



* IN THE HIGH COURT OF DELHI AT NEW DELHI

Reserved on: 16.12.2025
Pronounced on: 07.01.2026

+ W.P.(C) 9147/2018
 ASHOK KUMAR

.....Petitioner

Through: Mr.M. Bhardwaj, Ms.Priyanka
 M. Bhardwaj, Mr.Praveen
 Kumar Kaushik, Advs.

versus

COMMISSIONER OF POLICE AND ORS.Respondents

Through: Mr.Syed Abdul Haseeb, CGSC
 with Mr.Tanveer Zaki and
 Mr.Amir Kha, Advs.

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

HON'BLE MS. JUSTICE MADHU JAIN

J U D G M E N T

NAVIN CHAWLA, J.

1. This petition has been filed, challenging the Order dated 19.12.2017 passed by the learned Central Administrative Tribunal, Principal Bench, New Delhi (hereinafter referred to as, the 'Tribunal') in O.A. No. 4265/2014, titled *Ashok Kumar (Ex-Constable) v. Commissioner of Police & Ors.*, whereby the said O.A. filed by the petitioner herein was dismissed.

FACTS OF THE CASE:

2. To give a brief background of the facts in which the present petition arises, the petitioner faced a criminal prosecution in FIR No.146/1994, registered at Police Station Mehrauli, New Delhi, under Sections 307 and 324 read with Section 34 of the Indian Penal Code,



1860 (in short, 'IPC'), in relation to an incident which took place on 11.06.1994.

3. On the registration of the above FIR, the petitioner was placed under suspension *vide* order dated 15.06.1994, and was later reinstated in service *vide* order dated 25.03.1996.

4. He was convicted in the said criminal case by an order dated 16.02.2006 passed by the learned Additional Sessions Judge, New Delhi. He was sentenced to undergo rigorous imprisonment for seven years and to pay a fine of Rs.1000/- for commission of the offence punishable under Section 307 of the IPC, and in default of payment of fine, to undergo simple imprisonment for two months. He was further sentenced to undergo rigorous imprisonment for five years and to pay a fine of Rs.1,000/- for the commission of the offence under Section 326 of the IPC, and in default of payment of fine, to undergo simple imprisonment for two months.

5. Aggrieved by the said conviction order, the petitioner filed an appeal, being Criminal Appeal No. 123/2006, against his conviction and sentence.

6. Upon his conviction, a departmental inquiry was initiated against him *vide* order dated 01.08.2009, under the provision of the Delhi Police (Punishment and Appeal) Rules, 1980 (in short, 'Delhi Police Rules') on the allegation that while posted at Police Station Naraina, he was convicted in a criminal case and was sentenced to undergo imprisonment, and he had thus failed to maintain his conduct and integrity as a member of a disciplined Force like Delhi Police.



7. The Enquiry Officer found the petitioner guilty of the charges, and by an order dated 01.10.2013, the petitioner was visited with the punishment of forfeiture of four years of approved service permanently, entailing proportionate reduction in his pay. This punishment was subject to the decision of the Appellate Court in the appeal filed by him against the conviction order in the aforementioned criminal case. Further, the period of suspension of the petitioner, that is from 15.06.1994 to 24.03.1996, was also directed to be treated as period not spent on duty for all intents and purposes and which may not be regularized in any manner.

8. In the appeal filed by the petitioner against his conviction and sentence, being Criminal Appeal No.123/2006, this Court, by its Order dated 05.03.2014, while maintaining the conviction of the petitioner under Section 326 of the IPC, reduced the sentenced by observing as under:

“22. The nominal roll of the appellant shows that he has suffered incarceration of 7 months. Keeping in view the fact that the offence relates to the year 1994 i.e. almost two decades old, the appellant having no other criminal background; having suffered agony of trial for almost 20 years and the appellant also not having abused the process of bail since his release; his conduct in jail also being satisfactory during the period when he was incarcerated, it would be in the fitness of the things to modify the sentence. Accordingly while sustaining the conviction of the appellant under Section 326 of the IPC, he is sentenced to undergo RI for a period of 1 year. The fine of Rs.1000/- imposed under Section 326 of the IPC by the Sessions Judge shall remain unaltered. Bail bonds of the appellant



are cancelled. Surety discharged. The appellant be taken into custody to serve his remaining sentence.”

