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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI.

O.A.No.2009/2001 ^{21st May 2002} Date of Decision:

Sh. Suresh Chandra Applicant
(By Advocate Sh. S.C. Saxena)


Versus

Govt. of NCT Delhi & Ors. Respondents
(By Advocate Sh. Ajay Gupta)

Coram:

The Hon'ble Dr. A. Vedavalli, Member(J) -
The Hon'ble Sh. Govindan S. Tampi, Member(A)

1. To be referred to the Reporter or not? yes
2. Whether it needs to be circulated to other Benches of the Tribunal? —


(Dr. A. Vedavalli)
Member(J)

CENTRAL ADMINISTRATIVE TRIBUNAL

PRINCIPAL BENCH, NEW DELHI.

OA-2009/2001

New Delhi this the 21st day of May, 2002.

Hon'ble Dr. A. Vedavalli, Member(J)
Hon'ble Sh. Govindan S. Tampi, Member(A)

Sh. Suresh Chandra,
Ex-Head Constable (Delhi Police),
S/o Sh. Musaddi Lal,
Masjid Mohalla, Near Old Subzi Mandi,
Bahadur Garh Distt. Jhajjar,
Haryana. Applicant

(through Sh. S.C. Saxena, Advocate)

Versus

1. Govt. of NCT Delhi through
Chief Secretary,
Delhi Administration,
Players Building,
I.P. Estate, ITO,
New Delhi.
2. The Commissioner of Police,
Police Headquarters,
MSO Building,
I.P. Estate,
ITO, New Delhi.
3. Addl. Commissioner of Police,
Police Headquarters,
MSO Building, IP Estate,
ITO, New Delhi.
4. Dy. Commissioner of Police,
Police Headquarters,
MSO Building,
I.P. Estate,
ITO, New Delhi. Respondents.

(through Sh. Ajay Gupta, Advocate)

ORDER

Hon'ble Dr. A. Vedavalli, Member(J)

The applicant Suresh Chandra, an ex-Head Constable of Delhi Police, is aggrieved by his removal from service. He has impugned in this OA (i) the order of the Disciplinary Authority dated 24.05.1999 imposing

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the penalty of removal from service (Annexure-A), and (ii) the order of the Appellate Authority dated 17.11.1999 rejecting his appeal against the said Disciplinary Authority's order (Annexure-B).

2. Facts of this case briefly are as under:-

The applicant while posted as Head Constable in Police Station Punjabi Bagh, West District, New Delhi on the night of 28.9.1991 received a PCR call vide DD No.59-B at 9.00 P.M. marked to him stating that a tanker No. MMS 3445 was lying abandoned at Shivaji Park, Rohtak Road. He went to the said park and seized the tanker. It was deposited in the Police Station Punjabi Bagh at 2.00 A.M. on 29.9.1991 vide DD No. 71-B. One Sh. N.R. Gupta, supervisor of the owner of the tanker, and SI Satish Sharma of Police Station Kirti Nagar went to the Police Station Punjabi Bagh on 29.9.1991 at 9.00 A.M. to take possession of the tanker stating that it was required by Police Station Kirti Nagar in FIR No. 309/91 u/s 407 IPC registered with that Police Station. The said individuals alleged that the seal of the tanker was broken and some of the chemical was lying on the ground. The matter was entrusted to Sh. Ajay Kumar, Assistant Commissioner of Police for investigation. He submitted a preliminary enquiry report on 29.9.1991. A FIR No. 472/91 for cognizable offence u/s 379, 411, 409 and 34 of IPC was lodged against the applicant as co accused (Annexure-P) and criminal proceedings were initiated against the applicant in the court of ACMM Delhi.

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Thereafter a regular departmental enquiry was also initiated against the applicant. A departmental enquiry was conducted by the enquiry officer. 6 prosecution witnesses were examined and their statements were recorded. The applicant was given an opportunity to cross examine the said witnesses. Thereafter the enquiry officer prepared a charge as under:-

"I Insp. Rajinder Pal, charge you H.C. Suresh Chand, 78/PCR that on 28.9.91 at 9.00 A.M. a PCR call vide DD No.59-B P.S. P. Bagh was marked to you and you went to the spot and seized the tanker. At the same time S.I. Satish Sharma of P.S. Kirti Nagar alongwith the owner of the tanker which was wanted in case FIR No.309-91 U/S 409 IPC P.S. Kirti Nagar. Thus he should be given the possession of the tanker but H.C. Suresh Chand refused to do so and deposited the same tanker vide DD No. 71-B, U/S 66 D.P. Act. The complainant Sh. N.R. Gupta and S.I. Satish Kumar checked the seal which was intact.

