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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A.No.758/99

Hon'ble Shri V.K.Majotra, Member(A)
Hon'ble Shri Shaker Raju, Member(J)

New Delhi, this the 1st day of February, 2001

Ex. Constable Subhash Chand No.6038/DAP
son of Shri Saudan Singh
r/o H.No.8, Gali No.16, Sarojini Park
Near Geeta Colony, Shastri Nagar
Delhi - 31. ... Applicant

(By Shri Sama Singh, Advocate)

Vs.

1. The Commissioner of Police
Delhi Police Headquarters
MSO Building, I.P.Estate
New Delhi - 110 002.
2. The Addl. Commissioner of Police (Armed Police)
New Police Lines
Kingsway Camp
Delhi - 110 009.
3. The Deputy Commissioner of Police
Ist Bn. DAP New Police Lines
Kingsway Camp
Delhi - 110 009. ... Respondents

(By Shri Ajesh Luthra, Advocate)

O R D E R (Oral)

By Shri Shanker Raju, Member(J):

The applicant, a Constable, has been proceeded against a departmental enquiry on the allegation that on 8.1.1997 while posted at Ist Bn. DAP, CP Reserve, Vijay Ghat he came to the office of Inspector Mahender Dev and met Ct. Vijay Singh, reader of Inspector Mahender Dev and demanded his absence papers on the pretext that he had to add medical certificate with absence papers. It is alleged that instead of attaching the medical certificate, the applicant ran away after taking absence papers. Const. Vijay Singh and Ct. Kaushal Kumar ran after the applicant upto his tent and demanded absence papers, but the applicant refused to return the papers. He also

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A misbehaved, abused and threatened them by saying that 'Bhag Jao Nahin To Goli Se Uda Dunga'. The applicant had a carbine machine gun with 35 rounds which was issued to him to perform VVIP route duty. The aforesaid facts are brought into the notice of Inspector Mahender Dey, who called the applicant, at that time Inspector Gayatri Prakash was also present there. The applicant kept uttering vulgar language and threatening them in presence of HC Harbir Singh and Ct. Bhupinder Singh. The Carbine machine gun was taken into personal custody by Inspector Mahender Dev and the applicant was sent for medical examination where he was found to have consumed alcohol but not under his influence. After the conclusion of the departmental enquiry, the enquiry officer held the applicant guilty of consuming liquor while on duty and his misbehaviour with senior officers as a gross misconduct and negligence on the part of the applicant and the same was proved beyond doubt. The disciplinary authority agreeing with the findings of the enquiry officer, imposed the punishment of dismissal upon the applicant and his suspension period from 9.1.1997 to 12.5.1997 is treated as 'not spent on duty' for all intents and purposes by observing the misconduct as a graver turn. The applicant preferred an appeal against the order of punishment. Taking a lenient view on the basis of the previous service record of the applicant, the appellate authority vide order dated 25.3.1998 modified the order of the disciplinary authority and awarded him a penalty of forfeiture of three years approved service permanently for a period of three years entailing proportionate reduction in his pay with immediate effect. It is

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also further directed by the appellate authority that the applicant will not earn increment of pay during the period of reduction and on the expiry of this period the reduction will have its effect of postponing his future increment of pay and his suspension period from 9.1.1997 to 12.5.1997 is treated as 'not spent on duty' for all intents and purposes. The intervening period, i.e., from the date of his dismissal (26.12.1997) to the date the applicant joins his duty will be treated as "dies non".

2. The above stated orders are impugned in this OA by the applicant on the ground that the preliminary enquiry was held by Inspector Mahender Dev who submitted his report to the higher officials and on that basis a departmental enquiry was ordered against the applicant. The learned counsel for the applicant contended that the allegations regarding snatching of absence papers, the misbehaviour and threatening the higher officials would amount to a criminal misconduct and constitute a cognizable offence under Section 406 and 506 of IPC. By referring to Rule 15(2) of the Delhi Police (Punishment and Appeal) Rules, 1980 it has been contended that the preliminary enquiry had disclosed cognizable offence. The enquiry officer's conclusion was without seeking prior approval of the Additional Commissioner of Police is illegal and void. The respondents stated that the enquiry conducted by Inspector Mahender Dev was not a preliminary enquiry and as no cognizable offence was disclosed while

dealing in relation with public in discharging of his duties, therefore, Rule 15(2) would not be attracted in the present case.

3. We have given careful thought to the rival contentions of the legal issues. The contention of the learned counsel for the respondents that a preliminary enquiry which is to be ordered under Rule 15(1) of the Rules *ibid* can only be treated as a preliminary enquiry as no preliminary enquiry was ordered under Rule 15(1) of the Rules *ibid*, the enquiry conducted by Mahender Dev would not be treated as preliminary enquiry for the purpose of Rule 15(2) *ibid*. We do not agree with the contention of the learned counsel, as a preliminary enquiry is only a fact finding enquiry the purpose of which is to establish the nature of the default and to collect evidence for departmental enquiry and to ascertain the quantum of default for facilitating a regular departmental enquiry. In cases where the specific information has been available there is no necessity for holding a preliminary enquiry. Dealing with the facts of the present case, we find that on account of DD No.66 recorded by Inspector Mahender Dev regarding the incident dated 8.1.1997 an enquiry was conducted by Inspector Mahender Dev where after identifying the default and its nature and after judging its quantum he had given a detailed report concluding the alleged misconduct of the applicant to the higher officials for necessary action. In our view, the record submitted by Inspector Mahender Dev which was the basis of initiation of departmental enquiry against the applicant is nothing but the preliminary enquiry