9. Therefore, the sentence of the petitioner for conviction under Section 326 of the IPC was reduced from seven years to one year and his conviction under Section 307 of the IPC was set aside.

10. In spite of the above relief being granted to the petitioner in his Criminal Appeal, the Disciplinary Authority, by invoking Rule 11(1) of the Delhi Police Rules, *vide* order dated 03.04.2014, directed removal of the petitioner from service with effect from the date of his conviction, that is, 05.03.2014. The appeal filed by the petitioner against this order of the Disciplinary Authority was also dismissed by the Appellate Authority *vide* an order dated 26.08.2014, on the ground that the appeal was barred by limitation.

11. Aggrieved by the said orders of the Disciplinary and Appellate Authority, the petitioner filed the above O.A. before the learned Tribunal.

12. The learned Tribunal dismissed the said O.A. filed by the petitioner, by observing a under:

“6. In the instant case, as already noted, the applicant had preferred Criminal Appeal before the Hon'ble High Court of Delhi against the judgment of conviction and order of sentence passed by the learned Additional Sessions Judge. In view of the provisions contained in Rule 11(1) of the Delhi Police (Punishment & Appeal) Rules, 1980, an order either removing or dismissing the applicant from service consequent to the judgment of conviction and sentence passed by the learned Additional Sessions Judge could not have been



passed under Rule 11(1) of the Delhi Police (Punishment & Appeal) Rules, 1980, till such time the result of the Criminal Appeal filed by the applicant was known to the Disciplinary Authority. But considering the nature and gravity of the offence, the Disciplinary Authority decided to take departmental action by initiating regular departmental proceedings against the applicant under Rule 11(3) of the Delhi Police (Punishment & Appeal) Rules, 1980 and imposed upon applicant the punishment of "forfeiture of four years of approved service permanently" during pendency of the Criminal Appeal filed by the applicant before the Hon'ble High Court. When the conviction of the applicant under Section 326 IPC was upheld by the Hon'ble High Court of Delhi in the Criminal Appeal filed by the applicant, the Disciplinary Authority again considered the nature and gravity of the offence and passed the impugned order of removal from service with effect from 5.3.2014, i.e., the date of judgment passed by the Hon'ble High Court, by invoking the provisions of Rule 11(1) of the Delhi Police (Punishment & Appeal) Rules, 1980. No rule has been brought to our notice by Shri M.K.Bhardwaj, the learned counsel appearing for the applicant, which debars the Disciplinary Authority from exercising the power under Rule 11(1) of the Delhi Police (Punishment & Appeal) Rules, 1980, in view of its having either exercised the power under Rule 11(3) of the Delhi Police (Punishment & Appeal) Rules, 1980 while initiating regular departmental action and imposing upon a convicted police officer the punishment during pendency of the Criminal Appeal filed by him/her. In the above view of the matter, we find no substance in any of the contentions of Shri M.K.Bhardwaj, the learned counsel appearing for the applicant."

13. Challenging the same, the petitioner filed the present petition.

**SUBMISSIONS ON BEHALF OF THE PETITIONER:**

14. The learned counsel for the petitioner submits that the petitioner had already been punished departmentally *vide* the order dated 01.10.2013 passed by the Disciplinary Authority, on the basis of his conviction by the learned Trial Court. Therefore, only on the ground of reduction of his sentence and exoneration from one of the offences in the criminal appeal, the Disciplinary Authority could not revisit the punishment under Rule 11(1) of the Delhi Police Rules. He contends that imposing penalty twice, on the same incident, amounts to double jeopardy.

15. He submits that though the order dated 01.10.2013 had been passed subject to the outcome of the Criminal Appeal filed by the petitioner, the same can only mean that in case the conviction of the petitioner had been set aside in the Criminal Appeal, the punishment awarded to him would also need to be recalled by the Department. It could never mean that even though the sentence of the petitioner is reduced, the petitioner could be visited with an enhanced punishment in the departmental proceedings.

