

IN THE HIGH COURT OF DELHI AT NEW DELHI

SUBJECT : SERVICE MATTER

Writ Petition (Civil) No.1044 of 2008 and other
connected matters.

Judgment reserved on: November 3, 2008

Judgment delivered on: December 4, 2008

Commissioner of Police
Police Headquarter
ITO, New Delhi.

...Petitioner

Through Mr. P.P. Malhotra, ASG with
Mr. Vivek Tandon, Mr. Ajesh Luthra,
Ms. Manpreet Kaur and Mr. Chetan
Chawla, Advs.

Versus

Shri Brij Pal Singh
S/o Shri Shyam Singh
Government Quarter No.C-10
Shalimar Bagh
Delhi.

....Respondent

Through Mr. Naresh Kaushik with
Mr. M.K. Bhardwaj, Advs.

Coram:

HON'BLE MR. JUSTICE MADAN B. LOKUR
HON'BLE MR. JUSTICE SURESH KAIT

MADAN B. LOKUR, J.

The only issue that we are required to consider is whether, notwithstanding the proviso to Rule 11(1) of the Delhi Police (Punishment and Appeal) Rules, 1980 (for short the Rules) a police officer can be dismissed or removed from service during the pendency of a first appeal against an order of conviction and sentence.

2. With the consent of learned counsel for the parties, we heard submissions on this issue arising out of O.A. No.544/2006 decided by the Central Administrative Tribunal, Principal Bench, New Delhi on 9th March, 2007 in a batch of connected original applications. It was agreed that WP(C) No.1044/2008 be treated as the main case.

3. For facility of reference Rule 11(1) of the Rules and its proviso read as follows:- “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.” (Emphasis supplied)

4. The broad facts in all these cases are not in dispute. Suffice it to say, in WP(C) No.1044/2008, the Respondent was convicted of an offence under Section 7 read with Section 13 of the Prevention of Corruption Act, 1988. The conviction was handed down on 11th December, 2002 and he was sentenced to undergo two years simple imprisonment and a fine of Rs.2000/- . In default of payment of fine, he was to undergo simple imprisonment for a further period of two months. The sentence was awarded on 16th December, 2002.

5. Against the conviction and sentence, the Respondent filed an appeal in this Court being Crl.A. No.995/2002 and by an order dated 10th November, 2003 the sentence was suspended. The appeal is still pending disposal.

6. On 9th December, 2005, the Petitioner issued a circular pursuant to a decision rendered by the Supreme Court in Deputy Director of Collegiate Education (Administration), Madras v. S. Nagoor Meera, 1995 (3) SCC 377. The essence of the circular is that in view of the judgment of the Supreme Court, orders could be passed dismissing or removing a convicted police officer under Clause (a) of the second proviso to Article 311(2) of the Constitution during the pendency of his first appeal against the order of conviction and sentence. The circular provides that an order passed under Clause (a) of the second proviso to Article 311(2) of the Constitution is not barred, merely because the sentence is suspended by the appellate Court or the convict has been released on bail. In view of this, the disciplinary authority was required to take action under the Constitution in appropriate cases. This circular was issued in supersession of an earlier circular dated 6th January, 1994.

7. For facility of reference the circular dated 9th December, 2005 reads as follows:- “The Constitution of India provides [Article 311 (2) (a)] that a Government servant can be dismissed/removed from service or reduced in rank on the ground of conduct which has led to this conviction on a criminal charge. On the other hand, section 11(1) of the Delhi Police (Punishment and Appeal) Rules provides that action to dismiss/remove etc. of police officers on conviction in a criminal case can only be taken after the result of the first appeal is known. In a Civil Appeal No.2992 of 1995 (arising out of S.L.P. (C) No.684 of 1995) “ Deputy Director of Collegiate Education (Administration), Madras Vs. S. Nagoor Meera, the Hon”ble Supreme Court has observed that what is relevant for clause (a) of second proviso to Article 311(2) is the “conduct which has led to the conviction on a criminal charge”. The apex Court has observed that even if an Appellate Court suspended the order there can be “no question of suspending the conduct”. It has categorically stated that passing such orders under Article 311(2) (a) are not barred merely because the sentence has been suspended by the Appellate Court and/or the said Government servant/accused has been released on bail. The provisions of the Constitution of India and observations of the Hon”ble Supreme Court should definitely prevail over the provisions of the Delhi Police (Punishment and Appeal) Rules. Further as the Hon”ble Apex Court has pointed out, action under Clause (a) of the second proviso to Article 311(2) focuses of the conduct leading to the conviction. The Hon”ble Apex Court has in fact specifically observed that the clause does “not speak of sentence or punishment awarded”. Section 11(1) of the Delhi Police (punishment and appeal) Rules are, on the other hand, conviction based. In

view of this, disciplinary authorities should take action under the Constitution of India in appropriate cases. This circular supersedes the earlier circular issued by this Hdqrs. No.479- 510/CR-I, PHQ dated 6-1-1994.”

