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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

O.A.NO.1380/2001

Friday, this the 11th day of October, 2002

Hon'ble Shri Shanker Raju, Member (J)

ASI Karan Singh s/o Shri Jit Ram
r/o Vill.P.O. Karanola, Delhi-81

..Applicant

(By Advocate: Shri Yogesh Sharma)

VERSUS

1. NCT of Delhi through the Chief Secretary
5, Sham Nath Marg, New Delhi

2. The Commissioner of Police
Police Head Quarter
Near ITO Building, New Delhi

3. Joint Commissioner of Police
Southern Range, Police Head Quarter
New Delhi

4. The Addl. Dy. Commissioner of Police
West Division, Police Head Quarter
Near ITO Building, New Delhi

...Respondents

(By Advocate: Shri Ajay Gupta)

O R D E R (ORAL)

By Shri Shanker Raju, Member(J):

Earlier, this OA was remanded back on the ground that Joint Commissioner of Police is not competent to act as an appellate authority. In view of the decision of the High Court of Delhi, in CWP No.6689/2001 where the matter has been remanded back to the Tribunal after holding that the Joint Commissioner is competent to act both as disciplinary and appellate authority, this matter is being disposed of on merits.

2. Through this OA, applicant impugns' respondents order dated 20.5.2000 imposing upon the applicant a minor penalty of 'censure' as well as order in appeal dated 15.2.2000 upholding the punishment.

-2-

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3. Applicant was posted as Assistant Sub-Inspector in Vigilance Department of West. On an anonymous complaint regarding sale of liquor with the connivance of police officials, an enquiry entrusted to Inspector of Vigilance (West), who submitted his report on the basis of a detailed report submitted by the applicant, wherein sale of liquor was not found to be operated from houses of the persons figured in the complaint.

4. Show cause notice was served upon the applicant for a minor penalty of 'censure' on the ground that as on the basis of the report of applicant that none was found selling liquor but later on, on the basis of a raid on 13.3.2000, liquor was found to be sold resulting the registration of a case under Excise Act. Applicant, according to the respondents, thus submitted a wrong report.

5. Applicant responded to the show cause notice. Disciplinary authority by an order dated 20.5.2000 confirmed the show-cause notice and imposed upon the applicant a minor penalty of censure, finding the explanation unsatisfactory. Appeal preferred against the punishment was rejected by an order dated 15.2.2000, giving rise to the present OA.

6. Learned counsel for applicant, Shri Yogesh Sharma, contended that applicant has been punished, which is not a misconduct as every negligence cannot be treated as a misconduct unless it is culpable. In

27

this regard, he referred to a decision of Apex Court in Union of India v. J.Ahmed, 1979 SCC (L&S) 157. Shri Sharma further stated that on the basis of the complaint he had conducted a detailed enquiry and had not found liquor being sold in any of the places or by any of the persons figured in the complaint. Accordingly on the basis of this report, Inspector (Vigilance) has not substantiated, the anonymous complaint. The subsequent raid, seizure of liquor, would not be sufficient to conclusively prove that the liquor was being sold earlier as at the time when an enquiry was made no liquor was found to be sold from the concerned houses mentioned in the complaint. It is, in this back ground, stated that subsequently isolated incident is not sufficient to judge that the earlier report was wrong, and as the punishment is based on suspicious or surmises, cannot be sustained in the eyes of law.

7. Respondents' counsel, however, denied the contentions and stated that as the disciplinary authority had conducted a raid through Inspector (Special Staff, West) and noticed that liquor being sold, and more particularly on 13.2.2000 on seizure to the liquor, a case was registered. As the explanation of the applicant was not satisfactory, keeping in view of the gravity of misconduct a minor penalty of censure was accorded which was affirmed by the appellate authority. It is also stated that there is no violation of Articles 14 and 16 of the Constitution of India.

