

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A. NO.1644/1999

New Delhi this the 11th day of December, 2000.

HON'BLE SHRI JUSTICE ASHOK AGARWAL, CHAIRMAN

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

Assitant Sub- Inspector Prabhat Singh
S/o Shri Kanhiya Lal
R/o B-1/94, Nehru Vihar, Timar Pur
Delhi. ... Applicant

(By Shri Sachin Chauhan, Advocate)

-versus-

1. Union of India through
Secretary, Ministry of
Home Affairs
North Block, New Delhi.
2. Joint Commissioner of Police
Southern Range
Police Head Quarters, I.P.Estate
M.S.O. Building, New Delhi.
3. Dy.Commissioner of Police
West District
P.S. Rajouri Garden
Delhi. ... Respondents

(By Advocate Shri Ram Kunwar)

O R D E R (ORAL)

Shri Justice Ashok Agarwal :

Applicant who is an Assistant Sub Inspector in Delhi Police was proceeded departmentally under the following charge:-

"I, Inspr. Balraj Singh, E.O. hereby charge you ASI Parbhat Singh, No.3750/D that on 24.1.98 you alongwith Ct.Vijay Pal No.794/West were deputed by SHO Anand Parbat to get postmortem conducted of dead body of Jiyavan S/o Sh.Kanya R/o Village: Nanda Pur Disst. Sultan Pur, U.P. recovered from a factory Gg-21/A, Gali No.13, Industrial Area Anand Parbat, Delhi on 20.1.98. SHO Anand Parbat directed you to take the dead body to mortuary at Subzi Mandi and after postmortem get the same cremated by the father of the deceased who had come to PS: Anand Parbat on 24.1.98 from U.P.

"At about 4.25 P.M. SHO Anand Parbat received a telephonic call from SHO Kashmiri Gate that you ASI had taken alcohol and were misbehaving with public at Nigambodh Ghat.

SHO Anand Parbat alongwith ASI Balbir Singh and ASI Vasudev reached Nigambodh Ghat and found alcoholic smell in your breath. SHO Anand Parbat directed ASI Balbir Singh of PS: Anand Parbat to get you medically examined. You were got medically examined in Hindu Rao Hospital vide MLC No.A 143-A/98 dated 24.1.98 by Ct.Brij Pal No.856/N and ASI Balbir Singh of PS: Anand Parbat. The doctor opined 'Pt. has taken alcohol but is not intoxicated'. The matter was also brought to the notice of ACP/Patel Nagar by SHO Anand Parbat.

"The above act on your part amounts to gross mis-conduct in the discharge of your official duty and unbecoming of a police officer which renders you liable for punishment and disciplinary action as envisaged under Section-21 of Delhi Police Act, 1978 and Delhi Police (Punishment & Appeal) Rules, 1980."

Enquiry was conducted by the enquiry officer by examining as many as 8 Prosecution Witnesses. Applicant has examined one witness in his defence. Based on the aforesaid evidence, enquiry officer by his report of 20.7.1998 has found the charge proved against the applicant. Disciplinary authority based on the aforesaid finding of the enquiry officer has by his order passed on 14.11.1998 proceeded to impose a penalty of forfeiture of 3 years' approved service permanently on the applicant thereby entailing reduction in his pay by three stages from Rs.4900/- to Rs.4600/- per month for a period of three years. Aforesaid order of the disciplinary authority was carried by the applicant in an appeal and the appellate authority by his order passed on 26.4.1999 has reduced the aforesaid penalty to one of forfeiture of one year's approved service permanently entailing reduction in his pay by one stage from Rs.4900/- p.m. to Rs.4800/- p.m. for a period of one year. Aforesaid orders are impugned by the applicant in the present OA.

V.P.J.