Next morning the complainant alongwith S.I. Satish Sharma reached the P.S. P. Bagh and found the seal of tanker removed. On enquiry it has been found that the seal of the tanker was broken and apparently the tanker was not kept under safe possession by the H.C. Suresh Chand, 89/W.

The above act on the part of you H.C. Suresh Chand, 89/W to gross misconduct, callousness, negligence and dereliction in the discharge of your official duties, unbecoming of a police officer for which you are liable to be punished U/s 21 of D.P. Act. 1978."

The above charge was got approved on 30.10.1998 and was served upon the applicant on



3.11.1998. The applicant as per the enquiry officer's report in reply stated that he does not wish to produce any defence witnesses and submitted his defence statement. The gist of the defence statement as given in the said report of the enquiry officer is as under:-

" H.C. Suresh Chand has mainly stated in his defence statement that he was detailed as Night Emergency Officer from 8 P.M. to 8 A.M. during the night of 28/29.9.91. P.C.R. call regarding abandoned tanker was received at P.S. vide D.D. No.59-B dated 28.9.91 and was entrusted to him. He had taken into possession the said tanker at about 2 a.m. in the night of 28/29.9.98 u/s 66 D.P. Act and there was smell of chemical coming out of tanker. He further stated that he was not present at P.S. P.Bagh from 8.20 P.M. to 2 A.M. on the night of 28/29.9.91 which is evident from the above said D.Ds and as such S.I. Satish Sharma of P.S. K. Nagar did not meet him. He also stated that complainant may not ring up at No.100 when the case was already registered at P.S. P. Bagh. Besides Driver & Cleaner of tanker have not been arrested in case FIR No.309/91 P.S. K. Nagar and declared P.O. SHO/P.Bagh with connivance of A.S.I. Mange Ram had stolen the chemical and sold through Mr. Rishi. ASI suicide himself after the registration of case."

The conclusion/finding of the Enquiry Officer is as under:-

"I have carefully gone through the statements of P.Ws, charge & defence statement. All the P.Ws. have supported the prosecution story. H.C. Suresh Chand tried to rebut the charge in his defence statement mainly on the grounds that he was not present at P.S. P. Bagh from 8.20 A.M. to 2 A.M. on the night of 28/29.9.98 which is evident from the D.Ds. entrusted to him. This contention has no force as the S.I. Satish Sharma (P.S.2) & Sh. N.R. Gupta (PW-1) has clearly deposed before the E.O. that they had meet H.C. Suresh Chand who refused to

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give possession of tanker then and there. The other P.Ws have also stated that H.C. did not act upon the advise of his senior officers."

In view of the above discussion, I am of the considered opinion that the charge against H.C. Suresh Chand, No.89/W stands fully proved."

A copy of the Enquiry officer's report was served upon the applicant on 2.4.1999. He submitted his written representation on 16.4.1999. He was called and heard in OR by the Disciplinary Authority. The said authority held that the charge against the applicant was fully proved and passed the first impugned order dated 24.05.1999 (Annexure-A) removing the applicant from service with immediate effect. His suspension period from 30.9.1991 to 11.3.1993 was decided as period not spent on duty. The applicant submitted an appeal dated 21.6.1999 (Annexure-E) to the Appellate Authority against the said penalty order passed by the Disciplinary Authority. The said appeal was rejected by the Appellate Authority by the impugned order dated 17.11.1999 (Annexure-B). The applicant filed a revision petition dated 17.1.2000 (Annexure-F) to the Commissioner of Police Delhi. However, the applicant was informed by letter dated 7.6.2001 (Annexure-G) that the Commissioner of Police Delhi no longer has revisional powers as per the headquarters Circular No.21038-21108/CR-I(PHQ) dated 28.5.2001 and that applicant will be at liberty to move the court against the orders passed by the Disciplinary Authority and the Appellate Authority if he so desires.

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The applicant ~~along~~^{with} one Sh. Ram Rishi (PW-4 in the DE) were acquitted by the Criminal Court by its judgement dated 23.1.2001 (Annexure-0).

3. The applicant filed the present OA against the impugned orders of the Disciplinary Authority and the Appellate Authority on 9.8.2001.

4. Heard the learned counsel for both the parties. Pleadings and the material papers and documents placed on record have been perused. Matter has been considered carefully.

5. The first main ground pressed by the learned counsel for the applicant is that the impugned order of punishment is vitiated since the same is violative of Rule 15(2) of Delhi Police (Punishment and Appeal) Rules, 1980. He submitted that no prior approval of Additional Commissioner of Police was obtained before initiating the departmental enquiry against him though the criminal enquiry disclosed a cognizable offence u/s 379, 411 and 409 of IPC and FIR was lodged. He contended that the impugned order of punishment therefore deserves to be quashed and set aside on this ground alone. In this connection he relied upon an order of this Tribunal dated 25.5.2001 in OA-796/2000 (Mohd. Usman Vs. U.O.I. & Ors.) (Annexure-J).