8. It is significant to note that the above circular correctly appreciates the decision rendered by the Supreme Court. However, it completely overlooks the proviso to Rule 11(1) of the Rules which specifically states that an order dismissing or removing a police officer from service, as a result of his conviction, shall not be passed till such time “the result of the first appeal that may have been filed by such police officer is known”. This is where lies the nub of the controversy.

9. Apparently acting in pursuance of the above circular the Petitioner passed an order on 8th February, 2006 dismissing the Respondent from service in exercise of powers conferred by Clause (a) of the second proviso to Article 311(2) of the Constitution. Similar orders of dismissal/removal were passed in respect of all other Respondents in this batch of writ petitions. The Tribunal noted that except in the case of some Respondents, the dismissal/removal orders were not given effect to because of the intervention of the Tribunal but in other cases the dismissal/removal orders were given effect to and a departmental appeal/revision is stated to have been filed against those orders.

10. After hearing learned counsel for the parties, the Tribunal concluded that the decision rendered by the Supreme Court in S. Nagoor Meera was not at all applicable to the facts of the case. The basic reason given by the Tribunal for coming to this conclusion is that S. Nagoor Meera did not consider a statutory bar, such as the one that exists in the proviso to Rule 11(1) of the Rules. Therefore, the Tribunal endorsed the earlier view taken by the Petitioner in this regard as contained in the circular dated 6th January, 1994 (since superseded by the circular dated 9th December, 2005). The text of the circular dated 6th January, 1994 reads as follows:- “Instances have come to notice where disciplinary authorities have dismissed under Article 311(2)(a) of the Constitution those police personnel who have been convicted by a court of law, without awaiting result of the pending appeal in a higher court. This act contravenes Rule 11 of Delhi Police (Punishment and Appeal) Rules, 1980 and also renders the department liable to unnecessary and avoidable litigation in court. Keeping spirit of Rule 11 in view it is advised

that action under Article 311(2) (a) may not be taken where the first appeal of the convicted police personnel is pending in the appellate court.”

11. In this view of the matter, the Tribunal held that all the applicants before it (the Respondents before us) would be deemed as continuing under suspension all throughout. This would, of course, exclude those applicants who are actually undergoing imprisonment. With this direction, all the original applications were disposed of in favour of the applicants (now Respondents before us).

12. It is against this common order passed by the Tribunal that the Petitioner is now before us under Article 226 of the Constitution.

13. It is submitted by the learned Additional Solicitor General that the proviso to Rule 11(1) has to be interpreted “harmoniously”. His submission appears to be that since Clause (a) of the second proviso to Article 311(2) of the Constitution permits dismissal or removal of a convicted police officer, it is permissible for the Petitioner to invoke the constitutional power to dismiss or remove the Respondent. To this limited extent, the submission of the learned Additional Solicitor General is acceptable but unfortunately for him, in this case there is a proviso to Rule 11(1) of the Rules which has to be contended with.

14. On a plain reading of the proviso to Rule 11(1) of the Rules, it is quite clear that it puts a fetter, for the benefit of a convicted police officer, on the exercise of the constitutional power of dismissal or removal without an inquiry. However, the restriction is limited to a situation where a first appeal is filed by the police officer against his conviction and sentence. In such an event, a reasonable restriction is statutorily placed upon the exercise of its constitutional power by the Petitioner to dismiss or remove without an inquiry. Consequently, the Petitioner will have to await the “result” of the first appeal. On a plain reading of the proviso, we see no reason to deny to a convicted police officer the full amplitude of the benefit statutorily conferred upon him.

15. In this connection, it would be worth referring to *J.K. Industries v. Chief Inspector of Factories and Boilers*, (1996) 6 SCC 665 wherein the Supreme Court has explained the purpose of a proviso in the following words: “34. A proviso qualifies the generality of the main enactment by providing an exception and taking out from the main provision, a portion, which, but for

the proviso would be a part of the main provision. A proviso must, therefore, be considered in relation to the principal matter to which it stands as a proviso. A proviso should not be read as if providing something by way of addition to the main provision which is foreign to the main provision itself.” Clearly, the proviso to Rule 11(1) of the Rules carves out an exception to the main section, which permits the summary dismissal or removal of a convicted police officer. The portion carved out is for the benefit of the convicted police officer, and however much learned Additional Solicitor General may protest and complain about it, we have to give the proviso its plain meaning and full play, as long as it exists on the statute book.

