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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH
New Delhi

O.A. No. 2476/1999

New Delhi, this 2nd day of the January, 2001

HON'BLE MR. V.K. MAJOTRA, MEMBER (A)
HON'BLE MR. SHANKER RAJU, MEMBER (J)

Const. No.4495/DAP
(Brijesh Kumar, S/o Ragubir Singh,
R/o Behrod, Distt. Alwar.
Rajasthan.)
5th Bn., DAP, Delhi. Applicant

(By Advocate : None)

Versus

1. Commissioner of Police
Police Headquarters,
I.P. Estate, New Delhi.
2. Addl. Commissioner of Police
Armed Police, (DAP) Kings Way Camp,
Delhi.
3. Deputy Commissioner of Police
Vth Bn. Delhi
(DAP) Kings Way Camp,
Delhi Respondents

(By Advocate: Mrs. Meera Chhibber)

ORDER

By SHANKER RAJU, MEMBER (J) :

None for the applicant, we proceed to dispose of this case in accordance with the Rule 15 of the Central Administrative Tribunals Procedural Rule, 1987.

2. The applicant is a Constable in Delhi Police has challenged an order dated 07.07.1998 passed by the Disciplinary Authority by which two years of approved service of the applicant is forfeited, permanently for the period of two years with cumulative effect and also treating the period of suspension with effect from 02.01.1998 to 08.02.1998 as not spent on duty.

3. The punishment order was carried in an appeal and vide an order dated 26.11.1998 the Appellate Authority rejected the appeal of the applicant.

4. The brief background of the case is that the applicant while performing duty on 31.12.1997 at 'E' Block, Security Line, from 5th Bn. DAP was detailed for P.S.O. duty in uniform from 8.00 P.M. to 8.00 A.M. with P.P. Shri Raju Bhayia. It is alleged that the Constable (applicant) reached on duty at 10.30 P.M. in Civil Dress and without weapon. A communication was lodged by P.P. Shri Raju Bhayia at 'E' Block, Security Line vide DD 63-A dated 31.12.1997 about the applicant. The Constable (applicant) was called back and at about 11.30 P.M., he was found under the influence of alcohol and misbehaved with ASI Ayodhya Parsad, Duty Officer, 'E' Block, Security Line and the matter was reported to Inspector, Control Room. Thereafter, the applicant was sent for medical examination to R.M.L. Hospital. After medical examination of the applicant, the doctor opined, 'Patient consumed alcohol and under its influence'. During the course of the enquiry 5 PWs have been examined and thereafter, the applicant submitted his defence statement. The applicant was held guilty of the charge by the Enquiry Officer.

5. We have carefully considered the contention of the applicant and the learned counsel for the respondents and perused the record.

6. The applicant challenged the impugned order dated 07.07.1998, firstly on the ground that the punishment imposed upon him is not consistent with Rule 8 (d) of

Delhi Police (Punishment and Appeal) Rules, 1980. We have carefully considered the punishment and as per the Full Bench Judgement of the Tribunal in the case of ASI Chander Pal Vs. UOI the aforesaid punishment has been held legal as per Rule 8 (D) (II) of Delhi Police (Punishment and Appeal) Rules, 1980. As such the contention of the applicant is rejected.

7. The applicant has also challenged the treatment of suspension period as not spent on duty by referring to Rule 26 (3) of Delhi Police (Punishment and Appeal) Rules, 1980. It is contended that the suspended Police Official is deemed to put on duty. We do not agree with this argument as the applicant has been awarded major punishment on alleged grave charges of taking liquor and having under its influence, the period of suspension has been rightly treated as not spent on duty.

8. The applicant has also challenged the findings of the Enquiry Officer, but we found that the findings of the Enquiry Office has not been appended as an annexure in the OA. No relief quo findings has been prayed in column 8 of the reliefs clause in the application. As such in absence of any prayer to the fact of quashing the findings, no relief could be granted on the same. Furthermore, the applicant has challenged the findings on the ground that the same are illegal and does not based on cogent reason. We have carefully perused the record of the Departmental Enquiry as well as findings of the Enquiry Officer. We find that the Enquiry Officer has elaborately discussed the prosecution evidence and also taken into consideration the defence

contention of the applicant. The Enquiry Officer passed a reasoned findings as required under Rule 16 (9) of Delhi Police (Punishment and Appeal) Rules, 1980. As such the contention of the applicant regarding challenge to the findings is rejected.