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6. The second main ground pressed by the learned counsel for applicant is that crucial witnesses, namely, the lady residing in Police quarters, Police Station, Punjabi Bagh who complained to S.I. Satish Kumar (PW-2) on 29.9.1991 that she could not sleep during the night due to the noise of the drums as well as the smell of the chemical and the other residents who told him that at night the chemical was taken away from the tanker, were not summoned as witnesses by the prosecution in the departmental enquiry to give evidence about the said theft. Such key witnesses ought to have been called and examined by the enquiry officer during the enquiry and that the respondents' failure to do so vitiates the enquiry proceedings and also the impugned orders which have ignored/not considered this aspect.

7. The third main ground pressed emphatically by the learned counsel for applicant is that the enquiry officer has totally ignored the plea of the applicant that the seal of the tanker was already broken when it was taken into custody and the smell of the chemical was coming out. The Disciplinary Authority and the Appellate Authority have also rejected the said plea without any application of mind. He contended that in the above circumstances, it is obvious that penalty of removal from service imposed upon the applicant is unsustainable in law since it is based upon perverse findings when there is no evidence to prove the charge against him and hence the impugned orders deserve to be quashed and set aside.

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8. Re the first main ground, namely, violation of Rule 15(2) of the Delhi Police (Punishment & Appeal) Rules, 1980, the respondents in their reply (Para 5.4) have stated that there is no need to seek permission under the aforesaid rule as a parallel departmental enquiry has been initiated against the applicant which is quite as per rules. Learned counsel for the respondents during the course of hearing has made a statement at the Bar that prior permission of the Additional Commissioner of Police was not taken in this case.

9. Rule 15(2) of Delhi Police (Punishment and Appeal) Rules, 1980 runs thus:-

"In cases in which a preliminary enquiry discloses the commission of a cognizable offence by a police officer of subordinate rank in his official relations with the public, departmental enquiry shall be ordered after obtaining prior approval of the Additional Commissioner of Police concerned as to whether a criminal case should be registered and investigated or a departmental enquiry should be held."

10. While so, respondents own statement and their counsel's statement made at the Bar as seen above make it abundantly clear that no prior approval of the Additional Commissioner of Police was taken before initiating the departmental enquiry against the applicant. The respondents averment as to there being "no need" for obtaining such permission is very sketchy

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and vague and does not justify their action in view of the specific provisions of Rule 15(2) of the Delhi Police (Punishment and Appeal) Rules, 1980 extracted above. Moreover, the respondents have not denied in Para 4.2. of their reply that the preliminary enquiry regarding the matter was conducted by the Assistant Commissioner of Police Sh. Ajay Kumar, who submitted his report and that a FIR dated 29.9.1991 for cognizable offence under the concerned sections of the IPC was lodged in the Police Station Punjabi Bagh against the applicant as co accused and that criminal proceedings were initiated against him in the court of ACMM. The respondents have failed to substantiate with supporting material that in case of parallel proceedings there is "no need" to obtain prior approval of the Additional Commissioner of Police under Rule 15(2) of the aforesaid rules. Neither the respondents in their reply to Para 4.5 of the OA nor their counsel during the course of the arguments were able to deny the applicability of the ratio of this Tribunal's order dated 25.5.2001 in OA-796/2000 in Mohd. Usman's case (supra) to the facts of the present case. Nothing has been brought to our notice to show that the order of this Tribunal in the aforesaid case whereby the impugned orders therein were quashed on the ground that prior permission of Additional Commissioner of Police as required under Rule 15(2) of the aforesaid Rules was not taken has not become final.



11. In view of the above facts and circumstances, we find that there is a clear violation of the provisions of Rule 15(2) of the aforesaid Rules since no prior permission was taken by the respondents before initiating departmental enquiry even though the preliminary enquiry indicated cognizable offence, a FIR was also registered in Police Station Punjabi Bagh and a criminal case was filed in the Criminal Court.

12. Re the second main ground, namely, non summoning of crucial or key witnesses by the enquiry officer, the respondents in Para 5.7 of their reply admitted that a statement was made by a lady during the enquiry conducted by Assistant Commissioner of Police (PW-3) that she could not sleep during the full night due to noise of drums and another lady who resides nearby where the tanker in question was parked told the Assistant Commissioner of Police verbally that few persons had come in truck with some drums and that they took out some liquid from tanker and took it away. The respondents have stated that it was not felt necessary to cite as a prosecution witness in the case as there are sufficient evidences to prove the charge against the applicant.

