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**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

O.A. No.3264/2002

New Delhi, this the ^{2nd} day of ^{June} May, 2008

**HON'BLE MR. JUSTICE V.K. BALI, CHAIRMAN
HON'BLE MR. L.K.JOSHI, VICE CHAIRMAN (A)**

Surender Kumar
S/o Late Shri Ashutosh Kumar,
R/o 41A/9, Yog Maya Appts.,
Kishan Garh, Vasant Kunj,
New Delhi-110070

....Applicant

(By Advocate: Ms. Anu Mehta)

Versus

1. Commissioner of Police,
I.P. Estate, PHQ,
New Delhi.
2. Additional Commissioner of Police,
PHQ, (PCR & Communication),
I.P. Estate, New Delhi.
3. Deputy Commissioner of Police (Communication),
Old Police Line, Rajpura Raod
New Delhi.Respondents

(By Advocate: Shri Ajesh Luthra)

ORDER

Mr. L.K.Joshi, Vice Chairman (A)

In OA number 3264/2002, **Surender Kumar Vs. Commissioner of Police and others**, a coordinate Bench of this Tribunal dismissed the OA at the threshold on the ground that in the departmental inquiry proof beyond reasonable doubt is not necessary and decision has to be taken on preponderance of probability and the Tribunal could interfere only if the findings were based on 'no evidence'. The Applicant had been awarded the punishment of dismissal by the disciplinary authority. Surender Kumar, who is the Applicant in this OA also approached the Honourable Delhi High Court in Civil Writ Petition No. 767/2003. The Honourable

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Delhi High Court by its order dated 29.02.2008 remitted the matter back to the Tribunal for fresh consideration on merit.

2. The Applicant had joined Delhi Police as Constable in 1979 and at the relevant time he was working as Head Constable (Assistant Wireless Operator). The incident, which led to the institution of departmental inquiry against the Applicant, eventually leading to his dismissal, occurred on 1.03.2001. The Applicant was on duty at the New Friends Colony Police Station on that fateful night. It was alleged that while he was performing duty at Radio Station, New Friends Colony Police Station, he was found under the influence of liquor. On a search being made by Inspector Roop Ram Sharma, two bottles of whisky were found in the drawer of the table where the Applicant was working and one of the bottles was half-filled and another was empty. The Applicant was medically examined by the doctor of AIIMS who opined that smell of alcohol was present in the Applicant's breath. It is also alleged that the Applicant made unnecessary transmission on the wireless set using abusive language on District Net. In spite of instructions from superior officers, he did not cease making such abusive transmissions. A departmental enquiry was initiated on the above allegations by order dated 27.03.2001. The enquiry officer, after examining five witnesses for the prosecution, framed the charge against the Applicant, which was substantially the same as the summary of allegation. One defence witness was examined. The enquiry officer reached the conclusion that the charge of consuming alcohol, making unnecessary transmission on District Net using abusive language, not marking of his duty in SOD and seizing two bottles of whisky from the drawer of the table where the Applicant was working had been fully proved without any shadow of doubt. The disciplinary authority, agreeing with the conclusion of the enquiry officer, found the misconduct to be of very serious nature and inflicted the

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punishment of dismissal from service on the Applicant. The Applicant preferred an appeal against the order of the disciplinary authority, which was rejected. Challenge in this OA is to the orders of the disciplinary authority and the appellate authority.

3. During the course of her submissions, the learned counsel for the Applicant submitted at the outset that it was a case of no evidence. It is argued that the enquiry has not linked the Applicant to the alleged misconduct. The allegation that the Applicant was making unnecessary transmission and using abusive language was allegedly communicated by SI Kedar Singh to SI (Wireless Operator) N. Sarsan who is PW-4 in the enquiry. This has been admitted by the witness (N. Sarsan) in his cross examination that SI Kedar Singh had told him about the Applicant making unnecessary transmission on the wireless set. He has also stated in his cross examination that SI Kedar Singh lodged this information about the Applicant making objectionable transmission in the District Net Log Book. However, he had not been able to give the time of such logging. The learned counsel for the Applicant has forcefully argued that the enquiry officer has made a serious mistake in not examining SI Kedar Singh, who is the only witness who has heard the so-called abusive transmission being made by the Applicant. Moreover, there is no transcript of the transmission available or produced before the enquiry officer and there is no evidence at all about what was objectionable or unnecessary in the transmissions being made by the Applicant. It is further contended that none of the witness examined has seen the Applicant drinking. The bottles, which were allegedly recovered from the drawer of the table, which was being used by the Applicant at the place of work, were never produced and exhibited at the time of enquiry. There is no seizure memo also by which the two bottles of whisky have been seized. PW-2, Inspector Roop Ram Sharma has accepted that when he entered the