report. In our view the aforesaid enquiry was within the purview of Rule 15 *ibid*. If the specific information regarding misconduct of the applicant was available with the respondents, there was no occasion for Inspector Mahender Dev to go into the allegations and give detailed report which facilitated the departmental enquiry against the applicant. As regards the application of Rule 15(2) as the misconduct was disclosed a cognizable offence but not in relation with the police officers, the same would not attract to Rule 15(2) as such in the absence of prior approval of the Additional Commissioner of Police the enquiry would not be vitiated.

4. It has been next contended by the learned counsel for the applicant that the reduced punishment is contrary to Section 21 of the Delhi Police Act read with Rule 8 of the Rules *ibid*. According to the learned counsel for the applicant deferment of increment for future purposes is not a punishment enumerated any of the previous punishments stated above. We do not agree with the contention of the learned counsel for the applicant as the Full Bench of this Tribunal in OA No.2225/93 (A.S.I. - Chander Pal Vs. Delhi Administration & Another), FB dated 18.5.1999 has upheld the legality of the punishment by observing as under:

"For the foregoing reasons, our answer to the question referred before the Full Bench is as follows:

"The penalty of forfeiture of 'X' years approved service permanently entailing reduction in pay by 'X' stages for a period of X years with the condition that the delinquent police official would

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not earn increment/increments during the period of reduction and on the expiry of that postponing the future increments, is in accordance with law."

5. We are following the ratio laid down by the Full Bench of the Tribunal and find no infirmity in the punishment imposed upon the applicant.

6. It has been next contended that the applicant has been punished due to bias and malafides of the higher authorities and more particularly of Inspector Mahender Dev and further contended that due to some previous incidents of refusal of leave to the applicant by the said witnesses he has been falsely implicated in the allegations and the other witnesses produced by the respondents had also deposed against the applicant under the influence of a senior officer. We find from the record of the applicant that the Mahender Dev against whom malafides were alleged was not made as a respondent. Apart from this, during the course of the enquiry, no suggestions was put to witnesses regarding this fact of malafides by the applicant. In the absence of a specific plea of malafide and without any proof of the same, in the form of other defence evidences or defence contentions produced by the applicant during the course of the departmental enquiry, the same would be irrelevant and without any reasonable proof. We also find from the enquiry that the witnesses had deposed against the applicant without any influence of senior officers and this includes Inspector Gayatri Prakash who is of equivalent rank to the said Inspector. We hold that the applicant had failed to establish the malafides against Inspector Mahender Dev and this plea of the applicant is not maintainable and rejected.

7. The applicant further contended that a medical examination of the applicant had taken place and he was subjected to test etc. like blood etc. and merely on smell he has been found consumed alcohol by the Doctor. According to the applicant his defence of taking some ayurvedic medicine issued through CGHS dispensary has not been taken into consideration by the enquiry officer. In this view of the matter, we perused the testimony of the Doctor produced in his defence. According to him if one consumes alcohol in the form of ayurvedic medicine the affect of which would for a period of half an hour. If he had taken food the smell would go automatically. We find that the applicant was medically examined after one hour. Apart from it this medical evidence in defence of the applicant was also taken note by the enquiry officer as well as by the disciplinary authority. we also find from the record that the applicant has not asked any question from the Doctor at the time of enquiry. Regarding that he had taken ayurvedic medicine. As such we are of the considered view that the defence of the applicant regarding taking ayurvedic medicine would not be of any help to him as the ayurvedic medicine even if consumed do not have that affect after one hour to the extent that the smell comes from the mouth of the person who consumed alcohol. Keeping in view of the small percentage of the alcohol, i.e., 18% the defence of the applicant is not at all reasonable. As such the plea of the applicant is rejected.

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8. It has been lastly contended that the appellate authority while reducing the punishment, has referred to same contradictory evidence in the testimony PW-2. We have also considered this plea and find that the appellate authority without application of mind misinterpreted the testimony PW-2, wherein it has been stated that the applicant came to the window and this has been construed as coming inside. In our view, this minor discrepancy would not vitiate the orders of appellate authority as there is onus sufficient evidence to establish the charge. Whatsoever may be the appellate authority had taken a lenient view on the basis of a long service of 15 years which to our mind is already taken note by the appellate authority keeping in view of the allegations of misbehaviour and threatening the fellow officers after consuming the liquor. We find no infirmity even in the order of appellate authority. No valid ground has been taken by the learned counsel for the applicant to challenge the impugned orders. In view of the above discussion, we find no merit in the present application and the same is dismissed without costs.

S. Raju
(SHANKER RAJU)
MEMBER(J)

V.K. Majotra
(V.K. MAJOTRA)
MEMBER(A)

/RAO/