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\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ W.P.(C) 1333/2014, CM No.2772/2014

GOVERNMENT OF NCT OF DELHI

..... Petitioner

Through: Mr. Santosh Kumar Tripathi, ASC.

versus

SURESH KUMAR

..... Respondent

Through: None.

**CORAM:**

**HON'BLE MR. JUSTICE SANJIV KHANNA**

**HON'BLE MR. JUSTICE NAJMI WAZIRI**

**ORDER**

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**16.03.2016**

In spite of second call, there is no appearance on behalf of the respondent.

The issue in question is covered by the Full Bench decision of this Court in WP(C) No.1956/2013, *The Commissioner of Police and Ors. v. Sukhbir Singh* decided on 6<sup>th</sup> January, 2014.

In these circumstances, we take up the matter for final hearing and disposal.

The respondent, Mr. Suresh Kumar was a constable in Delhi Police. FIR No.243/2002 under Sections 302/207/216/34 of the Indian Penal Code and 25/54/59 of the Arms Act was registered at Police Station Sampla, District Rohtak, Haryana against him and he was arrested. Consequently, he was placed under suspension vide order dated 29<sup>th</sup> August, 2002.

By judgment dated 6.7.2006, Suresh Kumar was convicted in the aforesaid case for murder under Section 302 IPC and under Section 25 (1-B) of the Arms Act. He has been sentenced to life imprisonment and fine of Rs.1,000/- for the offence punishable under Section 302 IPC and rigorous imprisonment for a period of two years under Section 25 (1-B) of the Arms Act.

By the order dated 6.12.2006, under Article 311 (2) (a) of the Constitution of India, the respondent was dismissed from service. This order refers to the conviction of the respondent by the Sessions Court, Rohtak, Haryana in the aforesaid criminal prosecution arising out of FIR No.243/2002 and that the respondent had filed a criminal appeal which was pending before the Punjab and Haryana High Court. Reference was made to the judgment of the Supreme Court in Civil Appeal No.2492/1995, **Deputy Commissioner of Collegiate Education v. Nagoor Meera** that notwithstanding pendency of an appeal in such cases, what is relevant is the conduct which had led to conviction and the criminal charge. Equally, it would not matter if bail or order of suspense of sentence has been passed.

The Disciplinary Authority in the present case has dealt with and considered the findings and facts against the respondent in the case in which he was convicted and observed that the acts committed were gravest acts of misconduct and indiscipline. The respondent was involved and convicted for heinous crimes that would not justify his continuation in the police force.

This order was made subject matter of challenge before the Additional Commissioner of Police but the appeal was dismissed vide

order dated 28.7.2011. Thereupon, the respondent had filed OA No.4220/2011 which stands allowed by the impugned order dated 9.5.2013 on the ground that Rule 11 (i) of Delhi Police (Punishment & Appeal) Rules, 1980 would prevail over Article 311 (2) (a) of the Constitution. Reliance was placed on the judgment of the Delhi High Court in WP(C) No.1044/2008, ***Commissioner of Police v. Brij Pal Singh***, 155 (2008) DLT 115 (DB).

The Full Bench of this Court in ***Sukhbir Singh (supra)***, had referred to Article 311 (2) (a) and Rule 11 (i) of the Delhi Police (Punishment & Appeal Rules), 1980 and held that the expression “*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*” in Rule 11(i) was directory and to this extent judgment of the Division Bench in ***Brij Pal Singh (supra)*** was overruled. The Full Bench judgment extensively quotes from the Constitution Bench decision of the Supreme Court in ***Union of India v. Tulsi Ram Patel***, AIR 1985, SC 1416 and holds that the Rules framed by the President or the Governor of a State must conform to the provisions of the Constitution and Article 309 is subject to Article 310(1). It also refers to the expression “*this clause shall not apply*” in the second proviso to Article 311(2) of the Constitution which is mandatory and not directory, because of the express language of the second proviso. Thus, there was no escape from it and the proviso is inevitable. The said proviso was inserted as a matter of public policy and in public interest and for public good. Article 309 opens with the words “*subject to the provisions of this Constitution*” which implies that the

Rules framed under Article 309 must be subject to the provisions of the Constitution and therefore the Rules must be in consonance with Article 310 (1) and Article 311.

In view of the aforesaid legal position, the writ petition is allowed and impugned order passed by the Tribunal dated 9.5.2013 allowing OA No.4220/2011 and quashing the order of dismissal from service passed by the Disciplinary Authority dated 6.12.2006 and the Appellate Authority's order dated 8.10.2010, is set aside. The orders of the Disciplinary Authority dated 6.12.2006 and the Appellate Authority dated 8.10.2010 are upheld. In the facts of the case, there will be no orders as to costs.

**SANJIV KHANNA, J**

**NAJMI WAZIRI, J**

**MARCH 16, 2016/ak**

**At 2:15 P.M.**

At this stage, Mr. Anil Singal, Advocate has appeared for the respondent and he has been apprised of the order passed today.

**SANJIV KHANNA, J**

**NAJMI WAZIRI, J**

**MARCH 16, 2016/ak**