16. Learned Additional Solicitor General then contended that “the result of the first appeal” should be read down to mean an interim order of suspension of sentence or grant of bail to the convicted police officer by the appellate Court. In other words, it was contended that the Petitioner does not have to await the “final result” of the first appeal. We are unable to appreciate this artificial dichotomy sought to be created. An interim order passed in a first appeal cannot, by any stretch of imagination, be said to be “the result of the first appeal”. Moreover, the contention of the learned Additional Solicitor General would compel us to read words into the proviso which are not there and which is, even otherwise, impermissible in law. The expression “the result of the first appeal” can only have its natural meaning, which is with reference to the disposal of the appeal and nothing short of it. In fact, this is precisely the interpretation given by the Petitioner itself to the proviso to Rule 11(1) of the Rules in the circular dated 6th January, 1994.

17. The interpretation sought to be canvassed by the learned Additional Solicitor General would, even otherwise, lead to an absurd situation. Effectively, the result of accepting the argument is that a convicted police officer cannot be dismissed or removed from service until his interim application is decided. Thereafter, if the interim application is decided in his favour and the conviction or sentence is suspended, then he can be dismissed or removed from service! The contention advanced is stated only to be summarily rejected.

18. The decision of the Supreme Court in *S. Nagoor Meera* does not change the legal position at all, at least in so far as the Delhi Police (Punishment and Appeal) Rules, 1980 are concerned. That decision was rendered by the Supreme Court while interpreting the Tamil Nadu Civil Services (Classification, Control and Appeal) Rules. There is nothing in the decision

of the Supreme Court to suggest, nor has anything been pointed out to us, that a beneficial proviso such as one contained in Rule 11(1) of the Delhi Police (Punishment and Appeal) Rules, 1980 even exists or was even considered. There is, therefore, a world of difference between the Rules dealt with by the Supreme Court and the Rules that we are concerned with. In the face of the proviso to Rule 11(1) of the Rules, it is not possible to say that pending “the result of the first appeal” means that the Petitioner can remove or dismiss a police officer, at any time even while the first appeal against the conviction and sentence is pending.

19. Learned Additional Solicitor General then posed the question: What is the Petitioner expected to do until the decision is rendered in the first appeal” In our opinion, the Petitioner is at liberty to take either of the three steps: (i) take back the police officer in service (which is wholly unlikely and purely hypothetical); (ii) it can treat the police officer as being under suspension, which was his status during the pendency of the criminal trial; or (iii) it can initiate departmental action against the convicted police officer under Rule 11(3) of the Rules. The Tribunal has directed the Petitioner to exercise the second option, namely, to treat all the convicted police officers as being under suspension other than those who are actually undergoing imprisonment. We are of the opinion that this direction is perfectly reasonable and continues the status quo that existed during the pendency of the criminal trial. Of course, this cannot and does not prohibit the Petitioner from simultaneously initiating departmental action under Rule 11(3) of the Rules.

20. There are, therefore, two viable options that the Petitioner may resort to and it is not as if dismissal or removal of the convicted police officer is the only remedy that is available to the Petitioner, more particularly in the face of the proviso to Rule 11(1) of the Rules.

21. We may note that the Petitioner is not entirely helpless as is sought to be projected by the learned Additional Solicitor General. There is a gap period between the date of the sentence and the filing of the first appeal. While we do not express any opinion in this regard, it may be possible for the Petitioner (in an appropriate case) to use this gap period to pass an order of dismissal or removal from service by exercising powers under Clause (a) of the second proviso to Article 311(2) of the Constitution. But, if this gap period is not made use of by the Petitioner then, it will have to await the decision of the first appeal filed by the convicted police officer by the

appellate Court. An escape valve has been provided by the statute, but we do not express any opinion at all about its utility, since that question does not arise for our consideration.

22. To sum up, on a plain reading of the proviso to Rule 11(1) of the Rules, we find no error having been committed by the Tribunal in taking the view that it did.

23. We find the impugned order to be perfectly justified. We accordingly dismiss the writ petition and all other connected writ petitions. Each Respondent will be entitled to costs of Rs. 1,000/-.

Sd/-
MADAN B. LOKUR, J

Sd/-
SURESH KAIT, J