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

Date of decision: 28.08.2025

\+ W.P.(C) 12527/2023 & CM APPL. 49420/2023, CM APPL. 67577/2024
COMMISSIONER OF POLICE AND ORS

.....Petitioners

Through: Mr.Vikrant N. Goyal, Mr.Prince Balyan & Mr.Kunal Dixit, Advs

versus

RAM KISHAN

.....Respondent

Through: Mr.K.C. Mittal, Mr.Yugansh Mittal & Mr.Keshav Poonia, Advs

CORAM:
HON'BLE MR. JUSTICE NAVIN CHAWLA
HON'BLE MS. JUSTICE MADHU JAIN

NAVIN CHAWLA, J. (ORAL)

1. This petition has been filed, challenging the Order dated 10.03.2023 passed by the learned Central Administrative Tribunal, Principal Bench, New Delhi (hereinafter referred to as the 'Tribunal'), in O.A. No. 1473/2018, titled ***Ram Kishan v. Govt. of NCT of Delhi & Ors.***, disposing of the said O.A. with the following directions:

> *"8. Be that as it may, we are of this considered view that in the present case, the punishment is so strikingly disproportionate as to call for and justify interference in order to meet the end of justice, which is very harsh. Hence, we*

hereby set aside the impugned orders of the disciplinary authority and the appellate authority and remand back the case of the applicant to the concerned authority to re-look the punishment so awarded to the applicant. This exercise shall be completed within a period of 120 days from the date of receipt of a certified copy of this Order."

2. To give a brief background of the facts in which the present petition arises, the respondent was proceeded departmentally by way of an inquiry initiated under the provisions of the Delhi Police (Punishment and Appeal) Rules, 1980 (in short, 'Rules'), *vide* office order No. 11216-29/GAO(P-II)/PCR dated 12.08.1996, on the allegation that he had filled up a form in PCR on 16.07.1996, and was caught by the Shahdara Police while he was getting petrol from the Government Petrol Pump by producing a forged logbook. It was further revealed that he took 13 litres of petrol with forged vouchers for his own private motorcycle on the basis of this forged logbook prepared by him. An FIR, being FIR No. 348, dated 16.07.1996, under Sections 420/468/471 of the Indian Penal Code, 1860 (IPC) was also registered against him at Police Station Shahdara.

3. As far as departmental proceedings are concerned, the respondent was found guilty of charges, and by an order dated 25.09.1998, passed by the disciplinary authority, was visited with the punishment of withholding of the next increment for a period of two years with cumulative effect, and his suspension period was to be treated as not spent on duty.

4. In the meantime, in the criminal proceedings, by an Order dated 26.11.2009 passed by the learned Metropolitan Magistrate, the

respondent was found guilty of charges under Sections 420 and 411 of the IPC, and was awarded a punishment of three years of rigorous imprisonment for each of the offences along with a fine of Rs. 5,000/- for the offence under Section 420 of the IPC. In the appeal filed by him against his conviction and sentence, being Criminal Appeal No. 01/2010, he pleaded guilty, and the learned Additional Sessions Judge, by an Order dated 03.05.2010, observing that the trial had proceeded for 13 long years and the respondent had already been visited with punishment in the departmental proceedings, modified his sentence to the period already undergone, while maintaining the punishment of deposit of fine.

5. In light of the conviction of the respondent, the Disciplinary Authority, invoking Rule 11 of the Rules, by an order dated 16.05.2012, dismissed the respondent from service. The appeal filed by the respondent against the same was also dismissed by the Appellate Authority, *vide* order dated 06.12.2012.

6. Aggrieved thereby, the respondent approached the learned Tribunal by way of O.A. No. 161/2013.

7. The learned Tribunal, by its Order dated 18.02.2015, disposed of the said O.A. with the following directions:

> *"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 copy of this order and in the*

event on review of the aforementioned order, the disciplinary authority arrive at a conclusion that the application deserves to be dismissed from service, fresh review 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."

8. The petitioner challenged the said Order before this Court by way of a Writ Petition, being WP(C) 4085/2015, titled ***Commissioner of Police v. Ram Kishan***, which was dismissed by this Court, *vide* its Judgment dated 13.08.2015, observing as under:-

"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 or 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 Central Administrative Tribunal which would require interference. The petition is without any merit and the same is accordingly dismissed."

9. Complying with the Order of the learned Tribunal, the Disciplinary Authority, *vide* order dated 13.04.2016, now visited the respondent with a punishment of forfeiture of 5 years of approved service permanently, entailing proportionate reduction in pay. The suspension period was decided as a period not spent on duty, and the intervening period, that is, from the date of his dismissal to the date of reinstatement, was decided as a period spent on duty for purposes of seniority, pension, and promotions, but the respondent was held not entitled to draw/claim wages for the said period on the principles of 'no work no pay'.