2. Shri Sachin Chauhan, the learned counsel appearing in support of the OA, has first contended that the Doctor who had examined the applicant for his drunkenness has not been examined whereas the medical certificate issued by him has been placed on record and has been relied upon for holding that the applicant has consumed alcohol. According to the learned counsel, applicant has been deprived of his right to cross examine the Doctor so as to impugn his certificate whereby applicant was shown to have been found smelling of alcohol. In our judgement, no capital can be made out in respect of the non-examination of the Doctor. It ~~has~~ ^{is} always been in departmental proceedings to place reliance on medical certificates without examining the ~~Doctors~~ who have issued the same. Moreover that is not the only evidence on record for bringing ^{home} ~~them~~ the aforesaid charge against the applicant, We have on record evidence in the form of PW-2, SHO Anand Parbat who has deposed to the condition of the applicant namely that he was not in a position to speak properly and smell of alcohol was coming out of his breath/mouth. Aforesaid evidence is further supported by PW-7, Constable Brij Pal and PW-8 ASI Balbir Singh who have deposed that when they took the applicant to the hospital, smell of alcohol was coming out of his breath/mouth. As far as the evidence of the defence witness is concerned, the same has not found favour with the enquiry officer on the ground that the applicant was known to the Doctor for a very long time. In our view, no exception can be had to the aforesaid appreciation of evidence and the conclusion

drawn. Aforesaid finding of guilt has been affirmed both by the disciplinary authority as also the appellate authority. We are not a court of appeal and it will, therefore, not be open to us to re-appreciate the evidence and thereafter record a finding different from the one which has found favour with the said authorities. Aforesaid contention of Shri Sachin Chauhan is, in the circumstances rejected.

3. Counsel has next contended that the disciplinary proceedings in question should be held to be non est on account of non-observance of the provisions of Rule 15(2) of the Delhi Police (Punishment and Appeal) Rules, 1980. According to the learned counsel, in the preliminary enquiry held, a cognizable offence had been disclosed. In the circumstances, prior approval of the Additional Commissioner of Police was required to have been taken before initiating the disciplinary proceedings. The same not having been taken, the entire proceedings are liable to be rendered as non est.

4. A contention similar to the one now raised was also raised in the case of **Ex. Constable Anil Kumar vs. Union of India and ors.** in OA No.659/1998 decided on 9.11.2000 wherein this is what has been observed:-

W.L.
"Rule 15 of the Rules deals with preliminary enquiries. Sub-rule (2) thereof prescribes that in cases in which a preliminary enquiry discloses the commission of a cognizable offence, a departmental enquiry shall be ordered after obtaining prior approval of the Additional Commissioner of Police as to whether a criminal case should be registered and investigated or a departmental enquiry should be held...."

Moreover, aforesaid sub- rule (2) of Rule 15, as we read it, does not bar both disciplinary proceedings being initiated as also a criminal prosecution being launched. All that the aforesaid rule lays down is that where both the courses are open, the Additional Commissioner of Police may decide which of the proceedings, whether a criminal case or a departmental enquiry should first be initiated. This, in our view, is the only construction which can be given to the aforesaid provision. We see no reason why one proceeding, if taken should necessarily exclude the other proceeding. That could never have been the intention of the legislature in enacting the said rule. If a preliminary enquiry does not disclose the commission of a cognizable offence, there can arise no question of launching a prosecution. All that can be done is to initiate a preliminary enquiry. However, in case the preliminary enquiry discloses the commission of a cognizable offence, the question arises as to whether the delinquent is to be prosecuted in a criminal case or he has to be proceeded departmentally or both, and whether on facts arising in each individual case, it would be appropriate to first initiate departmental proceedings which would entail the requirement of the delinquent to disclose his defence which may or may not, depending on the facts of each individual case, prejudice his defence in the criminal trial. A high ranking officer of the rank of Additional Commissioner of Police has been entrusted with the function and duty to decide whether a criminal trial should first be initiated or whether disciplinary proceedings can be conducted even prior to the delinquent being charged in a criminal trial. Aforesaid provision, in our view, does not admit of a construction that one proceeding excludes the other. The said provision, on the other hand, contemplates two proceedings, one departmental and the other criminal prosecution. All that the provision ordains is that the Additional Commissioner of Police will decide which proceeding should be initiated first and which at a later stage..."

If one has regard to the aforesaid observations contained in the aforesaid decision, a conclusion is irresistible that the aforesaid contention is liable to be rejected.

M.J.

5. For the foregoing reasons, we find that the present OA is devoid of merit. The same is accordingly dismissed. No costs.

S.A.T.Rizvi

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

sns

Ashok Agarwal

(Ashok Agarwal)
Chairman