the order dated 25.09.1998 has been placed on record which would show that on the same very charge an enquiry was conducted and punishment imposed upon the respondent. No new fact has come to the light which was either not available or not within the knowledge of the petitioner or which the petitioner only learnt after the passing of the order of conviction.

10. What is not understandable is if at the time when the departmental enquiry was conducted, the department did not consider it appropriate to dismiss the respondent or remove him from service or did not consider his conduct to be such which would be prima facie undesirable and the petitioner decided upon inquiry to punish the respondent by withholding of next increment for a period of two years with cumulative effect, how can a second punishment of dismissal be awarded.
11. In our view Rule 11 (1) would come into play in two circumstances. Firstly, if no departmental proceedings had been initiated against the respondent prior to the conviction order and an order of conviction against him has been received, the petitioner would have been well within his right to invoke the provisions of Rule 11 (1). Secondly, when the nature of charge formulated against the respondent at the

first instance was of a lesser degree during the departmental enquiry and thereafter a charge was framed by the criminal court at a later stage. Rule 11 would still have been available for the petitioner as new facts would have come to light and new grounds which were not available with the petitioner when the departmental enquiry was conducted.

12. In this case, since the departmental enquiry was held on an identical charge which was formulated by the learned trial court, the petitioner having exercised his option by holding a departmental enquiry and awarding a punishment to the petitioner without waiting for the decision in the criminal trial cannot be permitted to award two punishments for the same offence.
13. In the concluding Para of the judgment of the Central Administrative Tribunal, it has been held as under :

“5. In view of the aforementioned, following the view taken by the Hon’ble High Court of Judicature at Madras, we quash the impugned penalty order. Nevertheless, in the wake of the conviction of the applicant in the criminal case and dismissal of his appeal (ibid), the disciplinary authority would review the penalty order No. 19486-510/HAP (P-II)/PCR dated 25.09.1998 within four weeks from the date of receipt of a copy of this order and in the event of review of aforementioned order, the disciplinary authority arrive at a conclusion that the applicant deserves to be dismissed from service, fresh review order will have the same effect as penalty order no. 3299-3367/HAP/SED/P-1 dated 16.05.2012. In other words, applicant would be treated dismissed from service w.e.f. the date of impugned order i.e. the dismissal order, assailed herein.”

14. We find no infirmity in the order of the Central Administrative Tribunal which would require interference. The petition is without any merit and the same is accordingly dismissed.

G.S.SISTANI, J

SANGITA DHINGRA SEHGAL, J

AUGUST 13, 2015/sc