9. The applicant has also taken a plea in this application that the material witness P.P. Shri Raju Bhayia has not been examined in the enquiry. It is further contended that the original DD 63-A does not mention about the fact that the applicant consumed alcohol. In this regard, we have perused the record and find that the applicant has been examined by the CMD, R.M.L. Hospital vide MLC dated 31.12.1997 and he has been found consumed alcohol and under its influence. The aforesaid MLC was forming part of the Departmental Enquiry report and the applicant was given reasonable opportunities to defend the same. As such, we feel that the enquiry would not be vitiated only on the facts of DD 63-A did not contain the facts of alleged consumption of alcohol by the applicant. The applicant has not alleged any malafides against the Enquiry Officer or against the Police Official who have recorded DD entry and got conducted the medical examination of the applicant. The learned counsel for the respondents contended that non-examination of doctor who had given the MLC would not vitiate the proceedings and for this, he relied upon the ratio laid down by the Tribunal in the case of Satya Prakesh Vs. UOI (1992 (23) ATC 260. We are fully in agreement with the learned counsel for the respondents and held that

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non-examination of doctor would not vitiate the proceedings as the other witnesses have proved, the MLC.

10. The applicant has also challenged the impugned order dated 07.07.1998 on the ground that the applicant was on reserve duty from 2.00 P.M. to 8.00 P.M. on the same day, 31.12.1997 and thereafter, he could not be deputed for another duty from 8.00 P.M. to 8.A.M. on 31.12.1997. The applicant contended that the Police Official could not be on duty for 16 hours at a stretch. The learned counsel for the respondents referred to Section 24 of Delhi Police Acts, 1978 which stipulates that the Police Official not under leave or suspension will be for all purposes of this Act, be deemed to be on duty. According to the respondents in Security Line on Sudden arrival of P.Ps or in case of absence of any P.S.O., the Duty Officer used to depute the P.S.O. from reserve duty staff with duty slip issued from 'Chitha Munshi' or BHM. In the instant case on sudden arrival of P.P. Shri Raju Bhayia, the applicant was issued a duty slip for his deployment in uniform from 8.00 P.M. to 8.00 A.M, dated 31.12.1997. In our considered view, there is nothing illegal to deploy the applicant for his reserve duty in case of emergent situation. The learned counsel for the applicant has failed to show any Rules and instructions prohibiting this sort of continuous duty. Hence this contention of the applicant is rejected.

11. The applicant has further contended that the punishment is highly ^{excessive} ~~exhaustive~~ and against the Rules. In this regard, the learned counsel for the respondents

has drawn our attention to a Judgement of Hon'ble Apex Court in the case of P. Ravichandran Vs. UOI and Ors. (1999 (1) SLJ CAT 245) and contended that the Hon'ble Apex Court has held that consuming alcohol on duty is a grave misconduct in the case of disciplined force. We are in agreement with the contention of the respondents that the applicant consumed alcohol on duty and having in its influence would be a grave misconduct. Apart from it, the Tribunal would not go into the proportionality of punishment. It is not a case where our conscience has been shocked. As such the punishment is rightly imposed upon the applicant.

12. The applicant has also contended that he has been denied reasonable opportunities and punished on no evidence. We have gone through the evidence recorded during the course of the Departmental Enquiry. We are of the considered opinion that there is sufficient evidence against the applicant to support the charge. The role of the Tribunal is very limited and we cannot reappraise the evidence to come to a conclusion different from what has been arrived at by the Disciplinary Authority. ^h Enquiry. As such this contention of the applicant is also rejected.

13. No other grounds have been taken by the applicant to challenge the impugned orders. We find this OA bereft of any merit and the same is accordingly dismissed. No order as to costs.

S. Raju

(SHANKER RAJU)
MEMBER (J)

V.K. Majotra

(V.K. MAJOTRA)
MEMBER (A)

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