

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A.No.465/99

Hon'ble Shri Justice V.Rajagopala Reddy, VC(J)
Hon'ble Shri Govindan S. Tampi, Member(A)

New Delhi, this the 1st day of November, 2000

Nar Bhahadur
(2175/DAP)
s/o Sh. N.B.Pandey
r/o C-3/301, Lodhi Colony
New Delhi - 110 003. ... Applicant

(By Shri Shyam Babu, Advocate)

Vs.

1. Govt. of NCT of Delhi
through its
Chief Secretary
5, Sham Nath Marg
Delhi.
2. Addl. Commissioner of Police
(now Joint Commissioner of Police)
Armed Police
Police Headquarter
I.P.Estate
New Delhi.
3. Dy. Commissioner of Police
3rd Bn. DAP
Kingsway Camp
Delhi. .. Respondents

(By Shri Harvir Singh, Advocate)

O R D E R (Oral)

Justice V. Rajagopala Reddy:

Heard the counsel for the applicant and the respondents.

2. A summary of allegations has been issued to the applicant while he was Head Constable in Delhi Police in which it was alleged that when he was detailed for duty from 10 P.M. to 6 A.M. on 7/8-3-1997 (Shivrathri Day), he sustained head injury and when he was taken to the hospital he was found to be smelling alcohol. It is also alleged that he left the hospital against medical advice. The applicant

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pleaded not guilty. A departmental enquiry has been ordered. The enquiry officer having examined four witnesses for prosecution but none for the defence witness, found the charge proved. The disciplinary authority agreeing with the findings of the enquiry officer imposed the punishment of reduction in rank from Head Constable to Constable for a period of three years, in the impugned order dated 11.2.1998, which has been confirmed by the appellate authority in its order dated 30.9.1998. These orders are under challenge in this OA.

(12)

3. The learned counsel for the applicant, Shri Shyam Babu, strongly urges that as the applicant was asked to do night duty while he was on 'duty rest' on the Shivrathri Day. He nevertheless went to duty and performed the same without any complaint against him. However, as he was on duty rest, he had consumed some drinks in his house and because of that he did smell alcohol but the same cannot be held as misconduct, as he had not consumed drink while he was on duty. It is also submitted that the plea of the applicant was neither rebutted by the prosecution as the Chitha Munshi was not examined nor the Chitha Roster (Duty Roster) was produced during the enquiry. It is also submitted that the alleged Medico Legal Certificate (for short, 'MLC') issued by Dr. Shikha of the Hospital was not proved as Dr. Sikha was not examined. Hence the MLC could not be relied upon. Thus, the best evidence in the case was not brought to light. In the result, it is argued, the enquiry should be held as vitiated.

4. The learned counsel for the respondents, Shri Harvir Singh, on the other hand, submits that there was sufficient evidence on record and the enquiry officer rightly held that the applicant was guilty of the charge of smelling liquor and that all the material witnesses have been examined by the prosecution to prove the case. There is therefore no warrant to interfere with the impugned orders.

5. We have given careful consideration to the contentions raised by the learned counsel on either side. The only allegation in this case was that the applicant, Head Constable, was found smelling alcohol during his night duty on 7/8-3-1997 (Shivrathri Day). In support of this contention, the prosecution examined four witnesses and on assessment of the evidence, the enquiry officer came to the conclusion that the applicant was guilty of the charge. It was the plea of the applicant that on the night of 7/8-3-1997, he was on duty rest as per the Chitha Roster (Duty Roster) because it was Shivrathri. Due to the festival, he has taken liquor in his residential quarter. But suddenly, the Chitha Munshi asked him to perform the duty. He had to go to perform duty. When he got injuries during his duty hours, he was taken to hospital where the doctor examined him and also noted that he was smelling alcohol. Thus, according to him, he has not taken alcohol during the duty hours. To rebut this plea the prosecution sought to examine the Chitha Munshi, Shri Shatish Kumar and produce on record the Chitha Roster (Duty Roster). The proceedings of the enquiry officer reveal that, in fact, the Chitha Munshi was not

examined as witness. It is however, stated in the proceedings that the Chitha Munshi had informed that the Chitha Roster was lost. In this regard, the enquiry officer has stated as under:

"Therefore Chitha of the Police Station Lodhi Colony was summoned and Ct. Satish Kumar 2000/SD Chitha Munshi stated that Chitha of that day i.e. 7.3.97 have been lost and daily diary did not show any rest. Ct. Satish Kumar 2000/SD handed over me a DD No.36B, dt. 13.8.97 PS Lodhi Cly. in this regard and now it can not be find out whether HC Narbahadur was on duty rest or not and this plea of the defaulter cannot be rebutted."

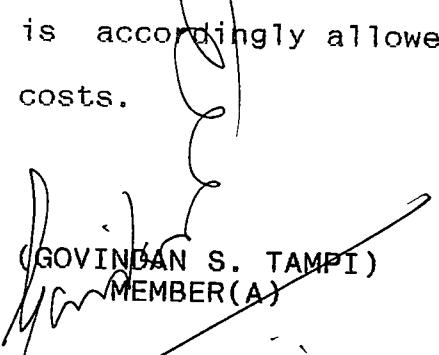
6. From the above, it is clear that the plea of the applicant remained unrebutted.

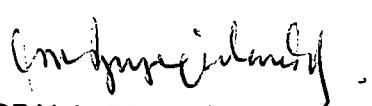
7. Regarding the MLC, it is argued that it was also not proved. We find sufficient force in this contention. The crux of the case against the applicant was on the basis of the MLC, as it was only in the MLC, the Doctor noted that the applicant was smelling alcohol. The finding of the enquiry officer is that other than the MLC, there is no other evidence to support the charge. There is no other oral or documentary evidence to prove it. Unfortunately, the Doctor, who issued the MLC was also not examined. It was however stated that despite best efforts the evidence of the Doctor could not be procured. But we do not find that any summons have been issued to her (Doctor) by the enquiry officer or any request is made to the Superintendent of the concerned Hospital to get the evidence of the Doctor. It is therefore not possible to accept that the evidence of the Doctor could not be procured for the purpose of this enquiry. It cannot be denied that the evidence of the Doctor is the best evidence in this case to prove the MLC.

8. Thus, we find that the material witnesses viz. Chitha Munshi and the Doctor were not examined. The material documents, Chitha of 7.3.1997 and MLC was not proved. (S)

9. In Mohd. Shafi and Another Vs. State of Jammu and Kashmir, AIR 1970 SC 688 it was held that non-production of the file raises a strong presumption that, if produced, it would have supported the case of the detenu. The ratio of this case equally applies to the instant case. Thus the best evidence in this case was not made available for disproving the case of the applicant. Taking the finding of the enquiry officer itself, it is clear that the plea of the applicant could not be rebutted and it was clearly stated that it was doubtful whether the applicant's plea could be accepted or not. We therefore find that the above infirmities would vitiate the enquiry.

10. The OA therefore succeeds. The impugned orders are set aside. The respondents shall grant all the consequential benefits to the applicant. The OA is accordingly allowed. We do not however order any costs.


(GOVINDAN S. TAMPI)
MEMBER(A)


(V.RAJAGOPALA REDDY)
VICE CHAIRMAN(J)

/RAO/