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wireless cabin where the Applicant was working, the Applicant was not present in the cabin at that time. The bottles were recovered from the drawers, which were not locked. He did not find any glass or water on the table, which could at least show that someone had been drinking in the cabin. The Applicant was sent to AIIMS for medical check. Inspector Roop Ram Sharma, who allegedly recovered bottles of whisky from the drawer of the table on which the Applicant had been working, has also stated that he did not make any attempt to smell the breath of the Applicant to check whether he was smelling of alcohol. The PW-4, SI N. Sarsan has said in his statement before the enquiry officer that from the transmission being made by the Applicant on the wireless set, he felt that the Applicant was probably drunk. He has also admitted that he did not see the Applicant actually drinking. PW-3 Amit Kumar had taken the Applicant to AIIMS for medical check up. He had submitted an application to the CMO, AIIMS about medical examination of the Applicant. However, it is seen from the report of the doctor that he merely noted on the application of PW-3 that "Smell of Alcohol present." There is no other examination. He (PW-3 Amit Kumar) has also stated in the cross examination that Inspector Roop Ram Sharma brought two quarters of alcohol from the wireless cabin, which he gave to the Duty Officer. He did not know whether these quarters were sealed or not. The learned counsel would contend that no credence can be put on the entire evidence on record about the Applicant being under the influence of alcohol. No one has seen the Applicant consuming alcohol. The bottles of alcohol allegedly recovered from an unlocked drawer of the table in the wireless cabin had never been seized and produced in the enquiry. As to the smell of alcohol, the learned counsel would contend that the Applicant had been consuming Ayurvedic medicines prescribed by the Chief Medical Officer (CMO) of Central Government Health Scheme (CGHS), Ayurvedic

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Dispensary at Kingsway Camp, Delhi. The doctor of the aforesaid dispensary has deposed in the enquiry as DW-1. The Applicant had been prescribed Dashasat medicine containing 18 to 25% of alcohol and Kancasav and Aurjurint containing 7 to 12% of alcohol as per the statement of DW-1. These medicines were prescribed on 20.02.2001 and the Applicant was asked to repeat these when he visited the dispensary on 27.02.2001, 7.03.2001, 13.03.2001 and 4.05.2001. The Applicant was prescribed these medicines for fever, chest pain and cough. PW-5, Dr. G. Rajesh of AIIMS has also accepted that some Ayurvedic medicines have the smell of alcohol. PW-5 has also stated that he did not conduct any check to ascertain whether alcohol was present in the blood, urine or spit of the Applicant. He did not also subject the Applicant to certain exercises to test his gait and balance. The learned counsel has also placed reliance on **Ram Kishan v. Union of India and others**, (1995) 6 SCC 157 and **Sher Bahadur v. Union of India and others**, (2002) 7 SCC 142.

4. The learned counsel for the Respondents contends that the evidence of DW-1, CMO of CGHS dispensary is not credible because it is inconceivable that the treatment for fever, chest pain and cough should continue for three months and the Applicant would have to take the medicines, which had alcoholic content. The argument is that the Applicant should have taken leave during this period if he had continued to be ill for such a long time. It is contended that it is the usual excuse given by the police officials when caught under the influence of alcohol that they have been consuming medicines with high alcoholic content. The learned counsel has contended that in order to curb this tendency, the department had issued a circular on 4.02.1997 that any Delhi Police personnel would not consume any preparations containing alcoholic contents and should it be necessary to do so then prior permission of the Head of Office should be taken in writing. It is argued that the disciplinary authority has also

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considered this in his order that the Applicant had failed to take prior permission for taking such medicines. It is argued, therefore, that the smell of alcohol is because of consumption of whisky by the Applicant and not the medicines.

5. From the consideration of evidence on record, the case against the Applicant seems to be extremely weak. There is no evidence about the Applicant using abusive language in the transmission. SI Kedar Singh who had supposedly heard the transmission and complained to SI N. Sarsan had never been examined. For some reason, SI N. Sarsan also never mentioned to his superior officers that he got the information about the Applicant making abusive transmission from SI Kedar Singh. The two quarters of whisky allegedly recovered from the drawer of the table where the Applicant was working have magically vanished. No prudent person would link the recovery of these bottles on the basis of such tenuous evidence with the charge that the Applicant was drunk or under the influence of alcohol. It is also difficult to disbelieve the statement of CMO that he had prescribed the medicines, which contained alcohol for the preservation of those medicines. The CMO has produced the OPD registration slip also, which is on record. His evidence cannot merely be discounted on the basis of Respondents' argument that it would be inconceivable that such treatment should continue for three months. The argument is misplaced. The remark of Dr. G. Rajesh of AIIMS that smell of alcohol was present also would not prove that the Applicant was under the influence of alcohol.

