

Central Administrative Tribunal
Principal Bench

O.A.NO.596/2002

(J)

Hon'ble Sh. Govindan S. Tampi, Member(A)
Hon'ble Sh. Shanker Raju, Member(J)

New Delhi, this the 23rd day of October, 2002

1. Shri Surender Pal
Constable
No.8949/Delhi Armed Police
VIith Battalion
Police Training School
Malviya Nagar
New Delhi - 17.
2. Shri Rajender Kumar
Constable
No.8979/Delhi Armed Police
VIith Battalion
Police Training School
Malviya Nagar
New Delhi - 17.

.. Applicants

(By Advocate: None)

Vs.

1. Addl. Commissioner of Police
Armed Police, Kingsway Camp
Delhi - 9.
2. Deputy Commissioner of Police
VII BN Delhi Armed Police
Police Training School
Malviya Nagar
Delhi - 17.
3. Shri V.S. Chauhan
Enquiry Officer
VII BN Delhi Armed Police
Police Training School
Malviya Nagar
Delhi - 17.

.. Respondents

(By Advocate: Sh. Harvir Singh)

ORDER (Oral)

By Shri Shanker Raju, M(J):

As none appeared for the applicant even on second call and as the matter has been listed under regular matters, the OA is disposed of in terms of Rule 15 of the Central Administrative Tribunal (Procedure) Rules, 1987 after hearing the arguments of the learned counsel for respondents.

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2. In this OA, applicants have assailed

respondents' order dated 30.4.2001 imposing upon them a major penalty of withholding of next increments for a period of two years with cumulative effect and treating the suspension period as not spent on duty. Applicants have also assailed appellate order dated 19.10.2001 maintaining the punishment.

3. Applicants, who have been posted at TML-7th Bn., DAP as Constable in Delhi Police, have slapped, in drunken condition, one Constable Virender Singh, who made a complaint to SI Jagmal Singh and HC Ajab Singh (Duty Officer); they made a preliminary enquiry and on the basis of report submitted to Inspector Randhir Singh a departmental enquiry was ordered by the Deputy Commissioner of Police on 11.10.2000.

4. Applicants have been served with summary of allegations for the following allegations:

"It is alleged against Const. Satish Kumar No.8284/DAP (PIS No.28880956), Ct. Surender Pal No.8949/DAP (PIS No.28883976) and Ct. Rajinder Kumar No.8979/DAP (PIS No.28891683) that while posted in 7th Bn. DAP, they were performing duty at TML - 7th Bn. DAP in "B" Company from 2 P.M. to 2 P.M. on 7.9.2000. They have slapped one Const. namely, Virender Singh, 8654/DAP as reported by the constable to SI Jagmal Singh and HC Ajab Singh (Duty Officer) while he was on duty rest dated 7.9.2000. All the three Constables were in drunken condition. They were called by SI Jagmal Singh as per direction of Insp. Randhir Singh but they were not found present in the premises of T.M.L. Thus, they were marked absent vide DD No.52 dated 7.9.2000 at T.M.L. so they could not be examined medically. They intentionally slipped away from the premises of TML to avoid medically examination. Const. Satish Kumar, 8284/DAP resumed his duty

vide DD No.14 dated 12.9.2000 after absenting himself for a period of 4 days, 11 hrs. and 55 mts. Consts. Surender Pal, 8949/DAP and Rajender Kumar, 8979/DAP resumed their duty vide DD No.16 dated 8.9.2000 after absenting themselves for a period of 11 hrs. and 25 mts. unauthorisedly & wilfully.

The above act on the part of Const. Satish Kumar No.8284/DAP, Ct. Surender Pal, 8949/DAP & Const. Rajender Kumar, 8979/DAP amounts to grave misconduct, indiscipline which renders them liable to be dealt with departmentally under the provision of rule 6 of the Delhi Police (P&A) Rules, 1980."

5. During the course of the enquiry five PWs were examined and thereafter a charge was framed against the applicants who in defence produced five defence witnesses and thereafter on examinations of witnesses, through his findings the enquiry officer held the charges proved against the applicants in common proceedings.

6. Applicants preferred representations against the findings and on consideration of the same, a major penalty was imposed through a common order on 30.4.2001.

7. Applicants preferred a separate appeals against the order of punishment which were rejected by orders dated 19.10.2001, giving rise to the present OA.

8. In the pleadings the learned counsel for applicants have basically discussed the evidence and the only legal issue which has been raised is that the enquiry has been delayed and could not be completed within six months, which is contrary to the Circular dated 30.8.1971 and Section 42 of the Police Act,

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1861. Applicant has further assailed the proceedings and the orders on the ground that the defence evidence produced has not been taken cognizance of.

9. It is stated that there had been loopholes in the story of prosecution which is full of discrepancy and contradictions. The story of prosecution and the complainant has not been corroborated by independent evidence. As none of the independent witnesses have been examined, to support the version of the complainant. Apart from police officials, the complaint of Constable Virender Singh is found to be false.

10. Malafides also alleged, according to the applicants, as there had been a controversy between Constable Satish Kumar and Constable Virender Singh over the issue of Body Protector and Helmet which were handed over to Constable Virender Singh latter by Constable Satish Kumar to deposit in Makhana but the complainant did not deposit, the aforesaid complaint which has resulted in punishment is a revengeful act of Constable Virender Singh.