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9. I have carefully considered the rival contentions of the parties and perused the material on record. The following observations have been made by the apex Court in J.Ahmed's case supra:

"However, lack of efficiency, failure to attain the highest standard of administrative ability while holding a high post would not themselves constitute misconduct. There may be negligence in performance of duty and a lapse in performance of duty or error of judgment in evaluating the developing situation may be negligence in discharge of duty but would not constitute misconduct unless the consequences directly attributable to negligence would be such as to be irreparable or the resultant damage would be so heavy that the degree of culpability would be very high. An error can be indicative of negligence and the degree of culpability may indicate the grossness of the negligence. Carelessness can often be productive of more harm than deliberate wickedness or malevolence. But in any case, failure to attain the highest standard of efficiency in performance of duty permitting an interference of negligence would not constitute misconduct nor for the purpose of Rule 3 of the Conduct Rules as would indicate lack of devotion to duty."

10. If one has regard to the aforesaid ratio and in the light of the facts and circumstances of the present case, I find that the applicant, who has been entrusted, while working in Vigilance, to conduct a detailed enquiry into the anonymous complaint of alleged sale of liquor in the area, he conducted the same, and found that the complaint is fictitious, and the same is not sustainable. On the basis of this, Inspector Vigilance has not found the allegations ^{correct} ~~made~~, his report was submitted on 3.3.2000.

11. Applicant, who has been alleged to have submitted a wrong report, and the observations of the disciplinary authority that with the connivance of police officials and beat officers cannot be ruled out

-5-

and is solely based on another raid which resulted in registration of a case on 13.3.2000 on seizure of liquor pouches. The fact remains that once when the raid was conducted as the liquor was not being sold, applicant submitted his report and subsequent event when the liquor was found to be sold, with the registration of criminal case, cannot be made basis for conclusively arriving at a finding that the report was wrong. The subsequent seizure of liquor is not an indication that this liquor was being sold earlier as well and the applicant was instrumental in giving a wrong report. It is a cardinal principle of law that only on suspicious and surmises, a person cannot be punished departmentally. The charge against him is to be conclusively established on the basis of the material adduced. If one has regard to this action of the disciplinary authority that the report was wrong and is based on subsequent seizure of the liquor, which to my considered view, cannot be sustained.

12. I have also perused the order of the disciplinary authority where the contentions put forth by the applicant has not at all been considered and rather his explanation was not found satisfactory, the order is absolutely bald, mechanical and does not show due application of mind by the disciplinary authority.

13. In so far as the misconduct is concerned, in view of the decision of the Apex Court in J.Ahmed's case supra where it is held that lack of efficiency and even negligence and lapse would not constitute as a misconduct unless the consequences directly attributable to negligence would be such as to be

32

-6-

irreparable loss to the Government or resultant damage would be so heavy that the the degree of culpability would be very high.

14. If the present conduct of the applicant is viewed in this perspective mere seizure of liquor subsequently after 10 days from the date of submission of the report is not even remotely connected with submission of the earlier report. The aforesaid conduct of submission of a wrong report to my considered view is not even a misconduct in performance of his duties as the applicant has not violated any rules or instructions. The aforesaid report was culminated on the basis of the investigation carried through by the local police and the public and this had been reiterated by the Inspector (Vigilance). The aforesaid report was acted upon by the competent authority and subsequently when the incident had taken place, the entire responsibility has been shouldered upon the applicant by making him a scape goat.

15. Impugned punishment cannot be countenanced in view of the fact that though it is alleged that local police has connived in selling of liquor but a show cause notice issued to other two police officials on their explanation had been vacated. This smacks of arbitrariness and hostile discrimination which in peculiar facts and circumstances of the case, is violative of Articles 14 and 16 of the Constitution of India.

33

-7-

16. I have carefully perused the appellate order where the contentions have been dealt with and find that only because liquor was being found sold in the area, the punishment has been maintained as applicant has failed to find out sale of liquor which in fact was not even a charge alleged against him in show cause notice issued for minor penalty. Appellate authority has travelled beyond the ambit of his jurisdiction and took into reckoning extraneous matters which without putting to the applicant, cannot be legally sustainable.

17. In the result and having regard to the reasons recorded above as we find this a case of no evidence as well as no misconduct the punishment being imposed on merely suspicious and surmises in view of the decision of the Union of India Vs. H.C.Goel, AIR 1964 SC 364, cannot be legally sustained.

18. The OA is allowed. Impugned punishment and the appellate orders are quashed and set-aside, the applicant shall be entitled for consequential benefits. No costs.

S. Raju
(Shanker Raju)
Member (J)

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