6. In Sher Bahadur (cited supra), the appellant had been issued a memo of chargesheet alleging that he had secured appointment with the railways by fraudulent means. He was dismissed from service. The appellant, Sher Bahadur had approached the Central Administrative Tribunal, Allahabad Bench which dismissed the application. The appellant

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carried the matter to the Honourable High Court at Allahabad which also dismissed the writ petition on the ground that sufficiency of evidence would not be a ground to challenge the order of the disciplinary authority.

The Honourable Supreme Court, while allowing the appeal of Sher Bahadur with costs, observed thus :

"7. It may be observed that the expression "sufficiency of evidence" postulates existence of some evidence which links the charged officer with the misconduct alleged against him. Evidence, however voluminous it may be, which is neither relevant in a broad sense nor establishes any nexus between the alleged misconduct and the charged officer, is no evidence in law. The mere fact that the enquiry officer has noted in his report, "in view of oral, documentary and circumstantial evidence as adduced in the enquiry", would not in principle satisfy the rule of sufficiency of evidence." (emphasis supplied)

The Honourable Supreme Court further observed that :

"In our view, this is clearly a case of finding the appellant guilty of charge without having any evidence to link the appellant with the alleged misconduct."

In Ram Kishan (cited supra), the official was a Constable in Delhi Police and was charged for using abusive language. He was dismissed after a departmental enquiry. The Central Administrative Tribunal dismissed the OA filed by the charged officer. Thereafter Ram Kishan carried an appeal to the Honourable Supreme Court. The Honourable Supreme Court held as follows :

"11. It is next to be seen whether imposition of the punishment of dismissal from service is proportionate to the gravity of the imputation. When abusive language is used by anybody against a superior, it must be understood in the environment in which that person is situated and the circumstances surrounding the event that led to the use of the abusive language. No strait-jacket formula could be evolved in adjudging whether the abusive language in the given circumstances would warrant dismissal from service. Each case has to be considered on its own facts. What was the nature of the abusive language used by the appellant was not stated.

12. On the facts and circumstances of the case, we are of the considered view that the imposition of punishment of dismissal from service is harsh and disproportionate to the gravity of charge imputed to the delinquent constable. Accordingly, we set aside the dismissal order. We hold that

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imposition of stoppage of two increments with cumulative effect would be an appropriate punishment. So, we direct the disciplinary authority to impose that punishment. However, since the appellant himself is responsible for the initiation of the proceedings, we find that he is not entitled to back wages; but, all other consequential benefits would be available to him."

In **M.V. Bijlani v. Union of India and others**, (2006) 5 SCC 88, the Honourable Supreme Court observed thus :

"25. It is true that the jurisdiction of the court in judicial review is limited. Disciplinary proceedings, however, being quasi-criminal in nature, there should be some evidence to prove the charge. Although the charges in a departmental proceedings are not required to be proved like a criminal trial i.e. beyond all reasonable doubt, we cannot lose sight of the fact that the enquiry officer performs a quasi-judicial function, who upon analysing the documents must arrive at a conclusion that there had been a preponderance of probability to prove the charges on the basis of materials on record. While doing so, he cannot take into consideration any irrelevant fact. He cannot refuse to consider the relevant facts. He cannot shift the burden of proof. He cannot reject the relevant testimony of the witnesses only on the basis of surmises and conjectures. He cannot enquire into the allegations with which the delinquent officer had not been charged with."

7. It is thus clear that there has to be some evidence and some basis of material on record to prove the charge against a delinquent official. Even though the standard of enquiry may not be like in a criminal case where the charge has to be proved beyond reasonable doubt, yet even in a departmental enquiry where on the basis of preponderance of probability a charge can be proved, there has to be some evidence to show that at least there is a preponderance of probability. In the case in hand, the evidence recorded and the inference drawn do not support the allegations against the Applicant. Merely because the Applicant did not take prior permission for taking medicines which had alcoholic content does not lead to the inference that he had consumed liquor. There is no charge against the Applicant that he had not complied with the directions contained in the circular dated 4.02.1997. No prudent person would infer from this that the smell of alcohol has to be because of consumption of liquor.

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8. On the basis of above discussion, we have no doubt that this is a case of 'no evidence'. The OA succeeds and the order dated 14.08.2002 of the disciplinary authority and order dated 31.10.2002 of the appellate authority are quashed and set aside. The Applicant should be reinstated in service forthwith. He would be eligible for all consequential benefits including payment of back wages. The above directions should be complied with within a period of three months from the date of receipt of a certified copy of this order. No costs.



(L.K. Joshi)
Vice Chairman (A)



(V.K. Bali)
Chairman

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