13. It is seen from the enquiry officer's report (Annexure-D) that 6 prosecution witnesses were examined during the enquiry and their statements were recorded. The applicant was given an opportunity to

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cross examine those witnesses and therefore availed the said opportunity regarding PWs 1, 2, 3 & 4. It is apparent that the prosecution have not bothered to summon the crucial witnesses i.e. the lady who was residing near the Police Station where the tanker was parked and the other residents to prove the charge against the applicant.

14. In view of the above, we find considerable merit in the second ground of the applicant's counsel that the enquiry is vitiated by non-summoning of the crucial witnesses to prove the charge against the applicant.

15. Re the third main ground learned counsel for respondents has not been able to refute the aforesaid contentions on any valid and tenable grounds with supporting material.

16. We have considered the third ground very carefully. As per the statement of Head Constable Bal Kishan Dahiya (PW-5) who is posted at Police Station Punjabi Bagh, DD No.71-B was recorded by the applicant. The said document was produced by him during the enquiry. It is also noticed from the statement of Head Constable Ranjit Singh of Police Station Punjabi Bagh (PW-6) that when he handed over Mud No.1918 vide which tanker was taken into possession vide DD No. 71-B dated 29.9.1991, it was written in the said DD that smell of

chemical was coming out of the tanker and the said tanker was given into the possession of Sub-Inspector Satish Sharma on 7.10.1991. Copy of the said Mud No. 1918 was also produced by him as exhibit PW-6-A. It is also seen from the Enquiry Officer's report that the applicant in his defence statement has stated that the abandoned tanker was taken into possession at 2.00 P.M. in the night of 28-29/9/1991 when there was smell of chemical coming out of tanker. While so, the enquiry officer in his conclusion has stated, inter alia, that all PWs have supported the prosecution. He has not given any reasons as to why the above plea of the applicant and the concerned Mud/DD entered were to be ignored or disbelieved or as to why the statements of N.R. Gupta PW-1 and S.I. Satish Kumar PW-2 as to the seal of the tanker being intact on 28.9.1991 were to be believed or found correct.

17. Regarding the plea of defaulter applicant that the seal of the tanker was already broken and some of the chemical was already stolen when it was taken into possession, the Disciplinary Authority in the impugned order imposing penalty dated 24.05.1999 (Annexure-A) gave a finding that it is an unfounded theory and there is nothing to support the same, whereas PW-1 and PW-2 are very clear that the seal was intact at the time of the seizure. On the basis of the statement given by those PWs and the later recovery of stolen chemical he came to the conclusion that the theft of

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chemical while the tanker was parked in Police Station Punjabi Bagh and held that the charge was proved. He has not given any reason as to why the aforesaid DD entry and the plea of the applicant (supra) have to be disbelieved or ignored whereas it is evident that the tanker where it was seized was in an abandoned state and there is no evidence to show the quantum of chemical, if any, found in the said tanker and crucial witnesses were not summoned to prove the theft as already noted above.

18. The findings of the Disciplinary Authority in his order as to the misconduct of the applicant in our view, therefore, are without any basis and are perverse. Such an order cannot be sustained under the law.

19. The Appellate Authority in his order dated 17.11.1999 (Annexure-B) has also not gone into the contents of the aforesaid DD entry recorded by the applicant when the tanker was taken into possession and relied upon the statements of PWs-1 & 2 regarding the seal of the tanker being intact. No reasons have been given as to why the statements of PW No.5 and PW No.6 regarding the DD No. 71-B dated 29.9.1991 with reference to the seal of the tanker being broken and the smell of the chemical coming out from the tanker at the time of the seizure are to be ignored and reliance was placed on the statements of PW-1 & 2 only to come to the conclusion that at the time of the depositing of the



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tanker the seal was intact and that the applicant had knowledge that the tanker was full of chemical. Plea of the applicant about proceedings being vitiated by the respondents failure to summon the key witnesses to prove the charge against him was also totally ignored. There is no evidence to show whether the abandoned tanker when it was taken into possession was empty, full or partly full and as to how the applicant could be held responsible for theft or negligence. The Appellate Authority has not applied his mind, inter alia, to the above crucial issues. We are, therefore, of the view that the impugned Appellate Authority's order also deserves to be set aside as being perverse and unsustainable under the law.

20. In the facts and circumstances of this case and in the light of the foregoing discussion, we are of the view that the impugned orders cannot be sustained under the law. In the result, the impugned orders dated 24.5.1999 (Annexure-A) and 17.11.1999 (Annexure-B) are quashed and set aside. The respondents are directed to reinstate the applicant in service with effect from the date of removal from service within a period of one month from the date of receipt of a copy of this order with all consequential benefits as per the relevant rules/instructions and judicial pronouncements on the subject.

21. OA is allowed as above. No costs.

(Govindan S. Tampi)
Member (A)

A. Vedavalli

(Dr. A. Vedavalli)
Member (J)