

CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH

(2)

O.A. NO. 193/2001

New Delhi this the 24th day of January, 2001.

HON'BLE SHRI JUSTICE ASHOK AGARWAL, CHAIRMAN

HON'BLE SHRI S.A.T.RIZVI, MEMBER (A)

Satya Prakash,  
Ex. Const. No.6316,  
III Bn. DAP, Delhi. ... Applicant

( By Shri K.N.Tripathi, Advocate )

-versus-

1. Deputy Commissioner of Police,  
III Bn. DAP, Delhi.
2. Addl. Commissioner of Police,  
Armed Police, Delhi.
3. Commissioner of Police,  
Police Headquarters,  
I.P.Estate, New Delhi. ... Respondents

O R D E R (ORAL)

Shri Justice Ashok Agarwal :

Disciplinary proceedings were conducted against the applicant who was at the material time a Constable (Driver) in Delhi Police on the following allegations:

"....that on 11-12-98 the defaulter Ct.(Dvr.) was required for duty at 6.30 A.M. but the defaulter Ct.(Dvr.) reported for duty under the influence of liquor and he misbehaved with MT staff, III Bn. DAP. The defaulter Ct.(Dvr.) was sent to D.D.U. Hospital for medical examination where the Doctor opined vide M.L.C. No.D-115822 that "Pt. consumed alcohol but not under influence at present."

*M.J.*

2. As many as six prosecution witnesses were examined by the enquiry officer, who by his report of 17.4.1999 has found the aforesaid charge duly proved. The disciplinary authority by his order of 5.7.1999

has accepted the aforesaid finding of the enquiry officer and has proceeded to impose a penalty of dismissal from service. Aforesaid order of the disciplinary authority was carried in appeal by the applicant. The appellate authority by his order of 22.5.2000 has affirmed the finding of guilt but has proceeded to impose a lesser punishment of removal from service. Aforesaid orders are impugned in the present OA.

3. Shri Tripathi, the learned advocate appearing in support of the OA, has first urged that no opportunity was afforded to the applicant to cross examine the prosecution witnesses examined in the enquiry. We have perused the report of the enquiry officer and we note that at the end of examination in chief of each prosecution witness, the enquiry officer has noted, "Despite opportunity given to the delinquent he did not cross the PW." In addition, while discussing the prosecution evidence, the enquiry officer has observed as follows :

"In the D.E. total 6 P.Ws. were examined and all deposed in support of the charge. The delinquent deliberately did not cross any P.W. despite opportunity given to him. He has also not submitted his defense statement, therefore there is nothing on file worth discussion. Hence the charge is squarely proved against him..."

  
3. As far as the appellate authority is concerned, he has also observed :

"....The appellant was afforded sufficient opportunity to defend his case

(A)

and submit his written representation against the findings of the E.O., but he did not do so due to the reasons best known to him."

Aforesaid contention that he was not given an opportunity to cross examine the prosecution witnesses does not even appear to have been taken before the appellate authority. In the circumstances, it is difficult to subscribe to the said contention ~~without~~ <sup>in the absence of</sup> there being any material on record to support the same. Aforesaid contention, in the circumstances, is rejected.

4. Shri Tripathi has next contended that the <sup>evidence</sup> material on record does not justify the inference that the applicant had consumed alcohol and had misbehaved with the MT staff. As far as applicant having consumed alcohol is concerned, we have on record the opinion of the medical officer of D.D.U. Hospital that "Pt. consumed alcohol but not under influence at present." That apart, we have on record the evidence of several prosecution witnesses who have deposed about the applicant having misbehaved under the influence of alcohol. Aforesaid contention is, in the circumstances, also rejected.

5. Shri Tripathi has lastly contended that the penalty of removal from service is disproportionately harsh and the same is not commensurate with the misconduct found proved against the applicant. As far as this contention is concerned, the same has merely to be mentioned for the purpose of being rejected.

*M.J.*

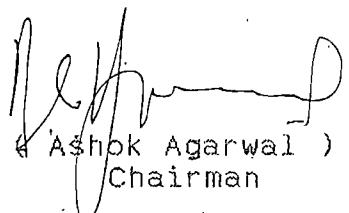
(S)

The disciplinary authority has found that the applicant had earlier been punished on three different occasions. In one case a penalty of reduction in pay by two stages was imposed; in another a penalty of censure, and in the third a penalty of dismissal had been imposed upon the applicant. Applicant had continued in service on account of the appellate authority having modified the penalty of dismissal to one of forfeiture of two years approved service for a period of two years. This is the past record of the applicant. Having been found under influence of liquor at 6.30 in the morning and having misbehaved with the MT staff is grave enough a misconduct to justify an order of removal from service. In our view, if at all the appellate authority has erred, it has erred on the side of leniency. Had we been the appellate authority, we would have most certainly upheld the order of dismissal. In the circumstances, the present contention is also rejected.

6. No other contention has been advanced in support of the OA, which is accordingly summarily dismissed.



( S.A.T. Rizvi )  
Member (A)



( Ashok Agarwal )  
Chairman

/as/