11. It is further stated that as none of the officers have found any evidence, i.e., bottle, glass and wine, the charge of consumption of alcohol cannot be sustained.

12. According to the applicants, testimony of PWs clearly established that the applicants were at their houses or in the hospital and 'B' Coy was not on duty and the defaulter Constable were not deployed anywhere.

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13. Respondents' counsel Shri Harvir Singh strongly rebutted the contentions and stated that the enquiry does not suffer from any infirmities. The defence of the applicants was discussed and taken into consideration by the enquiry officer as well as by the disciplinary authority. Moreover, it is stated that the Constable Virender Singh was slapped which has been reported to HC Ajab Singh, Duty Officer and SI Jagmal Singh and the applicants have been called by SI Jagmal Singh as per the directions of the Inspector Randhir Singh but the applicants have already slipped away intentionally from duty place to avoid medical examination and accordingly their absence was marked. The applicants were placed under suspension and on the basis of evidence adduced in the enquiry, they have been rightly held guilty of the charge.

14. Learned counsel for respondents further stated that the disciplinary authority passed the orders after dealing with the contentions of the applicant on the basis of record of the enquiry and the appellate authority has passed a speaking order.

15. It is stated that strict rules of evidence are not applicable in disciplinary proceedings. As per Rule 20 of the Delhi Police (Punishment & Appeal) Rules, 1980 and having some evidence against applicant, this Tribunal cannot reappraise the evidence as the misconduct of the applicant has been proved through the complainant, whose testimony was corroborated by PWs 1, 2, 4 and 5. It is stated that the applicants joined duty on

7.9.2000 at 2.00 PM but was not deployed. Moreover, as per the record of Chitha of TMI as well as statement of CW, HC Bablu Singh, the applicant was present but he was marked absent at 11.05 PM while in a double fall Special Roll Call.

16. As regards written complaint of Shri Virender Singh, the same would be of no help to the applicants. As the conduct of the applicants slipping away from the premises to avoid medical examination has amply proved their misconduct. Though the matter has been reported by Constable Virender Singh to SI Jagmal Singh, and Inspector Randhir Singh called the entire force and found the applicants' absent, marked them absent.

17. In so far as the bias regarding incident of Constable Satish Kumar, no such incident had taken place, as Constable Satish Kumar has nothing brought the facts to the notice of the senior officers.

18. As regards the defence evidence, it is contended that they are relatives and their testimony cannot be relied upon and on clarification they have not been found truthful.

19. We have carefully considered the rival contentions of the parties and perused the material on record. In so far as the legal plea of non-completion of DE within six months is concerned, resort made to Punjab Police Act would be of no avail as after coming into force Delhi Police Act, 1978 and the Delhi Police (Punishment & Appeal) Rules, 1980 and the provisions

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under Punjab Police Act, including the instructions issued are repealed by necessary implications. Accordingly, the instructions of 1971 would not apply. However, we find that the delay which is neither inordinate nor unexplained cannot vitiate the enquiry.

20. In so far as the plea that the defence evidence has not been considered, we have perused the findings of the enquiry officer and find that testimony of defence witnesses along with their clarificatory examination has been amply shown in the findings and while discussing and concluding the charge, the entire defence evidence was taken into consideration by the enquiry officer, as such this contention of the applicants fails.

21. In so far as order passed by the disciplinary authority is concerned, the same is detailed dealing with all the contentions of the applicant including the defence evidence and as the misconduct of the applicants has been amply proved from the evidence recorded in the enquiry and their defence was not found plausible, the punishment was imposed, which cannot be interfered. We are satisfied that the present case is neither a case of 'no evidence' nor 'no misconduct'. Findings arrived at are based on evidence and taking the view of common prudent man, the findings cannot be said to be either perverse or arbitrary. In this view, we are fortified by the decision of the Kuldeep Singh Vs. Union of India, JT 1998(8) SC 603.

22. In so far as the appellate order is concerned, the contentions of the applicants have been meticulously dealt with and also the proportionality of punishment was considered. The order shows application of mind and is reasoned one, does not suffer from any legal infirmity.

23. As regards the plea of the applicants that the testimony of complainant was contradictory and is not corroborated by independent evidence, we are not dealing with a criminal trial or judicial proceedings where the strict rules of evidence are applicable. The rule applicable in disciplinary proceedings is preponderance of probability. On perusal of the evidence, we are satisfied that the prosecution witnesses 1, 2, 4 and 5 have corroborated the version of the complainant and there exists evidence to conclusive points towards the guilt of the applicant. As such the findings arrived by the enquiry officer is detailed, plausible and on the evidence adduced.

24. In so far as the plea that the complainant was biased and in an earlier incident where Body Protector and Helmet were not deposited by the complainant, the same was not established as Constable Satish Kumar had failed to bring the fact to the notice of seniors and as such the aforesaid defence is an after thought.

25. In the result and having regard to the reasons recorded above, and moreover, the contentions put forth in reply by the respondents have not been rebutted in rejoinder, the OA is found bereft of merit and is accordingly dismissed. No costs.

S. Raju
(Shaker Raju)
Member (J)

(Govindaraj S. Tampi)
Member (A)

/rao/