SUBMISSIONS ON BEHALF OF THE RESPONDENTS:

16. On the other hand, the learned counsel for the respondents submits that the order of the Disciplinary Authority dated 01.10.2013, imposing the original punishment on the petitioner, was subject to the outcome of the appeal. Once the conviction under Section 326 of the IPC had been confirmed by the High Court in appeal, the respondents were within their rights, under Rule 11(1) of the Delhi Police Rules, to



initiate departmental inquiry against the petitioner and dismiss him from service.

17. He submits that the principle of double jeopardy has no application in the facts of the present case. In support, he places reliance on the judgment of this Court in *Tariq Ali Khan v. Govt. of NCT of Delhi & Ors.*, 2017:DHC:968-DB.

ANALYSIS AND FINDINGS

18. We have considered the submissions made by the learned counsels for the parties.

19. It is not disputed that the first enquiry proceeding against the petitioner was also on the basis of his conviction in the above criminal case. Having considered the conviction and sentence imposed on the petitioner in the criminal trial, where the petitioner had been found guilty of the offences under Sections 307 and 326 of the IPC, the Disciplinary Authority imposed the punishment of forfeiture of four years of approved service permanently, entailing proportionate reduction in his pay. Though the said order was made subject to the outcome of the Criminal Appeal, which was then pending against the conviction and sentence of the petitioner, it could only mean that in case the petitioner succeeds in the appeal, the punishment imposed on the petitioner would be revisited. It could also mean that in case the High Court found the petitioner guilty of an even more severe offence or enhanced the sentence of the petitioner, the Department may revisit the punishment awarded to him in the departmental proceedings. However, it can never mean that though the petitioner partially



succeeds in his criminal appeal, by having his sentence under Section 307 of the IPC set aside and his sentence under Section 326 of the IPC reduced from five years to one year, the Department can still enhance his punishment in the departmental proceedings and now dismiss him from service.

20. Rule 11(1) of the Delhi Police Rules, which was relied upon for the impugned action by the respondents for enhancing the petitioner's punishment, reads as under:

"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 judiciary



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.”

21. The above Rule provides that where an officer of a subordinate rank has been convicted in a criminal court for an offence involving moral turpitude, or on a 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. Sub-Rule 3 of Rule 11 further 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. Therefore, on conviction of a police officer, it is the discretion of the Disciplinary Authority, on consideration of the facts of the case, to visit such officer with either dismissal or removal from service or take such departmental action against such officer as it may deem appropriate.

22. In the present case, upon conviction of the petitioner under Sections 307 and 326 of the IPC, the Disciplinary Authority exercised such discretion and visited the petitioner with the penalty of forfeiture of four years of approved service permanently, entailing proportionate



reduction in his pay. For the same conviction, the Disciplinary Authority could not revisit its decision only because, in the appeal, the conviction of the petitioner under Section 307 of the IPC was not sustained while his conviction under Section 326 of the IPC was sustained by the High Court. If anything, the nature and gravity of the case against the petitioner was diluted and not aggravated by the decision in the appeal and the sentence of the petitioner had been reduced. Rule 11 of the Delhi Police Rules does not allow the re-opening of the case in such a case where the earlier punishment was also on the basis of the conviction of the delinquent employee.

23. For the reasons stated hereinabove, we are unable to sustain the order of the learned Tribunal and also the order dated 03.04.2014 of the Disciplinary Authority visiting the petitioner with the penalty of removal from service; and the order of the Appellate Authority dated 26.08.2014 dismissing his departmental appeal. The said orders are accordingly set aside.

24. The petitioner shall be entitled to reinstatement in service and all the consequential benefits, which must be released to him within a period of eight weeks from today.

25. The petition is allowed in the above terms. There shall be no order as to costs.

NAVIN CHAWLA, J.

MADHU JAIN, J

JANUARY 7, 2026/Arya/Yg