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CENTRAL ADMINISTRATIVE TRIBUNAL PRINCIPAL BENCH
NEW DELHI.

O.A.No.1713/95

New Delhi: this the 1st day of JULY, 1997.

HON'BLE MR.S.R.ADIGE MEMBER(A).

HON'BLE MRS. LAKSHMI SWAMINATHAN, MEMBER(B).

Shri Virenderpal Singh
S/o Shri Mahender Pal Singh,
Vill. & P.O. Dhinder,
Distt. Ghaziabad (UP)Applicant.

(By Advocate: Shri Diwarkar Chaturvedi)

Versus

Union of India through

1. Secretary (Defence)
Ministry of Defence,
New Delhi.

2. Ordnance Factory through
its General Manager,
Muradnagar,
Distt. Ghaziabad (UP)

3. The Chairman,
Ordnance Factory,
10A Auckland Road,
Calcutta - 700001.Respondents.

(By Advocate: Shri V.S.R.Krishna)

JUDGMENT

BY HON'BLE MR.S.R.ADIGE MEMBER(A).

Applicant impugns order dated 4.8.93
(Annexure-IX to rejoinder) removing him from
service and the appellate order dated 16.5.95
(Annexure-A) rejecting his appeal.

2. By Memo dated 20.8.91 (Annexure-I to
rejoinder) applicant was chargesheeted on the
grounds that while functioning as Ty. Driver Sr.II
during the night shift of 29.5.91 (duty hours
from 8 p.m. to 5-30 p.m.), he
i) drove the ambulance rashly
and negligently;

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ii) caused death of a factory employee Shri S.C. Singh by driving ambulance rashly and negligently; and

iii) left the place of his duty unauthorisedly without any permission/intimation.

3. The I.O. in his findings dated 20.4.93 (Ann. VI to rejoinder) held all three charges as established. A copy of the Inquiry Report was sent to applicant on 3.5.93 for representation if any which he submitted on 21.5.93. After considering the same the Disciplinary Authority rejected the representation and imposed the punishment of removal from service vide impugned order dated 4.8.93. Applicant filed an appeal dated 26.8.93. Applicant also filed O.A. No. 227/95 against the disciplinary authority's order dated 4.8.93, but as his appeal was still pending, after hearing the parties, the said O.A. was disposed of by order dated 9.3.95 directing respondents to dispose of applicant's appeal within two months under intimation to him. Respondents accordingly disposed of the appeal by impugned appellate order dated 16.5.95 rejecting the same, against which the present O.A. has been filed.

4. The main ground taken by applicant's counsel, which was also taken by applicant in his appeal, is that criminal case bearing No. 172/91 u/s 279/479/304A IPC was instituted against applicant in the Muradnagar P.S. in respect of the same incident in which applicant was acquitted by Addl. C.J.M., Ghaziabad's judgment dated 30.7.93 (Ann. VIII to rejoinder)

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and as the facts and circumstances in the criminal case and the departmental proceeding are identical in all respects, applicant is entitled to the benefit of the judgment acquitting him in the criminal case and consequent reinstatement. It is also contended that none of the prosecution witnesses in the D.E. could prove beyond doubt that applicant was driving the vehicle at about 9.45 p.m. on 29.5.91 when the incident occurred, and the I.O. failed to consider material facts and relevant evidence during the D.E. leading to findings which were influenced by extraneous considerations and the outcome through/non-application of mind.

5. A perusal of the Advl. C.J.M., Ghaziabad's judgment dated 30.7.93 reveals that the applicant was acquitted not because the incident involving applicant's rash and negligent driving on the night of 29.5.91, his causing the death of Shri S.C. Singh through such rash and negligent driving and his leaving the place of his duty unauthorisedly without any permission/authorisation was not believed by the Trial Court to have occurred, but because during the course of the Trial the three PWs produced by the prosecution namely Tejvinder Singh (P.W.1); M.K. Sharif (P.W.2) and Sardar Singh (P.W.3) either claimed to have not been present at the time of the incident, or denied to have seen the incident, and, therefore, were declared hostile, as a result of which the offences under secs. 279/427/304A IPC could not be framed against applicant beyond all reasonable doubts.