10. Aggrieved by this order, the respondent filed an appeal to the Appellate Authority.

11. The Appellate Authority instead issued a Show Cause Notice dated 13.10.2016 to the respondent as to why the punishment should not be enhanced, including dismissal from service. The Appellate Authority thereafter, again visited the respondent with a punishment of dismissal from service, *vide* order dated 09.06.2017.

12. The respondent challenged the same before the learned Tribunal by way of the above O.A., which, as noted hereinabove, has been allowed by the learned Tribunal, by observing that the punishment awarded to the respondent is highly disproportionate and directing the petitioner to have a relook at the same.

13. The learned counsel for the petitioner submits that as the respondent had been dismissed from service in terms of Rule 11 of the Rules, the Appellate Authority rightly dismissed the respondent from service; merely because he had earlier been let off by a lighter punishment, cannot act as an estoppel against the petitioner.

14. On the other hand, the learned counsel for the respondent submits that this Court, in its Judgment dated 13.08.2015 in W.P.(C) 4085/2015, had opined that Rule 11 of the Rules does not necessarily entail that on conviction of an employee, he must be dismissed from service. The gravity of the offence and the punishment already awarded to him has to be seen by the Competent Authority. He submits that in the present case, the respondent had been proceeded against on the same charges, both departmentally as also in the criminal proceedings. In the criminal proceedings, he did not

challenge his conviction only because he had, at that time, already suffered his punishment in the departmental inquiry. However, such conviction cannot later be used to enhance his punishment.

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

16. From the above narration of facts, it would be apparent that on the same charges, the respondent has been proceeded against, both departmentally as also in the criminal proceedings. As far as the departmental proceedings are concerned, the same culminated in the order of punishment dated 25.09.1998, awarding punishment of withholding the next increment for two years permanently against the respondent. The said order was not challenged by the respondent. Subsequent thereto, the respondent pleaded guilty in his appeal to the charges in the criminal proceedings, and taking a lenient view and also noting that the respondent had already been punished in the departmental proceedings, the learned Sessions Court reduced his sentence to the period already undergone. We reproduce from the Order of the learned Sessions Court as under:-

> "*In the present case, the appellant has faced the trial for about 13 years. He has also faced departmental inquiry whereby his two increments have been withheld vide order dated 25.9.1989 of Sh. Uday Sahaya the then DCP (PCR). Vide the same order his suspension period w.e.f 16/17.7.96 to 22.5.97 was decided as period not spent on duty.*
>
> *As the appellant is fiat challenging his conviction, so the impugned Judgment on conviction is upheld.*
>
> *So far as the sentence is concerned, in view of the fact that the appellant has faced*

> *trial for 13 years and also faced departmental inquiry whereby he was also punished. The appellant in the present case was convicted by the Ld. Trial Court for the offence punishable under section 411 IPC as the appellant was found in possession of a log book and vouchers which did not belong to him. The appellant was also convicted for cheating the Govt. Department as he had obtained 13 liters of petrol and caused wrongful loss to State exchequer. Therefore, under these circumstances, in my considered view a lienent view can be taken against the conviction point of sentence."*

17. This Court, taking note of the above facts, in its Judgment dated 13.08.2015 passed in WP(C) 4085/2015, had also observed that since the departmental inquiry was held on an identical charge, the petitioner, having exercised its option by holding a departmental inquiry and awarding a punishment to the respondent without awaiting the decision in the criminal trial, cannot be permitted to award two punishments for the same offence. It was held that at the same time, in terms of Rule 11 of the Rules, it would still be available for the petitioner to review its order of punishment on new facts which come to its light and new grounds which were not available with it when the departmental inquiry was conducted against. It was held that, therefore, the Disciplinary as well as the Appellate Authority was to consider if there are some new facts which warrant a harsher punishment to be imposed on the respondent. Once it is seen that the disciplinary inquiry and the criminal charge were the same, and the Disciplinary Authority already having applied its mind to the nature of the punishment to be awarded on that charge, had awarded the same

by its order dated 25.09.1998, whether the mere conviction of the respondent would have warranted a harsher punishment of dismissal from service, had to be considered by the Disciplinary as well as the Appellate Authority.

18. The Disciplinary Authority and the Appellate Authority, at the time of enhancing the punishment of the respondent, however, do not seem to have taken note of the above exposition of law by this Court. The orders were, therefore, rightly set aside by the learned Tribunal and we find no infirmity in the Impugned Order passed by the learned Tribunal.

19. The petition, along with the pending applications, is accordingly dismissed.

NAVIN CHAWLA, J

MADHU JAIN, J

AUGUST 28, 2025/*rv/ik*