6. In the DE however, the statement of S/Shri M.K. Sharif and Sardar Singh together with the

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statement of the other prosecution witnesses namely Smt. A. Nair, Sr. Nurse, Smt. S. A. Singh, Staff Nurse and Shri Nathu Lal point to the preponderance of probability that applicant was guilty of rash and negligent driving on the night of 29.5.91 leading to the death of Shri S. C. Singh after which applicant left place of duty unauthorisedly without any permission/authorisation and remained away for the whole night. In this connection, that portion of Enquiry Officer's observations is very relevant that if applicant was innocent as he claimed to be, there was no necessity of his leaving the hospital without telling anyone, and that too for the full night, and his plea that he could have been harmed by the violent mob, is not worthy of credence, firstly because no one could have recognised him, and secondly because the people did not harm the other ambulance driver Sumer Singh even though they recognised him. Moreover if he had wanted to escape the violent mob he could have remained in the hospital unnoticed or gone to the Security Officer, Police Station etc. or informed the M.D. etc. but he did none of these things and instead ran away from the hospital without informing anybody and remained away for the whole night, which further indicates his involvement in the incident.

7. It is well settled that in a domestic inquiry the misconduct does not have to be proved beyond all reasonable doubt as in the case of a criminal ^{proceeding} case, and it is sufficient if the alleged misconduct is established on the basis of preponderance of probability. In the present case on the

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basis of the evidence recorded in the DE there is no doubt that the misconduct in respect of which applicant is charged, is established on the basis of preponderance of probability. Applicant has not pointed to any procedural infirmity in the conduct of the proceedings serious enough to deny him a fair and proper hearing of his defence, to warrant any interference by us in the matter.

8. Applicant's counsel has cited certain rulings in support of his contention that in the light of the Addl.C.J.M.Ghaziabad's judgment dated 30.7.93, the appellate authority should have reinstated the applicant. The first ruling cited is Mohd. Toufic Vs. G.M. APSRTC and another 1989(5) SLR 301 but in that case the appellant was acquitted honourably on merits which is not the case here, where the present applicant was acquitted because the PWs turned hostile. The second ruling cited is K.L. Sabharwal Vs. G.M. Northern Railway & Ors. 1987(1) SLR 592 where again it was a case of clean and honourable acquittal in the criminal case on merits and not because the PWs turned hostile. Other judgments cited are Sattar Khan Vs. State of Orissa 1991(6) SLR 268 of CAT Orissa Bench; J.B. Sawant Vs. Board 1994 (6) SLR 555 of Bombay High Court; Sulekh Chand & Salek Chand Vs. Commissioner of Police & Others 1994 Supp. (3) SCC 674; J.R. D'Silva Vs. RTD South Kanara & another AIR 1952, Madras 853; Sri Kundan Lal Vs. Delhi Administration 1976 (1) SLR 133 and

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Bhagwan Charan Vs. State of UP & Ors 1973 (2)

SLR 238; but in none of the cases cited are the particular facts and circumstances of the present case noticeable, where in the criminal case the delinquent was acquitted only because the 3 prosecution witnesses produced by the State turned hostile, while in the departmental enquiry their testimony as well as the testimony of other prosecution witnesses who were not produced in the criminal case establishes on the basis of the preponderance of probability that applicant is indeed guilty of the misconduct as charged.

9. In the result, we are compelled to hold that the rulings cited by applicant's counsel are not relevant to the facts and circumstances of this particular case, and under the circumstance, the impugned orders warrant no interference.

10. The OA is therefore dismissed. No costs.

Lakshmi *Subbaram*
(MRS. LAKSHMI SWAMINATHAN) (S. R. ADIGE)
MEMBER(J) MEMBER(A).

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